Aishah Namukasa

Law and Labour Migration Struggles:
Legal Consciousness of East African Healthcare Professionals in Britain

kassel university press

Aishah Namukasa

Law and Labour Migration Struggles:
Legal Consciousness of East African Healthcare Professionals in Britain

kassel university press

This work has been accepted by the Faculty of Social Sciences of the University of Kassel as a thesis for acquiring the academic degree of Doktor der Wirtschafts- und Sozialwissenschaften (Dr. rer. pol.).

Supervisor: Prof. Dr. Helen Schwenken, University of Kassel
Co-Supervisor: Prof. Dr. Akua Opokua Britchuam, University of Cape Coast

Defense day: 20th December 2017

Bibliographic information published by Deutsche Nationalbibliothek
The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data is available in the Internet at http://dnb.dnb.de.

Zugl.: Kassel, Univ., Diss. 2017
ISBN 978-3-7376-0656-1 (print)
ISBN 978-3-7376-0657-8 (e-book)
DOI: http://dx.medra.org/10.19211/KUP97837376006578
URN: https://nbn-resolving.org/urn:nbn:de:0002-406576

For Issah

Contents

Acknowledgements

I am appreciative of my parents for encouraging me in my pursuit for knowledge. My parents deserve credit for valuing education. Tremendous appreciation goes out to all my previous teachers, lecturers, employers in Uganda. I am thankful for the Commonwealth Scholarship Commission and the German Academic Exchange Service that supported my masters at the University of Nottingham and doctoral studies at the the University of Kassel respectively. I am grateful to Professor Mary Elizabeth Footer who nurtured my interest in socio-legal research. Many thanks to my supervisors Professor Helen Schwenken and Professor Akua Britwum for their patient supervision of a project that grew out of my desire to undertake an interdisciplinary study of migrant rights and the political economy of migration. I am grateful to Professor Sonja Buckel, Lisa Marie Heimeshoff, Christian Möllmann, Professor Christoph Scherrer and Professor Eddie Webster for their advice.

My interview partners, thank you for sharing your transnational experiences with me and with this publication migrant voices can be heard. Special thanks goes out to medical staff in Germany. Through all your efforts, I learnt first-hand about the courage, dedication and work of all healthcare professionals that transcend borders to save lives.

I have benefitted from a great work environment of the International Centre for Development and Decent Work (ICDD) at the University of Kassel. Within the ICDD network I have received remarkable support from the entire team. I have been fortunate to interact and constructively share ideas with colleagues from around the world that it is difficult to name all or exclude some. I enjoyed the colloquiums at the Institute of Migration Research and Intercultural Studies (IMIS) and the Centre for Gender, Research, Advocacy and Documentation (CEGRAD). I am grateful to the hosts of symposiums where I presented parts of the book. To my siblings, family and friends, thank you for the times you have supported me from near and afar in various ways. I am eternally grateful to all who provided an ear and a support system to me. Finally I dedicate this book to my child. I pray that you grow to be the best that you can be.

List of abbreviations

BAME	Black Asian and Minority Ethnic
CUKC	Citizenship of the United Kingdom and Colonies
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
EEA	European Economic Area
EU	European Union
EVWS	European Voluntary Workers Scheme
GP	General Practitioner
GFMD	Global Forum for Migration and Development
HSMP	Highly Skilled Migrant Programme
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILPA	Immigration Law Practitioners' Association
ILO	International Labour Organisation
IOM	International Organisation for Migration
LMP	Labour migration programme
MAC	Migration Advisory Committee
NGO	Non-Government Organisation
NHS	National Health Service
OECD	Organisation for Economic Co-operation and Development
PBS	Points-based (immigration) system
RLMT	Resident labour market test
SOL	Shortage occupation list
TLMP	(Temporary) labour migration programme or policy
UDHR	Universal Declaration of Human Rights
UKVI	United Kingdom Visas and Immigration

List of tables

1. Introduction

It is not fair to make me fill an equal opportunity form, when they are not going to respect that, like equal opportunities… (Malia, former student, carer and nanny)

…all workers' rights are legislated by the government, so there is nothing the unions can do to the employer (Kato, sonographer)

Before I was a resident, even the visa type it would really worry you a lot. Because jobs were not easy to find especially when you have restrictions on the work permit (Gladis, former student and carer)

At least there are laws governing everything in the UK (…) In that people are trying to do whatever they do according to the law because the law protects you. You have the right to sue anybody (Gladis, former student and carer)

The job got me a work permit and then from the work permit I have kept my job for five years. So I would say it's quite straight forward if you followed the rules (Meeme, registered nurse)

These are narratives from East African migrants describing some of their diverse lived experiences in the United Kingdom (UK). The state's application of immigration law and policy constructs ideal migrant categories, and denies specific rights to certain non-European Economic Area (non-EEA) migrants, especially those constructed as low skilled. This construction replicates the categorisation systems of migrants and the rights they can access in other developed countries including the United States, Canada, and Australia. For the purpose of this study, rights are understood not only as legal entitlements involving judicial processes and formal compliance, but are a part of political processes that are refined through social struggles, whereby society-based movements play a dynamic role in advancing those struggles (Piper 2007, 8–9, 2015). This restriction and differentiation of rights under labour migration programmes (LMP) has come about through the UK exercising its "sovereign power" by imposing restrictive migration policies and related laws that dictate who can come to work and stay in the country (Morris 2003). The study seeks to answer the main research question: *How do migrants understand, perceive and make meaning of law? Do they perceive it as a tool of subordination or domination when their rights are restricted by the state? Or do they rely on law as a tool to assert rights?* In this sense the study aims to examine the role of

law as perceived by a selected group of migrants from East Africa working in the healthcare sector in the UK. The dissertation examines the construction and differentiation of migrant workers as legal subjects (with precarious migrant status) experiencing precarity and with rights restrictions under law. Within my socio-legal study, I examine the international human rights law approach (normatively requiring states to cater for all human beings within their borders) vis-à-vis the national law or national political economy approach (where states guarantee rights to their nationals or citizens, and permanent legal residents), especially at a time when European states are experiencing so called migration crises.

To regulate the movement of non-EEA nationals (including East African migrants), in 2008 the then Labour government introduced a new tiered 'points-based migration system' (PBS), a type of LMP or Temporary Labour Migration Programme (TLMP) to select migrants that could work (or study) in the UK for a specified length of time (Home Office 2006; Murray 2011, 4; Sumption 2014). The LMPs are also related to labour migration or other forms of migration (for e.g. family reunification) where the migrants end up working in the host country. The LMPs can take various forms: from bilateral and regional agreements for the exchange of labour between states, to changes in national legislation allowing employers easy and accelerated access to temporary migrant workers for varying time periods, or to provisions in multilateral trade agreements on Trade in Services (Valiani 2012, 22; Ghosh 1997). Other authors have observed that for the temporary programmes to function smoothly, states expect workers to return to their country of origin after having worked abroad for several years (Heckmann, Hönekopp, and Currle 2009, 8). The key policy structures range from the mechanisms for admitting and selection of eligible migrants, designating the eligible sectors of employment, and the rights granted to migrants after admission temporary status granted or imposed by the state (irrespective of the duration of visa) to the migrants that use these programmes or schemes to access work in a host country (Valiani 2012, 22). In many states, the LMPs are set annually with quotas on the numbers of migrants that can enter, economically oriented work permit fees, and laissez-faire admissions. The programmes may entail admission of migrants into a country for

temporary employment mainly in selected low skill occupations that include agriculture and healthcare work for instance in Canada (Koser 2009; Preibisch 2010; Valiani 2012). The UK's Tiered PBS is a mechanism of admitting international migrants to work with specific restrictions. The UK PBS Tiers range from Tier 1, 2 (highly skilled), Tier 4 (students) to Tier 5 (low skilled workers). A work permit or work visa under the Tiered PBS entitles a migrant to work in the host country for a limited duration that the state can extend upon fulfilment of certain conditions, for instance having held a job with a certain salary for five years in the case of highly skilled migrants. The fact that there is no clear entitlement to stay permanently especially for low skilled migrants is an aspect of LMPs that the state relies on to ensure that migrants remain in a temporary precarious or insecure status under these policies and visa regimes. This temporary status also contributes to the disadvantages that some migrant workers face in comparison to citizens and permanent or long term residents.

As a result of the rapidly changing UK migration laws and policies (Scott 2015), which were designed to reduce the number of non-European Union migrants coming to or already present in the UK, several East African migrants under TLMPs find themselves in a precarious situation and with more rights restrictions. In this study, the term 'migrant' includes all people who find themselves living outside of their country of origin (and/or nationality), regardless of their reason to migrate, and thereby generally covers students, refugees, and asylum-seekers (International Commission of Jurists 2014, 42). When certain rights or situations apply only to certain categories of migrants, these are referred to by more specific terms such as 'refugees', 'asylum-seekers' or 'migrant workers' (ibid.). Students working for example as carers, nannies, and support workers, are usually not labelled as 'labour migrants' (Blinder 2015, 8). Such categories can be problematic at times since some migrants may fall within all the categories mentioned, due to their heterogeneous circumstances and strategies to remain working in the UK (field observation).

According to Susan Martin, states possess broad authority to regulate the movement of non-nationals across their borders (Martin 2005). States regulate the movement of non-

nationals across their borders. States not only restrict migration but determine what rights different types of migrants can access upon entry and residence, and in most cases some migrants will generally find that they have fewer rights in comparison to the citizens of their countries of residence (International Commission of Jurists 2014, 35). Although states' authority to regulate migration is not absolute, states exercise their sovereign powers to determine who will be admitted and for what time period. In support of these powers, states enact internal law, regulations, and policies to govern the issuance of passports, admissions, exclusion and removal of 'aliens', and border security or frontier control (Martin 2007). Nonetheless, the vast majority of international labour migration still occurs through legal channels that are regulated by nation-states (Ruhs 2013, 12). As such, immigration legislative and administrative policies, legal statutes and court decisions, and regulations collectively shape nations' immigration systems, from visa allotments and immigrant-selection mechanisms to immigrant integration programs and border controls (Migration Policy Institute 2016). Nation-states such as the UK vary in the types of laws and policies adopted, with some being more restrictive than others (Martin 2005, 1).

Due to the restrictive laws and policies on migration, it is not surprising that absolute free mobility of people, especially the low skilled and poor, does not exist. When the international mobility of migrants, especially those classified as 'low skilled', is compared to the movement of goods and finance across countries, the latter clearly have freer mobility around the world, which is one of the paradoxes of globalisation. Additionally, nationals with passports from certain high income countries, for instance in Europe, Asia and in the Americas, can easily move across regions and countries. Wealthy individuals (for instance some Chinese nationals) easily meet migration requirements and individuals regardless of nationality with certain skills such as information technology expertise find it easier to access job markets in high income countries such as the UK (Salt 2013, 89). In an era of globalisation characterised by an interlinked world and with Europe experiencing so called 'migration crises' and externalising its borders to African states (Bezabeh 2016), all nation-states continue to look for ways to manage the movement and settlement of non-nationals such as those

from developing states through employing various restrictive policies and laws which I examine below.

1.1 **'Managing Migration'**

The restrictive migration policies and related laws mentioned above fall under the managed migration approach. This approach begun in the UK as early as 2000 when the then immigration minister launched the approach in the context of a global world with potentially huge economic benefits for the UK, and accepted that Britain had always been a nation of migrants (Kofman et al. 2009, 16; Somerville 2007a, 29). The managed migration approach as enshrined in paragraph 1.3 of the White Paper entitled "*Secure Borders, Safe Haven: Integration with Diversity in Modern Britain" means:*

> ...having an orderly, organised, and enforceable system of entry. It also means managing post-entry integration and inclusion in the economy and society, helping migrants to find their feet, and enabling members of the existing population to welcome them in their communities (Home Office 2002, 23).

Migration management provides a potential compromise between the often conflicting objectives of states; it seeks to achieve a balance between the multiple concerns associated with migration including in particular: the need to recruit or export labour, the focus on (under)development, the rights of migrants, and security (Geiger and Pécoud 2012). The UK and other high income countries such as Canada and the United States resort to temporary labour migration programmes or policies to manage and govern labour migration (Preibisch 2010, 405). Determining the entitlement to stay permanently in a host state remains at the host state's discretion, as illustrated with the UK's Points-Based System Para. 3.19:

> We have designed a flexible points-based system of assessment similar to that used in the Innovator Scheme. Individuals will be able to apply from overseas and will need to submit appropriate evidence of, amongst other things, educational qualifications, work experience, past earned income and their

> achievements in their chosen field. These conditions will ensure that successful applicants will make a significant contribution to the UK economy and society through employment, self-employment or engagement with business (Home Office 2002, 43).

The UK Home Office is responsible for immigration policy, which aims to control and manage the movement of migrants and their dependents. In order to establish a system of comprehensive managed migration, the Home Office department designed a system of strict, hierarchical differentiation between groups of migrants. This ascribed rights and their limitations depending on a variety of factors including skill levels, the nationality of the workers concerned, and the sectors of employment in which they are engaged (Flynn 2006, 15).

Undoubtedly, in a contemporary global political economy where high-income states seek to tighten their borders and further delineate the conditions for entry, TLMPs have become an increasingly popular policy instrument for some countries to manage migration (Preibisch 2010, 405). Experience has also proved, however, that associating countries of origin and transit in the management of migration requires more than simply exporting border control to the South (Chetail 2009, 215). Notably, TLMPs such as the UK's Points-Based System (PBS) serve functions that include attracting highly skilled non-EU workers and restricting permanent migration of low skilled workers from outside the European Union (EU):

> By contrast, migration management is a technocratic invention that disguises, often under the label of more humanitarian and rights-based approaches to migration, the perpetuation of restrictive migration control; it would look like an apparently sound and balanced policy orientation, but with the sole purpose of enabling powerful receiving states to steer migration flows according to their political and economic interests (Geiger and Pécoud 2012, 12).

So the LMPs involve states welcoming migrants as long as they can compete and do not become a burden for the welfare state (Paul 2015). As a result of this migration management policy approach, some highly skilled migrants have access to more rights than low skilled migrants from outside the European Union. Migrants from East Africa rely on labour migration to earn their livelihood but usually face challenging immigration laws (among other laws), labour regulations, and restrictions on movement and access to work that infringe both their human rights and rights as workers. It is therefore interesting to analyse East African migrant workers' experiences on migration, the legal rules and the immigration policies that govern their entry, and taking up residence and working in the UK. By analysing these experiences, I am able to understand not only the human rights restrictions that they experience under immigration laws and policies, but also the strategies they employ as a response of having a 'no recourse to public funds' status, in order to access, claim, and enjoy certain rights. I examine law (including immigration, labour, and international law) from the perspective of East African migrant workers engaged in healthcare work – a sector experiencing increasing 'flexibilisation' – with cuts to permanent staff and salary structures under the National Health Service (NHS) (Larsen et al. 2005). I examine my research questions below.

1.2 **The Research questions**

This book examines the different facets of law that migrants encounter in their daily lives by examining their lived experiences and narrations on rights under immigration policy. My disclaimer is that, while I accept that a detailed study of the policymaking process greatly enriches the discussion of migrant rights, herein I focus on the system of rights in active operation (that is, at the implementation stage or legislation) and their outcome in terms of civic stratification. This follows Lydia Morris's approach to managing the contradictions of states, whereby they have sovereign powers to restrict migrant rights, but at the same time there is a transnationalisation of migrants' rights (Morris 2003). Additionally reframing my research questions to go further than the role of law in shaping rights led me to examine both migrants' experiences and their perceptions of what amounts to law rather than the policymaking processes. This

enabled me to examine the multiple, nonlinear, and seemingly contradictory meanings of law and legality (Schwenken 2013, 136). This approach both reveals the contradictions served by law, on the one hand controlling movement of migrant subjects and creating illegality, and on the other hand as a solution for migrants to claim more rights from the state especially by drawing on transnational international human rights norms and legislation (Dauvergne 2008; Wexler 2007a; Piper 2006a; Piper 2015).

Acknowledging that all individuals irrespective of their nationality have rights as human beings, which have been codified into human rights law under international human rights law norms (Grant 2005; Wexler 2007a; Viljoen 2012), I attempt to answer a disturbing and puzzling question that is at the helm of the human rights movement, i.e. how to improve labour standards through implementing equitable law(s) and possibly achieving social change (see for instance Kostiner 2003). Going beyond the state-centred policy-making processes and examining both state laws (including immigration, labour, and human rights laws) and international laws or norms in action, I am interested in understanding specifically how East African migrants experience law as a part of migration management policy and regulation. In light of this and from the migrants' perspective I emphatically elaborate on my main research question raised earlier: How can we understand the multifaceted law that can be seen (from a socio-legal analytical perspective) as both a tool of disciplining and as an enabling weapon of resistance with respect to migrants' access to human rights? Additionally my study is guided by these sub-questions:

1. What practices has the UK state applied as a part of the law in order to define migrants, their legality, and their rights, and what are the implications of these practices for migrant workers?
2. What are the lived experiences of migrant workers related to rights and their perceptions of law, at the time of visa application, on arrival and taking up residence to work in the UK?
3. Apart from law, how do economic, political and socio-cultural factors, e.g. racialisation, influence or structure migrants' migration experiences?

4. What are the consequences of bureaucratic practices of the state's immigration officers for migrants?
5. What are the responses and strategies of migrant workers to claim rights?

As my study is a qualitative one and focuses on particular actors, migrants, being observed rather than generalisations to larger population (Dooley 1990, 283), I do not intend to test or prove any hypotheses in a positivist sense. Rather the following hypotheses assist to check and guarantee consistency in my line of argument:

1. Basing on the principle of sovereignty, states utilise and rely on law to maintain and perpetuate economic, political, and ideological domination over migration governance, migrants, and their lives, and in this way the states are able to always have a reserve or regular army of labour.
2. Law is implicated in the construction of illegal and legal migrant subjectivities. Migrants mainly obey or are disciplined by the law and immigration policy which they acquiescence to, although there are moments of challenging restrictive immigration law.
3. Besides laws regulating migration, other contributory factors including prejudice, politics, the gender order and the economy, structure both male and female migrants' experiences upon migration.

The next section introduces the socio-legal theoretical basis that guided my answering of these research questions and to examine the application of the above hypotheses.

1.3 Socio-legal study on law, migration governance and rights

I address these questions from the perspective of the sociology of law i.e. the socio-legal perspective [1], informed by literature and concepts from political sociologists and political economists on migration governance and migration regime analysis (Tamas and Palme 2006; Glick Schiller and Salazar 2013; Walters 2015; Rass and Wolff 2018).

[1] See chapter three on the theoretical perspectives and concepts that guide my understanding and analysis of data.

I focus on the UK's visa immigration regime for non-EU nationals (Hampshire and Bale 2015; Blinder 2015). I critically examine the multifaceted and contradictory role of law as both a tool of subordination for example by creating categories of migrants for exclusion from basic services of the state and a weapon of resistance (for instance, where migrant rights issues are framed as human rights to be demanded, involving political processes that will contribute to legal and policy reform).

In framing my primary research question and operationalising it, it was useful to examine the role of law, migrants' perceptions and actions revolving around law, that is, their legal consciousness (Silbey 2001; Sarat 1990). For my study, collecting individual interpretations of the law through inquiries about migrant rights and migration experiences is the beginning of an analysis of legal consciousness (Silbey 2005, 358). Legal consciousness is a theoretical concept and topic of empirical research developed to address issues of how the law sustains its institutional power despite a persistent gap between the law on the books and the law in action (Silbey 2005, 324). So, in light of my main research question, I examine whether migrants view law as empowering and thus use it to claim rights or only refer to law as having controlling and disciplining effects. This is also dependent on what they perceive as law (Calavita 2006, 108) and its various facets.

Notably, law has many origins and takes various forms (for instance customary and state laws) which is conceptualised under the concept of legal plurality (Tamanaha 2007; Calavita 1998; Wiessbrodt 2007; Menkel-Meadow 2010). Due to legal plurality, i.e. the existence of various legal systems, the law has various facets (Tamanaha 2007). This can be observed from the migrants' direct and indirect experiences with different state laws, for instance immigration, labour, and housing laws. And further, what they *consider* to be law through their experiences of the entire visa application process, complaints and/or court cases, if any. It could be that migrants are negotiating for better working conditions, resorting to legal and non-legal means for better labour rights through the existing international labour standards (Wexler 2007a). I analyse East African migrant workers' human rights experiences under the PBS (or outside of it in

case they could not meet the conditions and migrated outside of it), and both the legal rules and the immigration policies that govern their entry in taking up residence and working in the UK. Thus, I mainly examine state law regulating migration, labour, and human rights and legislation from international organisations that guarantee the protection and labour standards of migrant workers such as the International Labour Organisation, the United Nations, and the European Union. I examine law in operation (including the social, economic, and political aspects to analysing law), whereby both female and male migrant workers, as legal subjects, are seen to employ law as a weapon of resistance and empowerment to claim rights, while at the same time law is a tool of subordination that controls them. Approaching my research question from a socio-legal perspective enables me to analyse the role of law in the control and disempowerment of migrants, and on the other side how it is used by migrants as a tool of safeguarding their rights and thereby empowering them in their struggles for example against restrictive immigration and visa conditions. For instance, the multifaceted nature of law is evident upon examination of 'free' movement of highly skilled workers who are granted rights almost at the same level as nationals and at the same time where low skilled migrants' rights are restricted upon entry (Somerville 2007b, 61; Ruhs 2013).

Within a political economy approach to immigration policy-making or border drawing (Paul 2015), we see the role of the law in the UK in shaping both the statuses and rights of migrant workers. Furthermore, we see the rights-based approach embedded into the domestic legislation of the state and having strong support from international human rights normative frameworks[2] which safeguards migrants' rights to equality and non-discrimination. Migrants may rely on it to attain justice and claim rights, for instance the right to family life (European Union Agency for Fundamental Rights and Council of Europe 2014). Under the international economic law approach we find arguments in favour of the liberalisation of migration (Trachtman 2008) irrespective of states' constraints on migrant rights. Before going into the rationale of a socio-legal study on

[2] For instance see the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) opened for signature 4 November 1950, 213 UNTS 221. Entry into force 3 September 1953.

law, migration, and migrant rights, I examine the context in which I locate my study of international migration of East African nationals to the United Kingdom.

1.4 A transnational context of East African labour migration to Britain

I do not examine migration from East Africa as a geographical region but rather the regions demarcated by Kenya, Uganda, and Tanzania that have a historical connection to Britain and are members of the Commonwealth of Nations. Together with Burundi and Rwanda, the countries make up the East African Community and are also part of the African Union. Migrants from the East African countries that were formerly the British East African Protectorate (i.e. Kenya, Uganda and Tanzania) migrate outside of bilateral agreements to work in the UK. Other African countries including South Africa have bilateral agreements for the training of South African doctors in the UK (Buchan and Dovlo 2004; Stewart, Clark, and Clark 2007; Abella 2006). An international recruitment code of practice exists for English health authorities, although this has a rather different aim - to prevent 'poaching' of skilled workers from developing countries - and it is generally seen as easily circumvented (Barber, Black, and Tenaglia 2005; VSO 2010; Kaelin 2011).

The aforementioned East African states do not have bilateral agreements or memorandums of understanding with the UK for the migration of their nationals in the healthcare sector or as low skilled workers (Wickramasekara 2015). East Africans autonomously migrate under the PBSs, and outside of these programmes (i.e. as dependants of other migrants that are under the programmes) to the UK. The countries were part of the establishment of a Strategic Framework for an Integrated Policy on Migration on the African Continent (Achiume and Landau 2015). This Policy included partnerships between African countries and the European Union (EU), facilitating inter-State dialogue and co-operation concerning return, readmission, and re-integration.

Unlike the rest of the African continent, East Africa has a relatively low level of migration to Europe and North America (Black, Hilker, and Pooley 2004). Taking Uganda as an example, Ugandan migrants in particular, numerically represent one of

the smallest migration flows from Africa to Europe (Binaisa 2010, 5). However, what makes them interesting is the diversity of trajectories and sustained nature of their migration flows (ibid.). Generally the East African migrant 'community' is highly heterogeneous and reflects a diversity of social economic backgrounds and ethnicities. It includes newly arrived migrants for instance through the Tiered PBS, those holding indefinite leave to remain or exceptional leave to remain status, students, naturalised citizens, asylum seekers, refugees and the undocumented. Pre-independence migration from East Africa, especially in the 1950s and 1960s, was mostly composed of 'student elites' (Binaisa 2010; and see Hampshire 2005). These were the first Africans who came to Britain to undertake university studies, and were usually sponsored by the colonial government or the religious establishment (ibid.). Other migration patterns included forced migration following the violent political instability in the 1970s and 1980s. These events were followed by increased economic hardship in East Africa as a result of structural adjustment policies compounding migration flows from across East Africa (Binaisa 2010, 5). Notably, I only examine the historical migration of East African migrants and refugees including British Ugandan Asians that were expelled from Uganda (East Africa) in chapter five, where I examine the evolution of anti-racism legislation and racializing immigration policy in Britain. This heterogeneous composition is a characteristic of migrant communities from the former British East African protectorate.

Kenya, Uganda, and Tanzania can be characterized as reluctant emigration states. These states experience a brain drain of highly skilled workers and, as such, their citizens face migration restrictions in the UK and other high-income countries, which want to demonstrate that they are not actively recruiting professional migrant labour from the former countries. The East African nations also have elements of labour brokering similar to the Philippines (for a critique of labour brokering see Rodriguez 2010) where ministries concerned with labour, for instance in Uganda and Kenya, have special units for nationals who seek to move abroad. These ministries additionally organise events for migrants which often leads migrants to feel appreciated so that they will send more remittances arguably for the development of their countries of origin. The East African

governments are also engaged in the controlling of labour migration, registration and supervision of foreign employment agencies and strengthening co-operation with their nationals overseas.

Once in the UK, non-EU migrants including East African nationals from Kenya, Uganda, and Tanzania, face difficulties accessing the UK labour market. The UK government expects employers to advertise all qualifying jobs under the Resident Labour Market Test (RLMT) and then first consider applications from European Union nationals and permanent residents before all other applicants (Migration Advisory Committee 2009b, 2010, 2015a; Salt 2013, 86–89; Koser 2009, 8). The state implements rules on employers having to advertise jobs in fulfilment of the RLMT to ensure that migrant workers are only employed after employers have unsuccessfully searched for local workers to fill the existing vacancies. The implications of these tests are expounded further in chapter six of this book. Further, East African migrant workers' ability to change immigration status from temporary to permanent always depends on fulfilling the state's conditions, or terms, in order to fit within the categories that can stay and work in the UK. They have to meet specific conditions to attain permanent residence or permission to remain, and later on citizenship, unless they are extremely wealthy in which case they automatically qualify for permanent residence. Below I examine the international regulation of migration and the debate on the states' continuing sovereign role of selecting migrants.

1.4.1 The fragmented international regulatory framework

There is no comprehensive treaty governing all aspects of international migration. However under the general normative framework grounded on customary international law migrant rights are protected by the principle of non-discrimination whereby states are not permitted to derogate from them. The Universal Declaration of Human Rights

(UDHR)[3], the International Covenant on Civil and Political Rights (ICCPR)[4] and the International Covenant on Economic, Social and Cultural Rights (ICESR)[5] all provide for the protection of individuals' rights to life, freedom from torture and for the right to work and join Unions. The principle of non-discrimination is supplemented by treaties provisions covering migrant categories including migrant workers e.g. the 1949 Migration for Employment Convention No. 97 and the 1975 Migrant Workers Convention No. 143.[6] Another is the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), which the UK has not ratified. No less than eighty-seven states have ratified one or more of the three universal treaties devoted to migrant workers (Aleinikoff 2007; Chetail 2017). The ILO adopted a Plan of Action with respect to migration, which includes as one component the development of a non-binding multilateral framework for a rights-based approach to labour migration (Nielsen 2007; Trachtman 2008; Awad, Wickramasekara, and Taran 2010).

Further, the international institutions, e.g. the UN, have also outsourced discussions on the regulation of migration to international conferences such as the Global Forum on Migration and Development (GFMD) (International Commission of Jurists 2014). Such UN member state initiatives offer room for dialogue on migration and development linkages in practical and action oriented ways (Global Forum on Migration and Development, 2017). The GFMD is informal, non-binding on the state-parties, voluntary and is a government-led process rather than hard law. Other international bodies include the International Organisation for Migration (IOM) which later became a UN agency (see Sara Kalm 2012, 56–57; International Organization for Migration 2015). Notably in 2018, states signed a Global Compact for Safe, orderly and Regular Migration, a non-legally binding agreement aimed to improve and address all migrant issues.[7]

[3] Adopted by the United Nations General Assembly, Resolution 217 (111) of 10 December 1948.
[4] Adopted by the United Nations General Assembly, Resolution 2200 (XXI) of 16 December 1966; entry into force: 23 May 1976.
[5] Adopted same day as the ICCPR; entry into force: 3 January 1976.
[6] Conventions available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:::NO last accessed 20.12.2017.
[7]Available at: https://www.iom.int/global-compact-migration last accessed 29.12.2018.

There are bilateral regulations from interstate organisations such as the European Union (EU) on the movement of EU nationals, Third Country Nationals and non-EU family members (Guild and Bigo 2010; Dijstelbloem and Broeders 2015; Blinder 2015). Through the UK's implementation of EU legislation on integration of EU nationals, EU migrants easily move to the UK without restriction depending on when their countries joined the EU (Kubal 2012; Borkert and Penninx 2011).

Since the UK is not a signatory to most of the treaties explicitly focusing on migrant rights and labour standards, it is not bound by the contents of those treaties. However, some provisions of these treaties that have a customary international law status, e.g. prohibiting discrimination and torture, are binding on all states. While other provisions, declarations, resolutions and non-binding guidelines simply serve as "soft law" for the UK and can be drawn upon to compel the state to introduce measures to protect the rights of migrant workers. States such as the UK are still able to interpret and implement these international norms as they wish and can develop rules that differentiate among categories of migrants.

One implication of globalisation for the nation state is that international organisations (created by states) make it appear as if the state was retreating or losing control (Sassen 1998, 4–6). Yet when we examine international migration governance, it is clear that states still plays a major role in selecting, delimiting, and admitting migrants (Paul 2015; Grant 2005; Dauvergne 2008; Chetail 2017). Though diminishing, the sovereign state with control over national territory, still plays an important role in this era of globalisation and internationalisation, capital and labour mobility (Hay, Lister, and Marsh 2006, 13–16). In this sense, the UK retains the sovereign power to regulate international migration from outside the EU. Regulating non-EU migration such as the movement of East African healthcare workers is within the sovereign jurisdiction of the United Kingdom.

1.4.2 National context: The United Kingdom

The UK, as a modern nation state seeks mainly highly skilled migrant workers to boost its economy and maximise the benefits of migration. In this book I look at the state from a perspective of its role as a main actor involved in governance of migration through differentiating migrants that can come to the UK especially from countries with colonial ties. The UK is representative of those receiving countries in Europe with established immigration histories from former African colonies including the East African countries of Uganda, Kenya and Tanzania that were part of the British Protectorate, and have recently developed a rather exclusionary migration regime (Binaisa 2011; Ruhs and Anderson 2010). Through the UK's early 'post-colonial downsizing' and pragmatic, laissez-faire approach to EU entries, there was a far-reaching detachment from post-colonial labour ties (Paul 2015, 96).

Due to migration, British society, like most western European societies, is de facto multi-ethnic (I. R. . Spencer 1997; McIlwaine 2010). Multi-ethnic and multicultural Britain has specific characteristics which partly developed out of, or were primarily formed, when populations from the former colonies moved to the metropolis to seek employment and to meet the British needs in times of intense industrial development. The history of colonialism and violence brought most of the present British ethnic minorities to the territory of the UK, and as Hall argues (1992), this experience unified the different minorities; it has brought them together through a shared experience of exclusion but also in their becoming part of the British society (Solomos 2014; Hall 1980). Such history contributes to the UK's citizen model which appears as a pragmatic and depoliticised approach to citizenship, but also incorporates the silent gradual overwriting of inclusive norms, e.g. the rights of migrants with economic and numerical selectivity of migrants from the EU (Alberti 2017) and non-EU migrants (Paul 2015).

The UK adopted a migration regime to further detach itself from its former colonies that may have further racialised the migration regime. The UK government's further tightening of its migration regime with more restrictions on low skilled migrants

contributes to the eroding of low skilled migrant workers' rights, especially in times of economic crisis (Kofman 2005; Morris 2003; Hansen 2007). Furthermore members of civil society including the Migrant Rights Network and the Trade Union Congress have criticised the state's migration management policy. The PBS controls migrant workers from outside the EU and has institutionalised the division of migrants into two categories through the UK government's approach of managed migration policies. These categories are so called 'good migrants' who are useful and make money for the British economy and 'bad migrants' who are not seen as wealth creators and regarded as 'illegals' (Anderson 2013). This means that overseas workers, for example from East Africa, who have invested money, time, and emotional separation from their families to legitimately take up jobs in healthcare and social care find themselves deemed unwanted and undocumented if they stay on without sponsors (Kofman et al. 2009).

As a democratic state, the UK is premised on the idea of 'the rule of law', an idea that extends beyond the need to ensure that government operates in accordance with the laws. For the UK case involving transnational migrants to whose jurisdictions the UK transplanted the rule of law, some of the traditional earmarks of the rule of law include generality, universality, impartiality, and neutrality. Yet law can be further criticised as both providing a lever for challenging exclusion while at the same time it defines the terms of exclusion (Minow in Sarat and Kearns 1991, 67). It is in this context I examine the rule of law in practice from the bottom up perspective of East African migrants in the UK.

Human rights is one such aspect where the UK may have limited control due to the prevalence of the EU human rights legislation that it incorporated into its domestic law through the Human Rights Act of 1998. The state tries to reduce the dominance of human rights coming from the European Court of Human Rights through its legislative arm with proposals coming up in the UK Parliament to revoke the Human Rights Act of 1998. The intervention of the European Court of Human Rights is controversial and has been seen as a direct threat to the British government. This follows the realisation by some factions of the UK legislature that provisions such as the right to family life

(Article 8 of the European Convention on Human Rights) were being used by migrants and other individuals to claim more rights, yet the government through the Home Office sought to deport 'criminalised' migrants who were found to be breaking the law.

The UK is regarded as a stronghold of neo-liberal governance. The majority of state institutions have been transformed as a result of globalised neo-liberalism. The UK seeks to recruit highly skilled migrant workers to boost its economy. Nira Yuval-Davis provides a cynical illustration of this reality – the demand from all major political parties in the UK to agree to savage cuts in state benefits and services and/or freezing workers' salaries (including migrants), when the profitability of banks and most of the incomes of the highest earners are largely not affected or significantly interfered with (Yuval-Davis 2011, 10). Through the globalisation process and increasing neo-liberalism we can see the growing privatisation of the welfare state (Yuval-Davis 2011, 11). This privatisation of the welfare state includes increased flexibilisation of labour, austerity or welfare cuts, which also affect migrants who might lose their jobs and find themselves in a precarious situation (Alberti 2017).

These policies are blamed for the financial crisis of 2007–08 (Farris 2015; Bauder 2008; Kuptsch 2012). However, such crises are not new as there was the crisis of Thatcherism in the 1980s and the financial crisis in the 1990s (Erwing 2010, 2113). In other words, there has been a state of perpetual crisis, which now extends to the EU where there is also a cavalier regard for legality in the context of austerity policies and measures (Erwing 2010). This is evident with the UK, where there are increasing drives to privatise the NHS and increase the work-hours of specific staff, e.g. doctors. The later policy drive has not been without resistance as seen with the strikes of health professionals including junior doctors in 2011, 2015 and 2016. The state has struck back, moving to stop workers from organising in unions by proposing anti-union legislation (such as the Trade Union Bill) which unions such as UNISON were resisting (UNISON 2016). These anti-labour organising measures do not only affect UK nationals but also affect East African migrant workers within the healthcare sector and other related public

sectors. I examine these developments further in chapter seven when I analyse migrant workers' self-organising strategies and responses to rights' restrictions.

There are concerns in the UK about the figure of the migrant in data (Anderson 2013). This migrant in data relates to how migrants are portrayed in statistical data that governments, including the UK's, usually rely on in addressing citizens' concerns about migration control and management. An overview of statistics on migration to the UK demonstrates that the UK like other countries that are members of the Organisation for Economic Cooperation and Development (OECD), experienced an increase of migrant flows in the last decades. The preliminary 2014 data suggests that permanent migration movements to countries within the OECD reached 4.3 million permanent entries, a 6% increase when compared to 2013 (OECD 2015). The increase of the migrant populations contributed to states (including the UK) increasing their efforts to "manage migration at all costs" and engage in bilateral agreements (BA) and MOUs with major migrant sending countries in order to reduce illegal migration. Several countries have engaged in international cooperation in the management and governance of migration of workers of all skill levels by signing multilateral, regional to national level agreements (Wickramasekara 2015, 11).

1.4.3 Sectoral context: Healthcare

International recruitment and migration of health workers has been a prominent feature of the global health agenda since the late 1990s (Buchan and Dovlo 2004, 2; Buchan and Secombe 2006; Valiani 2012). In the health sector, some developed countries, particularly the United Kingdom, have actively recruited doctors and nurses from developing countries to address skill shortages (Chappell and Glennie 2010). Such practices of recruitment are evident where about one in three of the 71,000 hospital medical staff working in the UK National Health Service (NHS) in 2002 obtained their primary medical qualification in another country, according to the UK Department of Health (ibid.). Migration of health workers has always been a feature of health systems, yet in recent years it has been increasingly highlighted as a factor in undermining attempts to achieve health system improvement in some developing countries and

preventing brain drain. The UK has agreements with South Africa and the Philippines for import and training of doctors and nurses but not with the countries of East Africa due to its own restrictions via the Ethical Recruitment codes for health workers. It is clear that the guidelines to ensure ethical recruitment in the NHS do not necessarily work (Somerville 2007a, 189–90; Pagett and Padarath 2007).

Yet there is an increase of migration of healthcare workers from developing countries to the UK. The UK remains one of the top eight destinations countries for African migrant professionals with female nurses increasingly admitted since the 1990s through the 2000s (Wojczewski et al. 2015; Kaelin 2011; Buchan and Secombe 2006). Many surveys on healthcare migration emphasized the importance of the wider socioeconomic and political climate in the country of origin in influencing an individual's intention to migrate (with some skilled workers forced to depart their country of origin as asylum seekers or refugees). These numbers kept increasing further over the years with over 36,000 new non-UK nurses and midwives being registered in the UK (Larsen et al. 2005). Statistics [8] are available for specific departments within healthcare such as doctors and nurses (for instance see Wojczewski et al. 2015 on African nurses in the UK and global care chains). However as the analysis mainly clusters foreign born nurses and other healthcare professionals according to the specific field, it is difficult to attain information including other health professionals and not only concentrating on nurses and doctors. Also not all healthcare professionals trained in African countries continue to work in healthcare upon migration partly due to deskilling or some might be students.

According to several studies on the healthcare sector, substantial proportions of health workers ranging from 26% in Uganda to 68% in Zimbabwe were thinking of migrating to other countries (Stewart, Clark, and Clark 2007; Buchan and Secombe 2006; Larsen et al. 2005; Kaelin 2011). According to that study, the potential migrants' most preferred countries of emigration include the United States and the United Kingdom. A 2004 World Health Organization survey of migration intentions among South African health

[8] For OECD specific data see: http://www.oecd.org/els/health-systems/health-data.htm last accessed 10.03.2017.

professionals found that 38% of respondents commonly cited violence and crime or lack of personal safety as motivations for emigration (Chappell and Glennie 2010). In the area of development in recent years, another trend has been the rising interest of countries of origin in establishing a link to nationals who are overseas and referred to as 'diasporas' or transnational communities (see Piper 2007, 19; and see Brubaker 2005 for an elucidation of the diasporan communities). This trend is largely driven by their recognition that migrants can advance national development from abroad through remittances or investment. My interview participants were immigrants who had moved from Kenya, Uganda, and Tanzania independently to the UK under the PBS and some outside of it, (as some migrants had arrived prior to the implementation of the PBS inception or as dependants of migrants that had themselves migrated under the system but were working in other sectors other than the healthcare sector).

To work in the healthcare sector in the UK East African migrants, like other non-EEA workers, apply for PBS visas. Successful applicants are admitted into the country under the programmes. Some of these migrant workers never acquire permanent residence, while others acquire rights over time and their employment in the UK is simply a first step towards permanent residence then dual citizenship (or dual nationality). Ultimately, the workers' goals may include settling in the host country for a limited duration, or permanently, depending on their experiences. This is explored further in chapter seven of the book under migrants' acquisition of permanent residence and dual nationality as a proactive strategy to claim rights in the countries where they pay taxes (field observation).

The UK healthcare sector is part of the public sector. It is regulated by the state, whereby migrant workers interested in working in the sector must meet specific professional standards set by the state (Wojczewski et al. 2015; Buchan and Dovlo 2004). The NHS regulates professional membership to the healthcare sector, and employs most of the public healthcare workers in the UK (ibid.). We see regulations playing a role in determining who can work within the sector and influencing not only how the state recruits migrants but how migrant subjectivities are constructed in their origin countries that they seek to migrate from (Rodriguez and Schwenken 2013). In 2016 over 200,000

staff in the NHS (a third of doctors and a fifth of nurses and midwives) were from Black Asian and Minority Ethnic (BAME) backgrounds making the NHS the largest employer of BAME staff in the UK (Kline 2016). All public sectors including the health sector, face 'squeezing' through sub-contracting and public-private partnerships,[9] which means less sections of society are protected from such exploitation (Shelley 2007, 6–8, 26). Some migrants face exploitation while working in the healthcare sector. The health care sector is increasingly flexibilised with cuts to permanent staff and salary structures under the NHS. Some of the casualisation of labour conditions and standards that interviewees mentioned, included that they were employed within the healthcare sector but with temporary contracts valid for six months that were frequently extended in some cases for over two years (interview and field observation).

One difficulty I found in researching healthcare work was regarding unregulated care work performed in the domestic domain. I found that while domestic work did not fit neatly into the sector or category of healthcare, some healthcare professionals may end up working in this area after they cannot get their qualifications recognised, or if they claimed asylum and are waiting for a decision but need income (field observation). Additionally some domestic workers are also engaged in health-related tasks i.e. taking care of the ill, handicapped, and the old, etc. (Lutz 2008; Mantouvalou 2015; Farris 2015; Kalayaan 2015). This particular work reveals the difficulties of sticking to categories in academic work when the reality of survival techniques of migrants reveal something different in practice. I find this reveals the difficulties of research focusing on the categories of skills within a selected sector. So it is open to debate how the survival skills of migrant individuals who autonomously make decisions to survive within restrictive structures based on the number of available jobs and their expertise match with the skill categorisation and definitions within academia.

I concentrate on labour migration in the healthcare sector including professionals and migrants with different skill levels ranging from doctors to care workers. Working

[9] See https://www.gov.uk/government/publications/public-private-partnerships/public-private-partnerships. Last accessed 05.02.2016.

conditions and labour standards of healthcare workers was an aspect that I was interested in examining within my research. Under the Tiered PBS system, workers are divided according to skill levels, with types of work ranging from highly skilled professionals, such as medical doctors and nurses, to so called low skilled workers, for example carers and domestic workers. The sector receives workers across all these skill levels that have different durations of stay and conditions attached to their work permits or visas. For example, workers under the highly skilled scheme, (now the Tier 1) could bring their family members, while low skilled workers on Tier 5 visas could not bring their dependants (Ruhs and Martin 2008; Somerville 2007a, 35).

1.5 **Rationale of the study**

The book brings law into political science discourses on migration management and governance. By combining social and legal theory this study contributes to the emerging critical socio-legal scholarship on migrant subjects, and their transnational legal consciousness, for example, through deciding whether to participate in a trade union or non-government organisation-led demonstration against unfair salary cuts, or by instituting a suit in a tribunal or court as well as other strategies.

Particularly examining migrants' rights experiences, the research particularly reveals how migrants encounter the UK's managed migration policy and intersecting legal regimes, such as the immigration laws versus the labour laws, or non-discrimination laws versus property laws. The research also reveals how migrants manoeuvre these regimes to claim rights, with reference to existing transnationalised human rights norms. It is essential to examine migrants' conduct and responses to regulation of their lives through immigration policy and law that constructs them as ideal or not, illegal and undocumented, and so on. This contributes to understanding how migrant workers can mobilise, demand and claim their rights. Past experience has shown that immigrants are among those hardest hit in times of crisis (McGregor 2007; Kuptsch 2012; Ghosh 2013; Lambillon 2014; Farris 2015). Additionally, some of these workers face difficult conditions and conflicts, for example racist abuse and exclusion that amounts to a violation of their human rights at the time of visa application, upon arrival and at work

(not forgetting within the wider society). This is elucidated in chapter six in detail. Hence, with my research I contribute to the debate on issues of migrants' belonging, exclusion and inclusion in the workplace and within society arising from immigration categorisation and status, in contrast to a rights-based/decent work agenda and the UK's international obligations under customary international law. This is crucial, as problem solving discussions on international migration focus on its benefits as opposed to the absence of rights for migrant workers, as I will show in the literature review. The UK is therefore an interesting case study for anyone interested in the study of the regulation of migration, or its governance and the relation to migrant rights.

The study contributes to the academic debates on rights with a particular emphasis on migrant workers as empowered agents affected by laws and immigration policy implementation. I primarily focus on East African migrants working in the healthcare sector, dealings with law mainly from their perspective rather than a state-centric approach, which would focus mainly on official state actors, courts or institutions. The research reveals that some migrant workers were more interested in retaining their work, in order to maintain their residence or visa status, rather than organising for their rights at work. This is a demonstration of the state's enduring control over migrants through its PBS, constructing different migrant categories and criminalising various aspects of their migratory lives. I seek to contribute to understanding the challenges and conditions faced by heterogeneous migrant workers, including the dynamics of social class, gender, race and immigration status, and the roles that various sections of the global migrant workforce play in labour processes.

1.6 **The narrative of the book**

This introductory chapter set out the existing research on the UK's managerial approach to labour migration, temporary labour migration programmes and/or policies in the form of the PBS. It set out the main research question and related sub-questions that guide the book. My study can be broadly categorised as a contribution to the different facets and dimensions of law and its role in the construction of the legal migrant subject and the connection to various corresponding migrant subjectivities, for instance healthcare

worker, main applicant, parent, activist, and member of a migrant or religious community. It provided contextual and background information on governance of migration of non-European Economic Area nationals as such as East Africans healthcare professionals in the UK.

Through the chapters that follow, I attempt to tell a story that establishes both the function of law in labour migration programmes and perceptions of East African migrant workers, beginning with a literature review on the connection of law, governance of migration, and governmentality. I then turn to the theoretical foundations of socio-legal research in the third chapter, where I further expound on my application of the concept of legal consciousness. The fourth methodology chapter provides the details of how my study came to be, my positioning on law, and the methods that I applied in conducting this research. These chapters are followed by three empirical chapters that are premised on interview data, field note observations and legal analysis.

In each of the empirical chapters I present some of the different facets of law. With the overall research question, I examine how states regulate and manage populations of migrants and their rights, through various practices of exclusion and inclusion, and how migrants experience this and conduct themselves in response. Before looking at migrants' lived experiences in detail, in chapter five, I first examine how law has been applied as a tool over time (historically) to construct racialised migrant subjects vis-à-vis British subjects. Chapter five specifically presents the dominant function of immigration law in 'creating a racialised migrant other'. This is in comparison to international laws that were concurrently developed and recognised human rights of all 'civilized nations' at a time when several of the East African states were still under colonial rule. This chapter also explores how law then played a role in legitimising colonial rule in East Africa. The chapter focuses on struggles or contradictions within and of law (including the international law at the time) as both oppressive and a tool of capitalist development as seen through the legitimated spread of colonialism and the discouragement of movement of non-white British subjects.

Thereafter, seeking to understand migrants' legal consciousness, I analyse migrants' circulating narratives and their practices (what they do with the law and other law like phenomena), and its effects. In chapters six and seven, I analyse migrants' lived experiences and legal consciousness, whether proactive, collective, and transnational, as expressed through their narratives. The immigration laws are a tool for the state to legitimise the creation of different categories of migrants through assigning them different types of rights under the PBS. Secondly, I analyse the lived experiences of East African migrant workers migrated to the UK under these programmes or circumvented the programmes as family members of migrants already in Britain. These experiences are analysed through the concepts of subjectification, racialisation and precarious legal status. The concepts are useful tools in understanding the other structures in addition to laws that influence migrants' migration and human rights or experiences of conflicts. Additionally, I perceive migrants' experiences, for example with discrimination, in their daily lives whether at work or within the society, and how they cope either by accepting or resisting the status quo, as part of their legal consciousness. East African migrant workers sometimes face increasingly difficult criteria when applying for entry clearance but also when they are seeking employment, as some employers may expect them to meet different criteria from other applicants. The chapter thus examines law as having controlling effects and migrants' responses are further elaborated in chapter seven. The book ends with a chapter summing up the discussion on claiming migrant rights.

2. Literature Review: The governance of international migration

In the last two decades, there has been an increase in literature on the proliferation of labour migration programmes. I am interested in expounding on how migrants experience these programmes and the related regulations. While there is literature on East African migrants in the UK as established diasporas and their transnational lives (for instance see Binaisa 2011), there is a need to fill the gap on East African migrants' experiences with and perceptions of state laws and policies. Other literature is related to migrants working within the healthcare sector, and their gendered and racialised lived experiences (McGregor 2007; Asima 2010; Piper 2006b; Kaelin 2011). This research draws on and contributes to critical migration scholarship on migrant workers. I identified the major themes relevant for my study especially in a context when developed countries continue to recruit specifically highly skilled healthcare professionals, some of whom then face exploitative conditions on migration while subsequently depleting human resources of developing countries. A key theme is the enduring role of the state in governing, controlling and managing migration, and the logic behind the managed migration programmes. This chapter starts with an examination of the governance of migration and its connection to development before turning to an examination of governmentality and my contribution to migration and law studies.

2.1 Governance of migration and its nexus to development

This book contributes to the academic debates on the role of law in the governance of migration. Governance involves ideas that justify or legitimate political power and influence, institutions through which influence is stabilised and reproduced, and through which patterns of incentives and sanctions ensure compliance with rules, regulations, standards, and procedures (Bakker and Gill 2003, 5). Through the concept of governance, states come up with different mechanisms including temporary labour migration programmes, regulations and creating categories of migrants for admission or non-admission into their territories. At the same time under well governed labour migration with possibilities of return, migrants contribute to the development of their

countries of origin (Takyiwaa 2005; Setrana and Tonah 2016). Under migration governance approaches states also securitise or criminalise migration, manage and control migrant populations (Kuptsch 2012; Geiger and Pécoud 2012; Eule 2018). Migrants' own conduct under these programmes is also examined further below in the next section.

As far as migration governance is concerned, the state and its sovereign power is not declining. For example Kuptsch (2012), Sassen (2006) and Hampshire (2009), reveal the enduring role of the state in regulating, controlling, and governing migration. Scholars of the political economy have analysed the different power dimensions or constellations related to migration, including symbolic power, that the state uses in strategically selecting migrants and to construct legality (Paul 2015). Most of the literature analyses states' attempts to 'govern', 'control', and 'manage' migration, especially by high income states including Canada, Australia, and the USA, through various labour migration programmes (Preibisch 2010; Ruhs 2013; Castles 2006a).

Migration governance approaches are useful in understanding labour migration programmes. Migration governance constitutes a welcome approach that breaks with states' claimed zero-immigration policies and with the extreme political sensitivity that has developed around the cross-border movements of people (Geiger and Pécoud 2012, 12). International migration, it is argued, would be a normal feature that should not inspire fears or panic, but be pragmatically approached so as to become beneficial for all societies (ibid.). The various contradictions inherent in the UK's migration system include securitisation of migration, and the ideological displacement of undocumented migrants as having no place in society (Shelley 2007, 28). These studies establish that the governments of these states are mainly concerned with the economic benefits or utility of migration, promoting safe borders rather than protection of migrant rights.
Problem solving literature focuses on examining labour migration programmes and rights, whereby it is easy for migrants to lose their residence and legal status depending on how frequently the government changes the laws, migration programmes, and policies.

A contradiction in the literature on employing labour migration programmes in the governance or management of labour migration, is the emphasis that the policies with modifications are good for development of the sending countries (Barber, Black, and Tenaglia 2005). Taking an international economic law perspective, John Trachtman joins the migration management debate asserting that, more importantly, migration can if it is managed carefully help to raise the living standards in low income countries (Trachtman 2008, 1–2). Economists argue that worker mobility from poorer to richer countries maximises the value of labour resources, thus promoting global production while, other studies have focused on the economic benefits of migrant labour, not only for host countries but also for originating countries, especially in relation to remittances and the skills and investments of returnees (for a critique of these approaches see Jones 2008, 764). A few policymakers in the UK previously discussed the possibility of using immigration from developing countries as a form of aid policy by admitting migrants from countries where remittances form an important part of economic development, such as the Philippines, while trying to discourage a 'brain drain' (Murray 2011, 14).

What these studies have in common is that they represent a hegemonic stranglehold on methodologies that privilege economic factors over social and political ones (Jones 2008, 764). The quest to harness, maximise, and leverage the benefits of migration in order to promote economic growth and reduce poverty – the 'migration-development nexus' – is now an established development 'mantra' (Piper 2007) in analytical terms. Achieving the best policy environment in order to harness the benefits of migration and leverage its development potential is increasingly cast within a governance frame that considers the interests of destination countries in exercising border sovereignty and the post-9/11 securitisation agenda, while recognising respect for migrants' rights (Preibisch, Dodd, and Su 2014, 10). International migration is a challenge in the subject area of migrants' rights for researchers and policy makers alike, as it involves the conceptual and normative linkages between a rights-based approach to migration and how to translate this into concerted political effort (see Piper 2007). This challenge can explain the increase of political science literature on policy incoherence on why states

fail to achieve the goals, such as controlling migration set out in their policies, and why those policies fail (Boswell 2007; Castles 2004; Layton-Henry 2004). The political sociology and legal studies literature on migration examines the rights-based approach, and their findings indicate that the approach remains theoretical and on paper when it not implemented into nations' own domestic policies and law (Satterthwaite 2004; Piper 2007, 2006a; Piper, Rosewarne, and Withers 2016).

Most migration studies and policy research link migration to development (Ruhs 2006b; Koser 2009). The migration-development debate is often on managing migration flows to benefit multiple stakeholders and to reduce poverty in developing countries, although this contribution to the reduction of poverty is not easily proved. However, linking migration to development involves portraying international migration positively irrespective of the brain wastage issues, whereby healthcare migrant workers are discriminated against and do not realise the full potential of their skill types upon migration (Buchan and Dovlo 2004; Larsen et al. 2005). The healthcare sector has a double-edged implication because migrant healthcare workers provide essential services in both source and destination countries (Buchan and Secombe 2006; Larsen et al. 2005; Bradby 2013; Teye, Setrana, and Acheamong 2014) and are most needed in Sub-Saharan Africa including East Africa where there is a serious depletion of the health workforce.

There is need to further question the nature of the migrants' rights and experiences with inequality upon migration (Haan 2000, 2006). Similarly female migrants are particularly viewed as 'more reliable remitters', despite some being de-skilled in employment upon migration. Clearly, when labour migration programmes are framed within an economic utility or rationality framework, gender is likely not to be considered as a significant analytical category. Throughout most of the labour migration programmes literature, there is a need for the actors involved in 'managing' and 'regulating' migration to balance the rights of migrant workers with states' economic goals or interests (Piper 2007; Delgado-Wise, Marquez-Covarrubias, and Puentes 2013; VeneKlasen et al. 2004), although this could also be as a result of geopolitical goals and colonial ties, etc.

(Paul 2015). Research tends to follow funding lines and interest of governments, that is why there is a gap about the lived experiences of migrants.

From the contradictory aims of managed migration programmes, such as alleviating labour shortages in the host country but also reducing illegal migration while promoting post-colonial ties and development in former colonies, we see that it is crucial to examine both their historic development, in this case the PBS and the implementation of relevant law. However, state practice makes it abundantly clear that the driving force of the migration-development nexus relies on the internationalization of migration control under the banner of co-management and shared responsibility (Chetail 2009). I examine these aspects further in chapter five by relying on a historical analysis and literature study. Such analysis contributes to understanding why the policies, although appearing neutral in their design or implementation by requiring migrants to fulfil certain conditions, mean that migrant workers' rights (especially for the low-skilled) such as freedom from discrimination or a right to decent work for all, are not prioritised by receiving states bent on maximising the benefits of labour migration.

Most of the literature on migration governance by states does not provide much information on female and male African migrants' own perceptions of being governed or regulated by law or dwell deeper into dealing with racialisation and discrimination under the law, which is a part of their legal consciousness that my study aims to expound and make more explicit. Migration governance approaches are useful in understanding labour migration programmes, but need to be complemented by other approaches that cater to understanding the exclusion which migrants face under the programmes whether as a result of their nationality, country of origin, skin colour, gender and ethnicity. Going beyond only focusing on the utility of migration governance for development through remittances, requires conducting empirical research on migrants' lived experiences through a socio-legal analytical lens that connects critical race theory and intersectionality (see chapter three) (Kofman et al. 2009; Satterthwaite 2004; McIlwaine 2010; Grosfoguel, Oso, and Christou 2015; Kantola and Nousiainen 2009). It is important to pay attention to the dynamics of race and gender in social care workplaces,

and to the means of securing the rights of migrant healthcare workers, who play an important role in caring for some of the most vulnerable members of society (McGregor 2007). There is an increasing awareness of the important role that gender plays in international migration (Donato et al. 2006; Lenz and Schwenken 2002; Grieco and Boyd 1998; Ferguson and McNally 2015). Goldring and others mention the lack of a gender focus in their work but assert that precarious statuses are gendered and racialised processes (Goldring, Berinstein, and Bernhard 2007, 43) that need further research, which my study seeks to contribute to. Engendering Labour migration programmes could include explaining the different experiences faced by both male and female migrants especially as women may face double discrimination, both as women and as migrant workers (Piper 2006a). This is necessary because migration is rapidly 'feminised' with women increasingly migrating under programmes and policies that have gendered implications, (Piper 2006b) as I discuss further in chapter six. Thus a key aspect I tackle is the role of discrimination that plays out strongly in relation to labour market access and rights enjoyment under migration governance programmes.

This book contributes to these debates by providing a socio-legal understanding of the effects of the implementation of migration governance programmes, where East African migrant workers may find themselves with precarious legal status as a result of the rapid changes of immigration law and policy. It also contributes to emerging migration studies and debates on heterogeneous African migrants' perceptions of and experiences with European states' regulations and laws. Below I turn to a further examination of literature on governmentality and law in relation to migrant populations.

2.2 Governmentality and role of law in migration regime studies

Key literature on migration and law applies Michel Foucault's concept of governmentality in analysing migration management. By governmentality (Foucault 1978) in migration, we understand how governments try to produce migrants who are best suited to fulfil their labour migration programmes while at the same time we see how migrant subjects are governed and their responses thereto. How migrants govern themselves and how they accept being governed under the labour migration programmes

is key here. Migrants' own self-governing capabilities whereby they have the freedom to migrate on their own account under labour migration programmes, yet they are continuously under the control of states and other entities in their bid to regulate population. This power of governmentality in migration refers to a regime devoted to the management of migrant population and economy, and is identified with the governmental state and with a type of society controlled by apparatuses of security (Foucault 1978; Rose and Valverde 1998).

Scholars such as Guild and Bigo (2010) examine freedom of mobility as being transformed into a series of practices framing biopolitics - that is the administration of social and political power over life - as a form of governmentality. The authors argue that it is neither possible to analyse freedom without looking at police and disciplinary practices generating obedience and self-compliance nor is it possible to study freedom without an examination of the existence of a class of professionals of politics and of law and norms who are framing the right of the state to arrest and punish an individual (Guild and Bigo 2010, 413). States employ a series of practices (including hiring professionals such as immigration agents and police) to control the behaviour and movement of labour migrants (see for instance Foucault 1978, 92; Rose and Valverde 1998; Lemke 2002). Immigration laws and policies are some of the apparatuses through which migrants are controlled and in turn conduct themselves as I examine in specifically chapter six and chapter seven.

Regarding law, Foucault's analysis has been critiqued as leading away from notions of the autonomy of law and the Marxian perception that law is determined by economic and political structures (Turkel 1990, 189). Rather, law must be analysed in terms of its internal relations of power and knowledge as well as its relations to other discourses and sources of power (ibid.). Such a focus means that Foucault's work on prisons and asylum, that are at the periphery of social reproduction, remain crucial to understanding how various institutionalised and segmented facets of law control and shape popular discourses (Turkel 1990, 190). Turkel adds that from this we ought not to conclude that the constitution of society and the state through law and the details of power, discipline,

and punishment are unrelated but are interpenetrated with another (ibid.). Juridical equality, explicit legal codes, and representative democracy develop along with the disciplinary practices that shape the mundane. According to Foucault, the formation of legal rights and legal institutions expand with the detailed exercise of power. Where there are legal rights, there are technologies of power (Turkel 1990, 190). So in the migration context, states' surveillance of or disciplining of migrants, controlling the different rights that they can access, and their exercise of the same is seen to be a technique of the states' power over migrants who then self-discipline or govern themselves and respond in various ways, which I examine in chapters six and seven.

The governmentality of migration is a crucial issue of contemporary societies. Increasingly, critical migration researchers conduct innovative ethnographies of the state and analyse 'the governmentality of immigration' from the perspective of the migrants' own conduct (see Fassin 2011; Wright et al. 2010; Walters 2015). William Walters advances the already productive encounter between governmentality-oriented research and migration studies (Walters 2015). While Didier Fassin calls on critical authors to inscribe migration research in genealogies of postcolonial government (for instance, see Hampshire 2005; Rose and Valverde 1998), he further highlights a politics of policing borders and the production of boundaries (Fassin 2011). As a result, a focus on belonging, temporality and spatiality, become a concern for states and bureaucracies (ibid.). According to Fassin (2011), the arrangement of the immigrant question regarding the three pillars of governmentality, that is, economy, police, and humanitarianism, has been changing dramatically over recent decades, with policing becoming the principal instrument to govern those who are increasingly viewed as aliens (Fassin 2011, 211). From this international affairs scholarship, we see the need for empirical research on the links between the transnational and national levels of authority, and the outcomes that this has on the demand for migrant rights, mobilisation by migrants, and minorities at the local, national, or transnational level. I further examine these issues in chapter seven.

Feminist socio-legal scholars such as Munro (2003) working with the governmentality concept focus on the role of law in shaping women's migratory experiences. They examine the normative understandings of women's place, the patriarchal nature of law, and – in the case of the resistance literature – the paradoxical duality of law as both hegemonic and potentially instrumental to its own opposition (Calavita 2006; Munro 2003). I draw on the governmentality concept to scrutinise migrants' legal consciousness as including both acquiescence to or conforming to law's domination and resisting the hegemonic power of law (Silbey 2005; Sarat 1990; Kubal 2013). In light of this research, I am interested in analysing how racialized migrants bear the responsibility to meet the immigration conditions and how they conduct themselves under labour migration programmes.

Other approaches to international migration law have explored the non-legal role of law as a mobilisation tool for migrant rights (Wexler 2007a, 2007b; David Kennedy 2013). While in various problem solving and policy oriented literature, law has been identified, in addition to globalisation, politics, the media, and the personal traits of policy makers as a factor that influences the evolution of labour migration programmes with little consideration of migrant workers' human rights (Somerville 2007a). Migration and socio-legal scholars recognise the role of law (state law) in the receiving country in shaping labour policies, occupations, and the rights of migrant workers (Calavita 2006; Satterthwaite 2004). Satterthwaite particularly advances the 'intersectionality' of human rights laws as a solution for the problem of lack of rights for migrants (Satterthwaite 2004). Similarly, I seek to analyse the role of law further in contributing to both the restriction of migrant rights while at the same time functioning as one of the avenues where migrants can demand rights under labour migration programmes.

There are also critical debates on the hegemony and utility of international migration law (Buckel and Fischer-Lescano 2009; Peers 2007; Medda-Windischer 2011; Scholte 2001; Chetail 2017; Aleinikoff 2007). For instance Vincent Chetail proposes a deconstructivist approach to deal with the instability, complexity and contradictions of international migration law's overlapping fields (trade law, human rights law,

humanitarian law, labour law, refugee law, etc) (Chetail 2017). This critique of international migration law is crucial since most high income states do not ratify key migration conventions which would protect migrant rights per se. I contribute to these debates by probing the utility of international migration law for African migrant workers together with migrant rights movements. Since international migration law is neither the fortress of the state nor the labyrinth of migrants (Chetail 2017, 23), migrant workers can still can make use of the existing international legislation within the UK to claim rights, at a time when states are determined to maintain their sovereignty over immigration control.

Most migration studies of migrant rights mainly focus on migrants from Asia, especially the leading temporary 'labour brokering state', the Philippines (Rodriguez 2010). For example, these authors show migrants engaged in non-governmental Organisations (NGOs) and other social movement organisations to exercise agency within restrictive circumstances and claim rights (Carling 2005; Rodriguez and Schwenken 2013; Briones 2008, 2009; Piper 2007). The authors primarily focus on the low-skilled workers in the domestic sector (as the most disadvantaged group) but arguably the arguments and ideas (for instance, migrants having stratified statuses and rights) that they put forward are equally applicable to so called semi-skilled and highly skilled workers under labour migration programmes in other sectors such as nursing and care work (Kofman 2004; Kofman et al. 2009). Clearly, migrants of all skill levels are susceptible to discrimination and various rights abuses under law (Kofman et al. 2009). My study contributes to these academic debates and contributes an elucidation on East African migrants' own free initiatives and roles in subject formation as an ideal migrant that can be admitted and accepted to work in the UK upon meeting certain conditions set under the UK visa regime in their countries of origin (Rodriguez and Schwenken 2013; Alpes 2015).

The governance of migration is routed in the creation of migrant subjectivities such as the precarious legal migrant subjects. States' migration laws and policies 'stratify' migrants and create an often ignored group of people with 'precarious migrant status' that lack rights and suffer discrimination both inside and outside the workplace

(Goldring, Berinstein, and Bernhard 2007). Precarious legal status within the society is highly dependent on the frequently changing immigration laws of the UK. Precariousness has always been seen as a natural condition by the millions of workers and urban poor in the global South (Munck 2013, 747). Under neoliberalism, it is argued that European workers have been stripped of the security of employment, face unemployment, labour flexibility, and informal employment patterns. Munck recommends for scholarship to intervene in the broad labour movement, seeking the revival of social movement unionism instead of frightening the ruling order with the spectre of a migrant precariat (Munck 2013, 761). The study contributes to the debates and body of work on the legality, precarious working conditions of migrant workers and the political economy of migration (Kubal 2013; Ballard 1987; Paul 2015; Kuptsch 2012). Kubal utilised the tradition of socio-legal inquiry with an empirically grounded analysis of "soft cultural factors" that shape the ways migrants negotiate their relationship to the law in the complex process of socio-legal integration and focused on the fine details of the law as the key structural framework organising migrants' encounters with the host state. Semi-legality is such a site of contestation of the seemingly overwhelming power of the state to determine one's status (Kubal 2013). Semi-legality as a sensitising theoretical perspective helps to explain why many neoliberal regimes, which claim that law and order are the main political and moral features distinguishing them from others, actually engage in perpetuating the legally ambiguous modes of incorporation *sui generis* (Chauvin and Garcés-Mascareñas 2014). The research focuses mainly on integration of Eastern European migrants in the UK and their legal consciousness as a form of remittance in their country of origin.

Socio-legal scholars have produced empirical studies on legal consciousness. These describe what people think about the law, how they use it, and the effect of the complete set of ideas that people have about law on their decisions and actions in everyday life (Sarat 1990; Silbey 2008; Calavita 2006). For instance Kurkchiyan makes a constructivist analysis of the collective legal consciousness of society using focused groups methods and argues that this assists our understanding of legal culture and, with it, our comprehension of not only what law means for people in everyday life, but also

how it works in a particular socio-cultural context (Kurkchiyan 2012, 591). She uses this approach to explore how people in society develop a distinct interpretation of how social order is organised, what role law plays in maintaining that order, and how it becomes embedded in everyday life (ibid.).

Further migration scholarship examines the transnational legal consciousness of undocumented migrants. Migrants draw on their knowledge of existing international laws and laws in other jurisdictions to claim rights in the countries of residence (Schwenken 2013, 138). Such research also contributes to the literature on migrants' precarious status, as migrants must often negotiate their rights while being hampered by their precarious resident status within contexts where the overlap of migration, welfare, labour, and gender regimes lead to incoherent and contradictory institutional set-ups that hinder their claiming of rights. These perspectives on migration, law, and legal consciousness proved that there was a gap when it comes to looking for the legal consciousness of heterogeneous migrant groups that were not mainly composed of undocumented migrants in Europe. For instance an ethnographic study of the legal consciousness of African migrants in Germany examines Cameroonian mothers' belonging and transnational legal consciousness (Feldman-Savelsberg 2016). Such scholarship provides useful insights into studying legal consciousness of heterogeneous groups. However, there is need for more literature specifically analysing law and legal consciousness from the perspective of East African migrants or even looking at labour migrants within Africa and around the world. So this study seeks to fill this gap and build on the understanding of the rule of law in an international context from both a critical and an African socio-legal perspective.

To go beyond state-centric approaches to migration management and protection of migrant rights, political sociology scholars advance a social movement approach into the academic debate on the human rights of migrants, thereby taking a political sociological perspective on rights (Piper 2007; Schwenken 2013; Piper 2015). The approach is commendable as it goes further than the analysis of migrants' human rights revolving around citizenship status in studies where mainly wealthy or highly skilled

migrants can easily access citizenship after attaining a permanent residence status, thereby accessing citizenship rights. So to go beyond the mainly purely legal perspectives and/or theories that require mainly focusing on analysing the UK's compliance with the available laws and norms for protecting migrant workers (see for instance Grant 2005), this book draws upon this scholarship and attempts to contribute to the debates on migrants' collective engagement with social movements to claim rights (Wexler 2007b, 2007a).

2.3 **Conclusion**

This chapter reviewed key studies on migration governance in connection with migrants' rights and the 'migration-development nexus' with relation to healthcare workers. The critical literature on migration governance involves questioning the state's role in restricting migrants' rights irrespective of the existence of rights-based approaches as moral guidelines. Having perused the literature on labour migration programmes, I identified a need to examine the role of law both as perceived and experienced by East African migrant workers. It is important to conduct empirical research on the implementation of immigration policies and law. Via immigration law, the state confronts the international human rights regime whereby states want to protect their sovereignty while at the same time they are expected to protect human rights. In this way we can critically analyse how migrant workers' rights are legally 'traded away', reduced, or even ruled out for certain categories of migrant workers. I contribute to this body of work and try to go beyond only examining the precarisation of undocumented migrants. I introduced an overview of concepts such as governmentality and highlighted how they can be utilised. A key area of research interest remains the role of law in constructing migrant subjects and increasingly on migrants' legal consciousness. My study contributes to this interdisciplinary empirical research, examining migration governance and the related laws and policies structuring migration experiences, migrants' perceptions and coping strategies. The next chapter details my theoretical inspirations and analytical concepts.

3. The Socio-legal theoretical framework of the study

This research is undertaken from a socio-legal perspective, which requires a theoretically grounded, empirical study of law, and examining the rule of law (legality), based on circulating narrations of individual migrant workers. It draws on theories associated with sociological research to study legal systems, law, and law-like social phenomena basing on a foundation that law, as a social construct, cannot be meaningfully understood apart from within the wider culture and society (see Vlieger 2011, 13; Dupret 2007). Studying theory and its application is useful and essential for a full understanding of law (White 2005, 3). Socio-legal theory particularly assists to understand law in operation or practice, and its function for various interests, ranging from state's immigration control to construction of the ideal migrant subject and how migrants perceive law and contribute to the meaning of the rule of law (Silbey 2005). This is different from a positivist theoretical approach focusing on analysis of law or compliance with law, which emphases more on examining contents of legal statutes and discussing what the law ought to be (law in books). Taking on broader theories than a positivist approach contextualises the study of law in connection with reality (White 2005, 3).

I use this socio-legal approach to theorise, analyse, and contribute to understanding law in relation to the primary subjects of labour migration and its regulation by states, i.e. migrant workers. The socio-legal theoretical framework attempts to include the social and legal experiences of migrants to the debates on migrants' subjectification in political and economic debates under the British migration management policy. As Nigel White asserted: "Law itself is generated by politics, and politics is framed by ideas, ideology and philosophy: To help understand law, it is essential to look to ideologies, to theories and philosophies*"* (White 2005, 3).

Socio-legal researchers eclectically draw from critical theories that contribute to understanding migrant workers' experiences with rights and law. These critical theories and approaches include critical legal theory, critical race theory to International Law and the intersectionality approach. These approaches assist in analysing different rights

experiences, practices, and strategies of East African migrant healthcare workers, and how these are structured by multiple laws and policies. Before examining the relevant concepts including civic stratification and subectification in detail, I examine the critical theoretical approaches.

3.1 Critical theories on law and racialisation

Turning to the critical traditions in law and society scholarship (Silbey and Sarat 1987) means questioning what we take for granted about law, legal facts and rights in studies of law. These approaches are useful in examining what lies behind decision making by the judiciary, which can be class based and politically motivated. Relying on a critical perspective assists me to understand the ideas behind the evolution of the points-based immigration system in the UK in a racialised manner. A critical perspective evaluates social events from a moral and political standpoint where I examine and attempt to critique law and its origins or evolution over time and existing power relations. It also helps me focus on migrants as capable agents always having to make decisions within structures such as legal and cultural norms, various state practices and legal cultural contexts, and still remain optimistic about law in pondering possible acts of social change and reform through the law (Silbey and Sarat 1987, 170).

Critical theories that explain mainly what the law does (see Trubek 1986), are useful in understanding migrant workers' experience of conflicts and indecent working conditions under laws and policies of high income states that are premised on the rule of law. These theories include critical legal theory of human rights and law as being founded in domination. Proponents of this theory believe that logic and structure attributed to law grow out of the power relationships of the society. The concept of the rule of law was a myth designed to maintain the illegitimate domination of society by the economically and politically powerful (Hasnas 1995, 86).

Another aspect about the critical legal studies movement is criticism of human rights as formal, individualistic, and something that emphasises the division of the world into a state sector and a private world of civil society (Duncan Kennedy 1982, 62). While I

accept this critique of the rights discourses, claiming rights is at times the only recourse for marginalised and minority groups. Context-specific rights entitle their holders to claim redress, especially within political struggles and movements as evident, for instance, in East African states and their nationals' independence from colonial rule in the 1960s, and in the civil rights movement in the USA throughout the 1950s and 1960s (Kostiner 2003). Similarly, it was through the language of rights and affirmative action for minority groups, e.g. Muslims and women specifically, that members of these groups were able to attain education and follow careers such as nursing and medicine – this, following the implementation of both colonial and customary laws, which decided who should attain education in colonial times in East African states, such as Uganda. Specifically, rights flourish in relationships among identities and politics, as they turn out to provide the language that many different persons and groups can attach themselves to (see Sarat and Kearns 1995, 6–7). For instance, in the South African context, the politics of rights was useful in the struggle against apartheid, and in that instance law was available as a resource for resistance because the white regime proclaimed its fidelity to rights and because all other avenues for resistance were effectively closed to blacks at that time. This meant that for Africans claiming rights was one of the main avenues left to carry on black political struggles against apartheid rule (Abel 1995). Rights can thus be a source of empowerment and protection for migrants against the societies in which they live, yet they can also constrain those people as we see with the case of different migrant groups in the UK.

Stemming from the critical legal studies movement, are the Third World Approaches to International Law (TWAIL) which were developed by academics who mainly originated from the Third World and worked in developed states during the late 1960s and 1970s (David Kennedy 2007). This critical school examines how the core states developed by exploiting the periphery states, and how colonising states relied on law and international law at the time to dominate and exploit nationals in the colonies who were portrayed as uncivilised. Various international laws are implicated in the creation of colonial subjects and in the rise of various forms of resistance in colonial Africa (see Comarroff 1995, 194). These approaches explain the role of international law in the exploitation of

migrant labour and at the same time provide a solution in the form of resistance to law by claiming international human rights. The TWAIL explores how international law was an instrument for domination but which also still has potential for changing restrictive and domineering state laws and regulations. This is evident when we examine the transnationalisation of international human rights and norms, which social movement actors have drawn upon to claim rights in developing countries against multilateral companies and states, and which migrant movements can still rely on in developed states (de Sousa Santos 1997). I expound this further below when I examine migrants' transnational rights claims. In this case it is migrant workers coming from low-income countries migrating to a high income country. The approaches provide useful insights and tools that might offer an understanding of the transnational dimensions of the human rights situation of both highly and low-skilled migrant workers in the UK during their pursuit of decent work and yet they are idealised as contributing to development as we saw in chapter one and two.

The Critical Race Theory (see chapter five) explains that race is socially constructed and contributes to legitimating inequitable distribution of wealth and power. The critical race theory is useful for an elucidation of the concept of racialisation whereby to be racialised was to be dehumanized as part of the colonial process. Drawing on postcolonial studies, I turn to Frantz Fanon according to whom racialisation was a psychological process, in the context of physical domination and oppression, and was tantamount to dehumanizing the oppressed that they in turn have to struggle against in order to attain change (see Fanon 1986; Garner 2009, 20–21). One dehumanising process during the colonial times was the introduction of English language which diluted or changed some of the local African languages and cultures (Ngugi 1986). Upon migration, in spite of speaking English as an official language in most of the East African states, many East Africans still find that they need to prove their prowess in the English language during job applications as elucidated in chapter six.

While there are all kinds of phenotypical differences among people, the social meaning of those differences, their groupings, and their hierarchical arrangement – i.e. their

racialisation – are constructed through the interaction of social, economic, political, and ideological processes (Calavita 2007). In what Etienne Balibar calls 'neo-racism' or 'racism without races', presumed cultural and religious differences are substituted for biologically-grounded racial categories (Balibar 1988). Calavita argues that these cultural and religious differences are given meaning in large part by the economic marginality that is woven through them (Calavita 2007, 105). She adds that race in this context is not only socially constructed; it is more precisely economically and materially constructed, as the social meaning ascribed to both somatic difference and cultural otherness is grounded in material conditions, i.e. immigrants are racialised, and their cultures are highlighted as problematically distinct, to the extent that they are economically other. The concept of racialisation is helpful in understanding the historical context of how migrants from East Africa became defined as migrant subjects, with differentiated conditions of entry to the UK where class, gender and race intertwined in determining, migrants' behaviour and how they manoeuvred restrictive immigration laws and policy.

3.2 **Intersectionality and belonging**

Intersectionality approaches focus on the complex ways in which gender, race, immigration, and law interact in order to potentially advance our understanding of immigrants' experiences (Calavita 2006, 124). The level of precarity that migrants may face is influenced to the intersection of categories including gender, race, class, and status (Calavita 2006; Yuval-Davis 2011). The concept of intersectionality goes together with the theoretical concept of ambivalence which relies on the epistemic assumption that an object, situation, or action cannot fully be described and analysed using a single category, because it contains at least two notions contrary to one another (Cox, Geisen, and Green 2008, 7). Similarly migrant workers as subjects cannot only be analysed using a single category, and the intersectionality approach makes fruitful contributions to social research, since it facilitates understanding a plurality of perspectives, practices, and rationalities based on the plurality of human existence and human actions (see Geisen in Cox, Geisen, and Green 2008, 7). For instance, some migrants may suffer discrimination on a range of grounds, e.g. age, disability, economic or social class status,

marital status, or sexual orientation and gender identity (International Commission of Jurists 2014, 36). Migration status counts as a dimension of intersecting factors that contribute to the exploitation and precarity that migrants face across the globe. The concept of intersectionality and the related categories of belonging are in particular utilised in chapter six and seven to explain the heterogeneity of migrant experiences.

It was useful also to examine belonging, which is composed of intersecting categories, e.g. gender, race, religion, and ethnicity, as people can 'belong' in many different ways to many different objects of attachments that can vary from a particular person to the whole humanity, in a concrete or abstract way, by self or other identification in a stable, contested, or transient way (Yuval-Davis 2011, 5). Yuval-Davis adds that even in its most stable, 'primordial' forms, however, belonging is always a dynamic process, not a reified fixity – the latter is only a naturalised construction of a particular hegemonic form of power relations and that belonging is usually multi-layered, multi-scale, or multi-territorial (ibid.). Presently, there is a 'care gap' that appears in the national sphere. So too, when the growing dependence on migrant and immigrant workers in various sectors of the economy (especially the care sector) raises issues of racialized boundaries of the nation and the various inclusionary and exclusionary political projects of belonging – both secular and religious – and the emotions associated with them (Yuval-Davis 2011, 9). These aspects of belonging are examined in detail in the sixth chapter with relation to East African migrants of different ethnic, class, and gender composition performing various healthcare roles and occupying various transnational locations within the United Kingdom and in their own countries of origin. The rich analyses and extensive contributions of the alternative theories outlined above offer useful insights and tools for understanding racialisation and the intersectionality of different categories of precarisation as experienced by migrant workers.

3.3 Role of law in the stratification and subjectification of migrants

A core but deceptively simple issue in jurisprudence is defining what law is (Hutchinson and Monahan 1984, 199; Tamanaha 1995). Law's shifting definitions and the logical dilemmas it wrestles with in trying to batten down the edges reveal the fundamental

fluidity of the boundaries, and the plasticity and incoherence of social categories (Calavita 2006, 109). According to David Kennedy:

> It is now clear that the elements of economic life – capital, labour, credit, money, liquidity – are creatures of law. The same can be said for the elements of political life – power and right. Law not only *regulates* these things, it creates them. The history of political and economic life is therefore also a history of institutions and laws. Law constitutes the actors, places them in structures, and helps set the terms for their interaction. It often provides the language – and the stakes – for economic and political struggle (2013, 8).

Most of the definitions of law are functional, as they relate mainly to what law does and depend on the context in which the term is used. I start by examining the concept of law enshrined in what was described as both analytical jurisprudence and descriptive sociology by H.L.A. Hart. Hart, eschewing any definition of law arguing that nothing concise enough to be recognised as a definition could provide a satisfactory answer to the question 'what is law', observed that law is more than just primary rules of conduct but also includes secondary rules to officials that administer the former (Hart 1961). Hart asserted that the principle function of law was restricted to private litigations or prosecutions as a means of social control and to ignore the diverse ways in which law is used to control, guide, and to plan life of citizens out of court (ibid.). Critical socio-legal scholars criticise Hart's widely recognised concept of law, although it provides us with an understanding of law from a social context. For instance, Campbell argues that some of Hart's statements on the conformity and obedience to law are simplistic, and are likely to be ill-founded (see Campbell in Leith and Ingram 1988, 18–19). Malcom Wood expands on Hart's conceptualisation by looking at the differing perspectives of all actors including ordinary people, lawyers and officials, thereby attempting to offer a rule-based theoretical framework and discursive critique of Hart's philosophy. In this way, Wood's approach offers a deeper socio-legal understanding of law when compared to Hart's (see Malcom Wood in Leith and Ingram 1988, 27–59). John Griffith expands on the social elements of the conceptualisation of Hart's theory of law asserting that law relates to the

self-regulation of every social field and is thus synonymous with social control (Griffiths 1986, 1–2). Kitty Calavita argues that law shapes and manifests itself in the institutions and interactions of human society (Calavita 2006). While according to Brian Tamanaha, law is thoroughly a cultural construct lacking any universal essential nature (Tamanaha 1997, 128). He adds that law is a term conventionally applied to a variety of multifaceted, multifunctional phenomena: natural law, international law, religious law, customary law, state law, folk law, people's law and indigenous law on the ground level and if there is a shared trait to the various phenomena which carry the tag law, it's that they all lay claim to legitimate authority, to rightful power (ibid.). Tamanaha observes that the quality of law of claiming power makes it potentially dangerous and that a realistic socio-legal study examines each of these phenomena, individually, to ask what they are, what they do, and what we do with them (ibid.).

With respect to migration, it is hard to separate law from its function in the everyday lives of migrants (i.e. control and regulate) and what they in turn do with law. This approach to law is also partly premised on minority scholars such as Martha Minow's conceptualisation of law which emphasises the partiality of all stories and viewing legal institutions and legal language as terrains for struggle over situated problems (Minow 1991, 75). Minow urges us to recognise law as a "set of practices and institutions situated within more than one narrative of human history", to embrace a theory of law that is pluralist and heterogeneous and think of the fate of law by examining actual problems as defined and experienced by the people living them (Minow 1991, 65–67), in this particular case migrant workers. Understanding law is a crucial object of research that ranges from government enforced norms such as immigration control, social control to labour laws that go hand in hand with the rule of law.

For this book, the definitions cited above are relevant in as far as they question the role of law as expounded by Calavita (2006), Minow (1991), and Tamanaha (1997), and these elucidations on law also show the power relations between migrant workers as independent or free actors on one hand experiencing stratified access to rights, and the state, international organisations, and other social forces on the other. In a study

primarily focusing on African migrants' transnational experiences with law in a Western country, I contend as Baudouin Dupret (2007) does, that law is what people such as migrants refer to as law in addition to the formal norms that flow from the government that may both control and in other instances empower migrant workers (see Dupret 2007, 35). From a migrant's perspective, various government representatives and bureaucrats enforce or implement the laws, rules and policies, at times in discriminatory or inequitable ways to immigrants. I mainly concentrate on what migrants perceive as law and experience as law, including state laws, international regulations, and norms. The discriminatory treatment of migrants depend on what visa categorisation or status or lack of legal documentation that the migrant has while in the UK and how the state has stratified the rights of the particular migrant in question.

3.3.1 Civic stratification of migrants and their rights

The management of difference and granting different rights to differentiated migrants is termed as civic stratification. The law is implicated in the selection, admission and determining of rights of migrants in countries of destination. According to Lydia Morris (2003) and Eleonore Kofman (2005), there remains a differentiated system of rights – or civic stratification – which may be nationally variable (Morris 2003, 75; Kofman 2005, 456). Different states legislate and differentiate between migrants in various ways for instance, preferring highly skilled migrants over low skilled migrants, whereby the latter access less rights. Morris offers a conceptual framework that addresses this polarisation and enduring power of the nation state in migration studies. The civic stratification approach goes beyond a traditional citizenship framework in considering degrees of partial membership, but remains cautious with respect to claims about universal, transnational rights (Morris 2003, 79). Drawing on the concept of civic stratification is helpful to examine the rights of workers without citizenship in the UK and how the state continues to determine what rights non-EU migrants can access once they are in the country. I expound on the civic stratification of migrants and their rights further in chapter five on the role of law in creating racialised migrants with less rights; and in chapter six, looking at the migrants' human rights experiences that are related to or shaped by UK law and policies.

Most countries in the world restrict migrants' rights. These restrictions are partly present because migrants are perceived and constructed as the 'other' in relation to nationals. The restrictions on migrant workers' rights are also as a result of the civic stratification of migrant workers basing on the social constructions that they would have been assigned or subjected to at the onset through the different categories that they are grouped under. Additionally, under immigration laws specifically, migrants are hierarchised and categorised by law whereby there is a separation of 'us' from 'them' as is the case with undocumented migrants (Dauvergne 2008, 17). Under the same laws, highly skilled migrants, for example medical consultants, are not perceived as taking jobs from citizens. The division of the state of admissible migrant workers according to skill levels contribute to a further division within the migrant working class. There is stratification of migrant workers' access to certain rights, benefits, and entitlements, among other issues. So law through regulating migration creates or contributes to the continuous creation of a category of people with "precarious legal status" (Goldring et al. 2007). This status is partly attributable to the state's migration and labour laws, and policies such as those guiding the PBS 'stratify' migrants. Migrant workers (whether low or highly skilled) can fall into this precarious migrant status categorisation while residing in the host country because they are usually positioned through globalisation as part of the secondary tier labour force of the developed countries (ibid.).

The concept of 'status' explains the different categories of treatment and experiences of migrants working under LMPs. This treatment results from their having partial membership (Morris 2003) or lacking 'citizenship status', which would have entailed for them to access and enjoy certain rights and entitlements such as accessing services and protection (Goldring, Berinstein, and Bernhard 2007). Relying on the concept of 'uncertain legal status' or 'precarious legal status', Bernhard et al. investigate how this classification can affect whole migrant families' welfare in their case study of Canada (ibid.). They challenge the perspectives on citizenship and level status that fail to consider the implications of status for a person's primary social units and networks. People may shift between statuses, and there [are] a number of grey areas to consider,

which Goldring et al. refer to as ‘gradation of status’ (Goldring, Berinstein, and Bernhard 2007, 102). These are the distinctions and categorisations of stratified migrants (highly skilled versus low skilled; permanent versus temporary) according to visas set by the state, which demonstrates the power of the state to determine its own immigration regime. Some migrants might find that they occupy some of these categorisations at a given time, for example if a highly skilled Tier 2 employed migrant worker loses his or her job and yet the visa is expired, he or she might become undocumented and go into hiding from law. This civic stratification creates precarious migrant labour or migrants with precarious legal status (Goldring, Berinstein, and Bernhard 2007; Bernhard et al. 2007).

Under UK immigration law, by being migrants, East African workers access or enjoy different rights from citizens, EU nationals, and permanent residents depending on the visa categorisation that they have been granted. According to the socio-legal and political scientists Patrick Schmidt and Simon Halliday, the landscape of law has been changed significantly by the language of rights (Schmidt and Halliday 2004, 1–2). These human rights are also subject to many contentious definitions. For the purposes of this study, human rights (sometimes called ‘natural rights’) refer to the basic respect due to all as human beings. It is only in this understanding that terms such as ‘inalienable’ and ‘universal’, used in conjunction with ‘human rights’, really make sense. On the other hand, human rights law is the form in which these ‘values’ have been concretised in a codification or other legal texts. The focus on texts is an oversimplification, because it leaves no room for customary international law, and the focus on binding codification is equally under-inclusive, as it negates the role of ‘soft law’ standards that may be very influential despite formally lacking binding status (Viljoen 2012, xiii).

Rights include “claims or entitlements that derive from moral and/or legal rules” (Freeman 2011). Migrants ought to be in position to demand their human rights. However, as Freeman notes, “it is a leading feature of the human-rights field that governments of the world proclaim human rights but have a highly variable record of implementing them” (Freeman 2011, 5). This contradiction is visible when governments

do not confer migrant workers' rights with the same weight that they award to citizens or permanent residents, despite operating on human rights principles such as non-discrimination. Thus, migrant workers may not be able to vote for leaders in the recipient country's elections or receive social benefits even though they pay taxes. At the same time due to absence, a majority of these workers are not even able to vote in their countries of origin. Examining access to rights is thus useful in examining and exploring the situation of migrant workers working in the healthcare sector.

3.3.2 Subjectification of migrant workers

The subjectification or social construction of migrants before they migrate and after they migrate is a response to the available avenues of migrating to the UK. Construction of ideal migrant subjectivities begins even before the migrant journey and taking up residence in the destination country. The subject formation of migrants is not only vested with one single actor (for example the state) that 'manufactures 'migrants' but involves a range of wider societal practices and a wider interplay of actors, which include the production – and contestation – of the 'ideal migrant' (Rodriguez and Schwenken 2013, 376):

> The production of migrant subjects is multidirectional and diffuse. Private business actors such as recruiters, employers or money lenders, state agencies, non-governmental organisations, and, last but not least, the migrants themselves engage in a wide array of disciplinary and regulatory techniques of forming ideal migrants for different ends. These subject positions are gendered, both in terms of masculinities as well as femininities, and racialized. They speak to local conditions as well as to global expectations about 'good migrants'.

I concentrate on how states contribute to the subject formation of legal migrant subjects and the responses of migrant workers of drawing on their varying subjectivities as workers, students, activists and as members of migrant communities. In examining the range and complexity of legal migrant subjectivities that are constructed through law, I concentrate on examining how migrants conduct themselves under the UK's managed

migration paradigm (Layton-Henry 2004). Managing migration is partly pursued by the state through its policymakers and other actors by considering what 'type of migrants' can be a 'target group' that can come to the UK, what types of rights they can access, which I conceptualise in this section on the social construction of migrant populations, and what rights they are entitled to (if any).

The construction of the target populations approach can be applied to migrant workers who have been stratified into highly skilled and low skilled groups under immigration laws. Workers in the former group are constructed as suitable migrant subjects that can be admitted into the UK and access certain legal rights upon migration. Low-skilled workers are also be accepted under the Tier 5 visa of the PBS but with less rights and benefits. I refer to these 'benefits' as different rights that are economic, social, culture, civil, and political, which migrant workers may (or may not) access according to how they are constructed under migration laws and schemes. It could be related to occupational access, education, voting, and healthcare among others entitlements, which migrants as non-citizens are not entitled to. It helps explain why some migrant groups are advantaged more than others independently of traditional notions of political power and how the policy designs can reinforce or alter such advantages. In the UK, as I elaborate in chapter five and six, racial bias remains in the construction of migrants that are subjected to labour migration programmes and policies such as labour migration programmes. The actors behind the development of these programmes, i.e. the PBS, formulated these policies in a racialised or discriminatory manner – the requirements set for immigrating in a particular Tier, for example, Tier 1: General (closed in 2011) could easily be met by nationals of some high income countries more than others. They were thus discriminatory, as they were arguably not rights-based nor gender sensitive.

Here subjectification is applied to focus on the law that is implemented, and as a result the way in which migrants then govern or discipline themselves to fit within various migrant subjectivities that can access work or visas in order to work in the UK. The approach is thus useful in showing which migrant workers benefit under the law and which ones do not, depending on how they are constructed. The approach can also show

how the non-citizens (here migrant healthcare workers) who have been disadvantaged under a policy design might move to an advantaged position or move between categories.

In examining migrant subjects' construction within the UK nation state and their transnational lives, I employ the concept of 'othering', which is drawn from cultural and post-colonial studies. The 'othering' concept refers to a practice that involves the construction of an alien other, which serves as a projection for the (re-)production of one's own (positive) identity (Ziai 2012). The concept relates to a kind of knowledge production that was almost omnipresent during colonialism and can be observed presently when examining various topics ranging from development and how Western states perceive both themselves and migrants (ibid.). Stuart Hall established that in the colonial expansion of Europe beyond the Orient the classification of the non-West into a dichotomous, hierarchical system of representation has served to construct the identity of the West as civilised, rational, disciplined, and superior (Hall 1980). Drawing on Jensen's approach to the othering of minorities in the West and their varying reactions (Jensen 2009), I relate this to both female and male migrants from East Africa and how they experience this othering and how they draw on their different subjectivities to cope (see chapter six and seven).

To migrate under the PBS, migrants must meet the requirements of the constructed ideal migrant subject who can access rights. As Kirstie McClure argues, it is necessary to distinguish among different types of rights to understand the way rights help constitute subjectivity (McClure 1995, 150). These rights include positive liberty rights, which constitute an autonomous subjectivity; negative liberty rights, which constitute a protected subjectivity; and entitlement rights, which constitute a dependent subjectivity (McClure 1995). For migrants, accessing certain legal rights is tied to the state and international institutions such as the European Union and the United Nations. Sonja Buckel and Andreas Fischer-Lescano (2009) elucidate the way in which political leadership turns to law to make certain usages and modes of behaviour disappear and to disseminate others:

> If political leadership has to create a social conformism, then it is actually the 'legal problem' to 'educate' the 'masses', or 'a question for the "law"', through which 'the educative pressure on the individuals is exercised, so as to attain their consensus and collaboration'. This does not mean a traditional political 'control concept', but the 'educative, creative, formative character of the law' as a productive form of power, defining through legal practices types of subjectivity, forms of knowledge, and thus also producing relations between human beings and truth: subjectivities and forms of life (Buckel and Fischer-Lescano 2009, 447).

Law is implicated in the construction of various migrant subjectivities and how migrants then conduct themselves in response. It is through law that undocumented migration status is defined and constructed as 'illegal' and is now established as an identity of its own, homogenising and obscuring the functioning of the law and replicating layers of disadvantage and exclusion (Dauvergne 2008, 19). Furthermore, the construction of the ideal migrant subject that can work in healthcare as understood by migrants themselves, i.e. highly skilled and low-skilled healthcare professionals, is regulated by law (Hausner 2011). I turn to migrant workers' perceptions of law applying the concept of legal consciousness below.

3.4 **Legal consciousness**

Legal consciousness includes all the ideas about the nature, function, and operation of law held by anyone in society at a given time (Trubek 1986). According to Susan Silbey, legal consciousness is an important concept and topic of empirical research developed during critical shifts in the theoretical arsenal of socio-legal research in the 1980s and 1990s to address issues of legal hegemony, particularly how the law sustains its institutional power despite a persistent gap between the law on the books and law in action (Silbey 2005, 323). Within the law and society movement, the focus on legal consciousness developed directly from what appeared to be law's failure to realise its aspirations for equality and justice (Silbey 2005, 358). These also involved attention to and appropriation of the traditions of European social theory that had been addressing

these questions with the concepts of consciousness, ideology, and hegemony in an effort to understand how systems of domination are not only tolerated but embraced by subordinate populations (Silbey 2005, 328).

As a part of production of legal meanings, legal consciousness is understood together with its role in the collective construction of legality, or the rule of law (Silbey 2008). Ewick and Silbey use the term legality to refer to the meanings, sources of authority, and cultural practices that are commonly recognised as legal, regardless of who employs them or for what purposes (Ewick and Silbey 1998). With this analytic term, they distinguish their research and theoretical focus from the institutional manifestations of legality in the laws, legal profession, forms, acts, and processes, etc. The analytic construct 'legality' names a structural component of society, that is, cultural schemas and resources that operate to define and pattern social life (ibid.).

Legal consciousness is used analytically to name the understandings and meanings of law circulating in social relations – that is, what people do as well as say about law – and is understood to be part of a reciprocal process, in which the meanings given by individuals to their world become patterned, stabilised, and objectified (Silbey 2008). Ewick and Silbey (1998) organise their work around the three schemas namely: before, with and against the law (ibid.). The major import of the work is their explanation of how the ensemble of narratives work to constitute both a hegemonic legal consciousness, the rule of law, and openings for change or resistance. Through this concept, I am able to study and trace the schematic ways in which law is perceived, experienced, and interpreted by specific individuals (migrant workers) as they engage, avoid, or resist it and legal meanings (Silbey 2005; Sarat 1990). In recent studies, legal consciousness focuses on how what people think and do coalesces into a recognisable, durable phenomena and institution that we recognise as the law (Silbey 2005). Legal consciousness, in this account, consists of mobilising, inventing, and amending pieces of these schemas.

As Ewick and Silbey argue, law and legality achieve their recognisable character as the rule of law despite the diversity of constituent actions and experiences (forms of consciousness), because individual transactions are crafted out of a limited array of generally available cultural schemas. These few but generally circulating schemas are not themselves fixed or immutable, but are also constantly in the making through local invocations and inventions (Silbey 2005, 347). Migrants' lived experiences, practices, and strategies of claiming rights are examined as part of their engaging domineering facets of law, while at the same time law is seen to play a role in structuring their rights experiences.

Sarat's study of welfare recipients' views about law makes clear that legal rules and practices are all around, immediately and visibly present; yet the law itself is a shadowy presence (Sarat 1990). Another study on Cameroonian mothers in Germany presents state law as always having a hovering shadowy presence in migrants' daily lives and shaping their transnational belonging and experiences (Feldman-Savelsberg 2016). Legal consciousness is contingent and may change according to the area of social life about which the researcher asks, with reference to the social location of the subject, and the subject's knowledge about the law and legal norms (Cowan 2004, 394). Legal consciousness helps us understand why people like migrant workers acquiesce to a legal system in the receiving state (i.e. the UK) that despite its promises of equal treatment (for instance UK Human rights law) systematically reproduces inequality (see Silbey 2005, 323–24).

Studying the legal consciousness of migrant workers also helps me identify their exercise of agency and participation in claiming more rights or addressing their human rights issues, such as resisting or not resisting racialisation, precarious legal status, and navigating indecent work. Since my study focuses on migrants from non-EU countries that the UK may not be obliged under EU treaty obligations to offer specific rights and freedom of movement (especially if they are not family members of EU nationals), examining migrants' legal consciousness is useful in understanding complexities of law,

and legality in particular the enduring structuring power of national laws for migration management, in spite of a transnationalisation of migrant rights.

3.4.1 Transnationalisation of rights claims and legal pluralism

Migrants are increasingly aware of their rights and how to claim them, and their legal consciousness is evident from the many cases filed by migrant workers or by others on their behalf (Calavita 2006), in different jurisdictions around the world. How to empower migrant workers and how they empower themselves in light of restrictive state policies on rights and migration of low skilled migrant labour remains an issue irrespective of the existing laws and the incorporation of international human rights law within the UK through the 1998 Human Rights Act. Yasemin Soysal argues that an era of post national citizenship has emerged now that migrant rights depend not so much on citizenship but on territorial embeddedness, and that with the development of discourses of universal human rights, claims-making extended beyond the nation-state (Soysal 1994). Furthermore, some migrants even without legal status (undocumented) have been very active and strategic in seeking remedies and more rights for themselves whether under the law or against it. However, migrant workers are not entirely helpless, as their assertion of agency within restrictive conditions is evident right from the time they decide to migrate. This is seen from the strategies they might employ to seek knowledge about the visa application process, life in the UK and its labour laws. Migrants' agency is visible before travel when they apply for visas, from the strategies employed upon arrival not to be sent back home (in the case of unemployment), and in coping with racialisation at work and within the society.

Furthermore, migrants with different subjectivities and identities may act individually or as a part of a collective to claim or assert rights. Migrants' legal consciousness is partly a result of their individual and collective identities. Migrants have heterogeneous personal identities, which are understood broadly and affect whether and how migrants decide to claim rights. Each person has multiple identities, defined by race, gender, religion, class, and age among other factors. Personal identity is a place in which rights and participation intersect and can be both individual and collective (VeneKlasen et al.

2004, 12). VeneKlasen et al. add that in cases where identities have been the basis of discrimination, they can serve to activate people, helping them define their rights, gain confidence and a sense of community, and organise with others to act (ibid.). In other instances building broader alliances for social change requires people to reflect on values of solidarity, negotiate differences, and develop a more inclusive vision of society and the common good that goes beyond the boundaries of their identity group. This is why migrants may choose to form migrant associations or to join trade unions. In the healthcare industry, mutual recognition as workers is an initial step of collective identification. Before examining migrants' collective actions for rights further below, I examine the conceptualisation of transnationalisation of human rights.

Transnationally, human rights are held to comprise important norms such as 'non-discrimination' that create prima facie obligations, particularly on the part of governments, to take positive measures to protect and uphold these rights. Notwithstanding the terrain of rights or the Rights Based Approach, under law, in particular international law on one hand as constructed by states, states' sovereignty to shut their borders overshadows rights claims of individuals (Dauvergne 2008, 27). De Sousa Santos on the other hand, imagines an alternative transnational politics that moves away from a fixation on the coercive power of the state and focuses on other diverse forms of politics that spring as much from practices of social contestation (de Sousa Santos 1997). Yet as far as international migration is concerned, the state has always played a part in regulating entry and the rights of migrants at all times, although migrants are increasingly relying on the international human rights regime to claim and attain some rights.

Politics and academic interest in cross-national migration has generated two very different and potentially polarised positions, where one emphasises the continuing power of the nation state while the other position sees an emergent 'post-national' society in which migrants can increasingly draw on transnational rights located outside of the nation state, rendering national citizenship redundant (Morris 2003). Furthermore, according to Nicola Piper et al. transnationalisation refers to rights in which: (1)

migrants maintain vis-à-vis the country of origin when crossing borders; (2) migrants gain when entering the destination vis-à-vis the country of origin and destination; and (3) migrants keep and gain when returning to their country of origin (Piper, Rosewarne, and Withers 2016). Many of these are covered by existing international instruments, albeit in a fragmented manner (i.e. scattered over several conventions) (ibid.).

The socio-legal concept of legal plurality as conceptualised by Tamanaha (2007) and De Sousa Santos (1995) claims that there are different legal systems (i.e. international legal regime, customary laws, and other laws from other bodies) is useful to map transnationalisation of different versions of human rights norms and cultures into the UK's legal jurisdiction. All states have enacted and implemented various laws and policies regulating the movement of people from different countries or even transactions of these people in their lives before, during, and upon taking up residence and work in another country. Within most states exist different legal orders that are applicable to different activities performed by citizens or nationals and migrant workers. Thus, there is not "just one law" that is utilised in the civic stratification of migrants, a phenomenon described as "legal pluralism". Brian Z. Tamanaha asserts that legal pluralism is everywhere whereby in every social arena one examines, there is a seeming multiplicity of legal orders, from the lowest local level to the most expansive global level, national, transnational and international laws of various types. In addition to these familiar bodies of law, in many societies there are other forms of law, like customary law, indigenous law, religious law, or law connected to distinct ethnic or cultural groups within a society (Tamanaha 2007, 375).

While, Boaventura de Sousa Santos forges a conception of law based on the notions of legal pluralism and inter-legality that encompasses both the social constructions of normative orders and the human experiencing them (de Sousa Santos 1997, 26:473). De Sousa Santos states: "Legal pluralism is the key concept in a post-modern view of law. Not the legal pluralism of traditional legal anthropology in which the different legal orders are conceived as separate entities coexisting in the same political space" (de Sousa Santos 1997). This conceptualisation of plurality of legal regimes as global legal

plurality, and elaborates on a variety of other forms of global legal fields, including the human-rights regime, migration law, and common-heritage regimes (1995). In an age of globalisation, the UK immigration laws enable migrant workers to migrate to the UK under set conditions while its labour laws regulate work performed by migrants and citizens alike. This way, the UK partly relies on its laws to set the migration regime, i.e who can migrate and under what conditions. Additionally, by applying for UK work visas, migrant workers' exercise of agency (manoeuvring around the different requirements or under restrictive conditions) is set in motion. Then there are human rights laws, which cater for the wellbeing of people irrespective of their race, gender, and religion among other categorisations by virtue of their humanity. De Sousa Santos's conceptualisation of interlegality is relevant because his work on the globalisation of law identified an expansive and diverse array of contemporary legal fields including European law, migration, and human rights. Additionally, in his conceptualisation, De Sousa Santos classifies forms of globalisation as hegemonic globalisation from above and counter-hegemonic globalisation from below, including subaltern cosmopolitanism and the common heritage of mankind (de Sousa Santos 2002, 179–82). He advocates for the development of a cosmopolitan legality arising out of the counter-hegemonic forces, represented, for example, in social movements such as human-rights networks (de Sousa Santos 2002, 180–90).

Taking the case of the UK, there are various rules and laws from states – national laws, and transnational laws, for instance from the European Union – that are relevant to the human rights of migrant workers, for instance regarding the treatment of EEA nationals and third country nationals that are married to British or EEA nationals (Cholewinski 2004, 2010). Finally, there are international laws from the United Nations and some binding conventions from the ILO that the UK has ratified. Additionally, the UK as a Western society is mainly state-centred with laws originating from the UK state and those from international bodies being given primacy, while the 'unofficial laws' from other jurisdictions such as Jewish and Sharia tribunals operate in as far as there are nationals observing them that recognise them as law.

According to Tamanaha, at the close of the 20th century, globalisation gave rise to yet another wave of legal pluralism (Tamanaha 2007, 386). Globalisation reflects an increasingly interconnected world, for instance the migration of people across national borders for both labour and asylum, the creation of global networks of communication, global financial markets, the building of global or transnational political organisations or regulatory regimes, for example the European Union and the World Trade Organization and the presence of global non-governmental organisations (ibid.). Legal pluralism is a crucial issue within the EU and the UK as a member therein because "rather than being ordered by a single legal order, modern societies are ordered by a plurality of legal orders, interrelated and socially distributed in different ways" (de Sousa Santos 1997, 26:144). De Sousa Santos states that we live in a time of porous legality or legal porosity, multiple networks of legal orders forcing us to constant transitions and trespassing whereby our legal life is constituted by an intersection of different legal orders, that is, by interlegality (de Sousa Santos 1997, 26:473).

From De Sousa Santos's assertion above, both female and male migrants face different types of laws and various facets of law as far as their rights are concerned during their navigation through the immigration policies of the state and they adopt different coping strategies. They move through being categorised as 'legal' and 'undocumented' or may find themselves losing their legal status depending on their ability to stay employed. Laws are also as a result of the existing power relations on the global stage, with the UK, setting the conditions within its immigration policies that migrant workers coming from developing countries of East Africa must satisfy in order to work in the UK or even be considered as 'desirable' migrants from the onset.

With respect to globalisation, the state appears as both remedy and poison whereby populations still look to states to address problems generated by international markets, flows of people, and security threats, even as they see that the states are themselves the source of concentrated violence, inefficiency, corruption, and exclusion of non-residents (Wai 2008). However, given the current state of expectations and practice in each of the different transnational areas of world society, state forms of sovereignty, for all their

problems, often remain the most effective and legitimate forms of dispute settlement, and transnational governance needs to rely on the maintenance of roles for both state and non-state systems in governance (ibid.). One of the contradictions that can be addressed by the concept of civic stratification is that it recognises the enduring variations in states' exercise of their sovereignty and restricting migrant rights. The concept assists us to recognise the possibility of transnational rights claims against states especially where they have domesticated international human rights norms into their jurisdictions.

At a time when states are increasingly externalising their responsibilities and shifting their borders, their sovereignty over guarding their borders may seem out-dated. States rely on this sovereignty to restrict migrant rights while at the same time externalising their borders to third countries such as Senegal, Libya, and Turkey in order to stem the flow of migrants that the states do not want. Nonetheless, migrants still draw on transnationalised and domesticated international human right norms that states voluntarily agree to be bound to in drawing up international human rights treaties. Accordingly, and paradoxically, migrants can refer to human rights to contest the authority of the state and rely on the international agreements and conventions dealing with migrants' rights, a process Saskia Sassen documented as 'de facto transnationalisation of immigration issues' (Sassen 1998). In this way, international human rights law can be a tool that migrants can use collectively or refer to, in order to undermine the concept of state sovereignty.

3.4.2 Collective action and litigation with civil society

Migrants' collective actions such as joining social movements are part of their legal consciousness (Silbey 2005). Such collective practices can be explained by a broad understanding of social movement theory to include migrants' mobilisation in acting collectively within political movements such as trade unions, file strategic litigation and join civil society to claim rights (Piper 2015). Owing much to political science, social-legal scholars have long been interested in the mobilisation of social movements and interest groups (Schmidt and Halliday 2004, 7). The law-making institutions set agendas

and make decisions influenced by the structure of interest participation whereby wider social forces shape the options and choices of decision makers, resulting in law that bears the marks of those struggles (ibid.). Uprisings may also draw on local cultures of resistance and labour strikes as well, which may influence the strategies of East African nationals upon migration.

Social movement theory is applied to examine the legal opportunities available to migrants and analyse why migrant rights movements either choose litigation over protest, lobbying to claim rights, or even use all these opportunities within the national or international contexts that they operate within (Hilson 2002). I examine migrants' engagement with civil society, including NGOs and trade unions, as part of migrants' legal consciousness and try to find connections to resist or challenge restrictive laws. In the past, trade unions in the UK seem wary of working outside their own structures and remain ambivalent to the setting up of 'alternative' worker organisations for migrants, such as the workers' centres that exist in the USA (Connolly, Marino, and Lucio 2014; Jiang and Korczynski 2016). Presently there is growing union interest in coalitions with community organisations and the strengths of this community organising approach can be taken further through the adoption of a social movement approach. Through examining collective action, I am able to examine how migrants come together in a micro-mobilisation context, and how the participants in the specified movements decide to reframe their understanding of their working life and focus on sustainable forms of collective action.

3.5 **Conclusion**

The chapter set out to discuss the socio-legal conceptual framework to study migrants and their migration experience. I focus on migrants as one group of actors involved in migration regimes. I deal with migrant rights in law and compare the law on paper with law in practice as experienced and navigated by migrants. Informed by the concept of civic stratification, I look at the UK as both a state premised on the 'rule of law' that employs its immigration laws and policies to regulate and control migrants and restrict their human rights. I also make use of the concepts of subjectification and subject

formation to understand migrants' responses and coping strategies. Similarly, I examine the behavioural and cognitive dimensions of the relations of migrant subjects and law, their various responses to rights conflicts, and othering when I examine their legal consciousness. I analyse the actions of both migrants with a legal status, undocumented migrants and those with a precarious legal status. This micro and bottom-up approach (examining migrants' meaning making of law) predominantly focuses on migrant workers, their experiences, and their perceptions of law. The approach also exposes East African migrant workers' relationship with the law in the UK. For this study, I am particularly looking at how various laws intersect and/or operate in relation or in contradiction with each other to shape the experiences of migrant workers in the UK, and how migrants can draw upon protective international laws to resist restrictive immigration law and policy.

4. Methodology and methods

This chapter provides details of how I conducted my research. It includes my personal reflections on experiences in the field. It also covers the actual research process and how the research design process involved redesigning, rescaling, and refocusing the research topic. It additionally covers how I operationalised law as playing contradictory roles, by structuring society (for instance creating racialised migrant subjects while at the same time prohibiting racism) as well as the concept of legal consciousness to include migrants' perceptions of law, and contribute to different circulating meanings of legality. Thereby the chapter also addresses a key socio-legal question of addressing the function of law versus law as a knowledge regime.

4.1 Reflections on socio-legal research

I am an international lawyer interested in the field of socio-legal research. Research in this field is concerned with law in its societal context whereby law and society are at multiple levels intertwined and they cannot always be clearly separated from one another (Ervasti 2008, 142). For migration studies, this critical scholarship is connected to political sociology that seeks to understand not just legal phenomena within society, but both political and economic structures that influence and or constrain East African migrants' access to the UK labour market. This socio-legal approach (Cotterrell 2007; Ervasti 2008) analyses law, legal phenomena, and relationships between these and wider society. Socio-legal research on law includes an immersion in migration literature from sociology and political sciences and not only the study of legal texts (see Ervasti 2008, 142–43). Combining my training in legal theory and international law with socio-legal research meant I begun with interpreting what I perceived as legal rules. In particular, I examined the UK's immigration regulations, the UK Human rights Act, Equality Act, and International Human Rights legislation, which I found to overlap with the labour laws. I found it useful to examine this law in practice that is the state's practices, processes and institutions (see chapter five). Legal rules and norms contribute to our understanding of the type of law and what remedies can be available from them. For

example, under international norms there are international rights, which provide a basis for rights protection for specific rights violations, for instance prohibition of discrimination. I have included my analysis with concepts from social theory, the UK state laws and other law-like phenomena, and empirical observations of migrant healthcare workers in the UK.

I was interested in examining why migrants' right to decent work was not visible in practice. I contemplated if there was a right to work in theory, and why this was not available in practice for migrants. Further, why were there few rights for migrant workers in developed states? This partly influenced my selection of interview questions on human rights experiences and later I begun to reflect on how to frame migrant rights in an African context from a socio-legal perspective (see Namukasa in Viljoen 2012). Further, as a lawyer trained in Uganda and the UK I had witnessed both law's failure to protect workers in my own country and then witness the same in Europe, especially with the non-ratification of international conventions safeguarding migrant rights, which inspired me to conduct an interdisciplinary study going beyond viewing law as neutral but still able to see its potential in safeguarding migrant rights.

Through discussions and studying courses on the global political economy, I understood the different power dimensions and the structures that influence migrants' exercise of agency. The approaches from these courses showed me that it was possible to research about migration beyond the law while at the same time paying attention to law's role in the construction of migrants' precarity. I inquire into how law is a contributory factor to the lived experiences of migrant workers with regard to their human rights. This approach of going further than 'law in the books' and seeking to question law and human rights in practice draws from and builds on socio-legal debates including creation, implementation, and the reach of law (Schmidt and Halliday 2004, 6–8) as seen through the fields of legal anthropology, political sociology and political economy on migrant rights issues and the law. Ewick and Silbey suggest that we study everyday life to determine law's importance in constituting both the self and society, i.e. law plays an important constitutive role in shaping the social choice and actions of migrants (Ewick and Silbey 1998). At the same time the interdisciplinary socio-legal approaches

strengthened my view that law could be used politically to claim rights by drawing on social movement theory and the transnationalisation of rights.

I acquired knowledge constructively, in close connection with other students of the global political economy, governmentality, and migration regime analysis. These discussions boosted my zeal to contribute to knowledge production on migration, through reflecting on my own subject positioning as a female migrant African in Europe that can partly identify with the 'un-freedom' that came with a certain subjectivity (see Guild and Bigo 2010). My research journey begun in 2010 when I began reading about labour migration programmes and studying courses on the global political economy and qualitative research methods. In the next section I elucidate my qualitative methodology and methods.

4.2 **Qualitative research methodology and methods**

I employ a qualitative research methodology and methods which offer valuable contribution to social research in spite of questions of its strength when compared to quantitative research or a triangulation of both research paradigms (Cox, Geisen, and Green 2008, 1). The methodology detailed in this chapter provides my analysis of how I conducted my research in addition to establishing the principles that might guide the choice of method. Some techniques that guide against validity threats to the qualitative research methodology involve naming the steps taken, i.e. gaining entry into the field, category definition and data collection, and data recording and analysis. The techniques I employed include content analysis, semi-structured interviews with East African migrants as external informants who are essential to this socio-legal approach, field notes, and participant observation in the field (Devine 2002, 197). The qualitative methodology enables me to be open about the research itself, participants, research situation and the techniques. This is why this methodology is useful and ideal for answering the abstracted research question(s) introduced in chapter one. I am interested not only in uncovering migrants' rights experiences and perceptions of law, but am also driven to conduct socially relevant research that can contribute to the academic debates on migration governance and development. Through the selected methodology I was

able to acquire knowledge of the laws, policies, migration regime, and strategies of migrant workers to claim rights. The socio-legal analytical lens enabled me to observe law in operation through the everyday experiences of East African migrants.

As this is a qualitative study of law and migrants' legal consciousness and not a quantitative one, I do not make any statistical claims based on the interviews regarding the prevalence of rights conflicts or exploitation against the total population of migrant workers in the UK. Moreover, I have interviewed a relatively small number of workers who do not constitute a statistically representative (probability) sample of all East African migrant workers in the UK in the healthcare sector. I chose the healthcare sector as a sector that depends highly on migrant workers, especially females working at different skill levels. While the individual migrants as actors and narrators of their own stories matter and speak of the qualifications, professional struggles at work with belonging and racialisation, the collection of all the diverse narratives related to law, demonstrate migrants' circulating transnational legal consciousness.

Qualitative methods are an appropriate research tool since one goal of my study is to explore migrants' subjective experiences and the meanings that they attach to those experiences (Devine 2002, 199). The data collection process revolved around a document study (primary sources on law and policy), interviews with migrants and took meeting notes, which were relevant for understanding the positions of different migrants (chapters six and seven). Some of the interviewees showed me their passports and documents that they used in their applications for the points-based visas and appeal letters. During the interviews, I discovered some had become naturalised British citizens although they still identified with their countries of origin. The research participants included migrant healthcare workers who were categorised as highly and low skilled and they were able to tell their own stories including opinions on the visa application process and roles in the workplace. For the composition see the following table.

Table 4.1: Basic demographic characteristics of interviewees

Interviewee	Occupation	Country of origin	Location of interview
Female (18)	Junior Doctor (1) Nurse (7) Support worker (2) Carer (7) Manager (1)	Kenya (6) Uganda (10) Rwanda (1) Tanzania (1)	England (15) Kampala (3)
Male (10)	Doctor (2) Nurses (3) Support worker (1) Carer (2) Manager (1) Sonographer (1)	 Kenya (2) Uganda (8)	 England (8) Kampala (2)
Total (28)			

Source: Own compilation.

My fieldwork was conducted in 2011 (UK) and 2012 (Uganda). From September to December 2011 (in the UK) and from January to March 2012 (in Uganda), I interviewed 28 migrant workers, including doctors, nurses, and care aides working in hospitals, care homes, and in private homes (domiciliary care work), who moved to the UK mainly under the PBS. My interviewees had different experiences and visa categorisations, and levels of precarity, some with semi-legal status, and included migrants that encountered almost all the different categorisations. Additionally, until 2016, I was in contact with some of my interview participants who had given me permission to retain their contacts. I contacted some of them to inquire how far they were with the process of attaining permanent residence under their respective visa categories, while others contacted me and shared their experiences with renewal or visa extension or that they had returned to their countries of origin.

It is interesting for scholars of international migration to compare experiences of migrants categorised under immigration law as highly skilled and low skilled, and not

always treating individuals belonging to these skills sets separately. This is the approach I took by interviewing individual migrant categorised as health professionals which included those that were later characterised as highly skilled and some that were considered as low skilled migrant workers under the PBS. Regarding qualifications, all the interviewees (regardless of whether they were categorised as low skilled or highly killed under the immigration regime) had diplomas and degrees in different disciplines in addition to training in care work.

I conducted the interviews on days when migrants had time away from their work shifts. Some interviews were continued after some days when the interviewee had to go to work or attend to an urgent matter. The issue of confidentiality with respect to papers (residence permits) played a great role in the number of interviews as in some cases I would begin to interview a migrant and then when it came to those issues they would excuse themselves from the interview. The interviews involved my tracing migrants' migration process step by step in order to identify among other issues, the strategic moments when migrant subjectivities are shaped in their home country before they migrate. All the migrants I interviewed from Uganda, Rwanda[10], Kenya and Tanzania, talked about their experiences of applying for the visa to come to the UK which I took to be their first contact with UK law and policies. Three of the interviewees had attained British nationality by naturalisation and they had later acquired dual nationality.

4.2.1 Thematic historical analysis of policy documents

I relied on historical analysis of the development of immigration law and policy. This thematic historical analysis of the construction of racialised laws and migrant subjects was useful to understand the origins of the UK's points-based immigration system. I was inspired by scholars who took a Foucauldian approach to migration and its governance (Hampshire 2005; Walters 2015) and others who traced the development of immigration policy and legislation in the UK (I. R. . Spencer 1997; McDowell 2009, 2016). Through conducting historical analysis, I was able to uncover racialisation

[10] One migrant identified herself as both Ugandan and Rwandan.

processes. According to Silbey, conducting historical studies of hegemonic law reveals law's development as an ideological tool of repression but also uncovers spaces of freedom whereby the law was constituted by both domination and resistance, consensus and conflict (Silbey 2005, 341).

Historical analysis was the primary method of analysis of data for chapter five to set the debate of how law was employed to differentiate colonised subjects and limit their movement to the imperial motherland. Similarly, examining the literature on migration governance in the UK reveals how law developed ideologically to repress colonial subjects whose movement was curtailed (Hampshire 2005). Some spaces of freedom from the law or resisting repressive laws are seen from migrants from both Asian and Black communities partaking in demonstrations against the discriminatory practices and racialisation within British society. It was not possible for me to undertake an analysis of legal consciousness of migrants from the colonial period (the 1940s to the 1980s) because I interviewed migrants that had moved to the UK between the late 1990s and 2010. For the period spanning the 1940s and the late 1990s, I was able to examine how the law is implicated in constructing the PBS and various categories of migrants.

I conducted a literature study examining labour migration programmes and the law. The documents range from government policy papers on migration laws and policies – most of which are readily available online – academic and policy reports. I analysed the contents of government policies (Home Office 2002, 2009, 2015a, 2016) and policy recommendations from the Migration Advisory Committee (MAC) (UK Government 2015; Migration Advisory Committee 2009b, 2010, 2015b, 2015a). I relied on content analysis (Yin 2009), to extract relevant UK immigration policies and laws (see chapter five, six and seven). These documentary sources provided insightful discourses on racialisation of migrants, media, and public perceptions of migration especially during times of crises. Herein, documents are understood as written texts that serve as a record or piece of evidence of an event or fact and occupy a prominent position in modern societies (see Wolf in Flick, von Kardoff, and Steinke 2004, 284). The increase in the significance of documents is due to the secular trend towards the legalisation and

organisation of all areas of life, and in particular to the development of a modern type of administration characterised essentially by the principle of documentation (ibid.). A purely comparative legal study where I would compare the laws and policies of the UK with those of another jurisdiction would not have enabled me to probe deeply into the national systems to acquire empirical evidence about the dynamics of compliance with human rights norms (Schmidt and Halliday 2004, 3), or to fully understand the societal context of British immigration regulation and how it affects transnational migrants' lives.

4.2.2 Transnational case study and field observations

I focused on a single case study of the United Kingdom's international migration regime. My empirical research is based on a transnational case study of law from the perspective of East African migrants in the UK. Field research was necessary for me to conduct empirical observations and interact with East African migrants in the UK. The data was collected during multi-sited fieldwork in England and one sending country, Uganda. Before I could go to the UK, I had to apply for a business visitor visa to present at a conference and to in conduct interviews for a set duration. I had to show both my purpose of travel and to have an invitation letter to apply for the visa. The visa application process was a fairly easy one, as I had done it before. I made two applications for the visa and had to withdraw the first application as it took a long time to have it issued, and yet I had to travel to South Africa for a University-related trip. I was, as usual, questioned at the UK airport border about the purpose of my trip by immigration officers. I never felt as if I was in a privileged position as a researcher, as I was unsure whether the entry clearance officer would grant me entry.

In the UK, I sometimes stayed with migrant host families and participated in some community events. Some of the migrant families that I interacted with, stayed in estates that have previously been studied as part of community research for social change (see Roger Green in Cox, Geisen, and Green 2008, 75). I attended migrant community events included migrant family gatherings at the weekends, which proved to be some of the best moments for me to conduct interviews and make contacts to interview in the future.

I visited a few hospitals and nursing homes, although I was not able to conduct interviews in the later places due to the ethical prohibition, privacy and additional requirements for discretion.

Prior to my travelling to the UK in September 2011, there had been strikes by doctors, nurses, and other workers employed in the public sector against the capitalist culture of cutback on welfare funding. During the time I was in the UK, I witnessed some of the strikes and demonstrations against welfare cuts, i.e. to NHS spending. During one strike by health practitioners outside a hospital, I met and talked to one doctor who turned out to be from East Africa, and who I later interviewed. I interviewed migrants on their participation in such demonstrations and observed that most of my interviewees were not able to join them due to work commitments, visa restrictions and family responsibilities. Some participants in the informal gathering during the Ugandan community event commented about the cuts as a strain on service delivery.

Later in 2012 in Kampala, Uganda, I was able to conduct further interviews with migrants on holiday and newly returned migrants, which gave a transnational perspective to my case study. The Ugandan field visit provided further insights beyond the UK into the transnational dimension of my study on migration governance. A key area I observed was virtual communication among online migrant community groups who shared ideas about visa application processes, which is a useful source of knowledge on migrants' transnational legal consciousness. The other processes I observed were visa extensions in the UK via post, which contributed to my understanding of how migrants' lives are continuously monitored through the routine data collection. Migrants always have to be aware of the visa or work permit's duration and expiry date as any lapse in time would mean losing the residence status. I also reflected on my own transnational life, migrant status and experiences while travelling.

4.2.3 Semi-structured interviews

Following a detailed literature review on labour migration programmes and migrant rights, I designed an interview schedule. The interview guideline sought out specific gender implications (Grieco and Boyd 1998) from the healthcare professionals. The

interview schedule mapped out the migration journey, beginning at the time of visa application in the country of origin, to the time of arrival and upon employment. Through the last section on managing life in the UK, I was able to inquire into the migration and residence status of the interviewees. It also provided useful information on other aspects that migrants revealed, such as always having to be lawful and law abiding in the UK in order to attain naturalisation. Observing the interview schedule as a social-legal scientific qualitative research tool, one can see that it was designed to capture as many nuances of experiences including views on law and policy without directly asking the migrants about what they thought of the law. One question on human rights violations meant that many interviewees, particularly female migrants, responded by talking about how there was law in the UK that regulated everything and this is why they had not had so many "rights violations" or the male migrants mentioned that the "rights were the same for everyone". The replies to the questions at times required me to ask more questions to the given responses or not to ask some of the questions from the schedule. For example, I ended up asking whether one female interviewee had sued the person that she had a rights conflict with which I later coded as proactive legal consciousness. It also made me reflect on the East African context where some of the governments do not uphold the rule of law, and this possibly affected the interviewees' responses.

Previous networks from my earlier education in England (2008-2009) enabled me to access migrant interviewees within migrant communities. Through these networks, I made contact with some migrant workers who worked in the healthcare sector. I interviewed migrants to trace their migration process step by step in order to identify, among other issues, the strategic moments when migrant subjectivities are shaped in their home country before they migrate. To access more interviewees during my fieldtrips, I relied on snowball sampling where I ended up interviewing individuals from 'different walks of life' so as to avoid staying within the bounds of one network only (e.g. highly skilled or low skilled migrants and those with short or long migration experience). I found that the interviews revealed different categories of migration statuses from what I had expected when I began conducting the research.

I conducted semi-structured and in-depth interviews with migrant workers on their lived experiences. The qualitative style of interview is aligned with an interpretive epistemology that stresses the dynamic, constructed, and evolving nature of social reality (Devine 2002, 201) whereby the perceptions of the conscious actors that attach subjective meaning to their own situation and that of others, are important. I was able to record most of the interviews. I conducted these interviews in English, the interviews lasting between 40 minutes and one hour and 48 minutes, and afterwards I transcribed them. Most of the migrant workers were willing to be recorded while others refused to be recorded saying that they did not want their information to be stored in this format but only in written form. I wrote down these particular interviews in my field notebook and later typed out interview notes in order to jog my memory of the interview content, which I referred to when analysing the data.

Open coding was the preferred method of interview data analysis. The transcribed interviews were coded, with crosscutting themes highlighted, and the content analysed to fit within the coded themes. Comparing and contrasting different interviews and perceptions of the interviewees assisted to produce a clearer understanding than any single perspective (Dooley 1990, 277). Specifically, in chapters six and seven I discuss findings from the openly coded interview material in connection to my literature study and socio-legal theoretical framework.

4.2.4 Ethical considerations and overcoming limitations

I interacted directly with migrant workers as my primary research participants and endeavoured to conduct my research in an ethical manner, for instance I got informed consent from them prior to the interviews and before recording (Dooley 1990, 31). I spoke about the research, provided written information about my study to some of the participants who requested it. I told them beforehand that they could freely withdraw from participating at any time during the interviews in case they did not wish to continue. I resolved to only include interviews where the person expressly agreed. Additionally, I protected my field notes from falling into wrong hands to avoid compromising the

sensitivity of the private and privileged conversations (Dooley 1990, 286). I have used pseudonyms throughout for all migrant respondents in the interest of their privacy, security and to do no harm. Some interviewees selected their own pseudonym for the study. Some of the selected names reveal the countries of origin, but I tried as much as possible to change as much detail as I could in order to protect the privacy of the respondents. Additionally, I have withheld interview locations and other identifying information. Furthermore, at the end of each interview I gave my interviewees a formal data form to attain contact information if they agreed to stay in touch.

Having encountered first difficulties to access the field and interview partners (partly due to visa processing delays), and personal difficulties on my part, I was not in a position to interview all the actors and instead relied on available data on migration programmes. Given my circumstances and the fact that ethnographic research requires relatively long-term relationships with the informants (Devine 2002, 198), I only employed some of the methods under this approach for instance interviews with migrants with different subjectivities, i.e. some were highly skilled and others low-skilled, and others had experienced precarious legal status, while others were members of migrant community self-organisations and trade unions. I analysed the strategic litigation of the historical HSMP campaign as a migrant rights movement in chapter seven.

There was no linear research design but rather I went back and forth between literature study, data analysis, and revising the research question. Flexibility as one of the significant advantages of qualitative research enabled me during the research process to move in a cyclical way and adjustment my research design. It also allowed me some leverage to narrow my focus to study law as regulating migrants' lives in various ways and their responses. My research design is not easily replicated due to my specific circumstances and context (Schmidt and Halliday 2009). By rescaling my project, I was able to broaden my own understanding of law transnationally, not just as a legitimising tool by states but also its transformative role for migrants individually and collectively. Since my informants had talked about their diverse migration experiences, I re-scanned

the interview data in order to identify what I interpreted as migrants' legal consciousness (Silbey 2005, 348). Thus I examine migrants' experiences and coping strategies with law in its various facets (see chapters six to seven). Having begun with randomly selecting migrant groups to interview this gave me the leeway to refocus my research on migrants' relationship with the law. I covered anti-racism legislation versus differentiating immigration law and policy. Additionally, I drew on critical legal and race theory to examine - the intersectional concepts – gender, race, culture, and social class – that influence migrants' conduct and lived experiences.

4.3 Conclusion

The chapter expounded how the study took shape, i.e. my non-linear research design. Indeed, in finally putting the book together I came up with the title "Law and labour migration struggles: Legal consciousness of East African healthcare professionals in Britain" to reflect law as both constructing and structuring migrants lives, precarious legal status and migrants' acquiescence and resistance practices. Taking an historical analysis of the development of the UK's PBS, the next chapter expounds on the role of state law (especially immigration law) in constructing suitable migrant subjects.

5. Racialisation practices in legislation and migration governance

Chapter five provides a historical analysis of the governance of migration of East Africans to the United Kingdom. As already introduced, all elements of economic life, e.g. capital and labour and political life including power and right, are creatures of law and that 'the history of political and economic life is therefore also a history of institutions and laws' (David Kennedy 2013, 8). This statement partly reveals why it is necessary to conduct a historical analysis of the legal and political transformation of migration governance in the UK preceding the UK PBS. This chapter argues that the UK PBS developed in a racialised manner through the practices of differentiation and construction of categories of legal migrant subjects migrating to work in the UK. The specific aim of this chapter is to expound on how migrant workers from former colonies in, for example, East Africa were constructed by the UK state through various laws and policies as 'non-white migrants', who came to the UK during the period leading to the establishment of PBS and later upon its implementation. I do this by briefly examining the promotion of migration from Europe in the post-war period (1945-1949), as opposed to migration from Great Britain's colonies at the time, such as those in East Africa. By looking at the policy documents and literature on this topic, I discuss the role of racialisation in influencing the development of immigration regulation and other controls. The chapter also covers some of the major law and policy developments in the UK from the late 1940s to 2016. I examine the introduction and regulation of the PBS in a similar vein, through exploring how the practice of using codified immigration policies and laws may contribute to the creation of the migrant worker with precarious legal status.

I elucidate on the exclusionary nature of the UK immigration policy and law even prior to the inception of the PBS. Labour migration from East Africa was systematically controlled by the UK government's enactment of restrictive migration policies over a gradual period of time, as I will demonstrate by looking at some critical stages relevant to regulating and arguably 'managing' migration. On the other hand, throughout the years different British governments aimed to address the racial tensions within the society by introducing policies and laws promoting equality and non-discrimination

among all classes of people in the UK. In addition to the international law regime addressing the protection of migrant workers, these national policies and laws are also applicable to migrant workers that reside and work in the UK. Analysing the development of these laws and related policies is necessary to understand the racialisation practices and differentiation processes that we see from historically examining British regulation of international migration.

5.1 Racialised immigration to Great Britain under labour migration programmes

Thinking historically about migration counters political claims of the exceptionalism of contemporary migration (Anderson 2013, 12). By conducting this historical analysis of migration to Great Britain and its regulation or so-called management, we contextualise that all movements are differently constructed and experienced, forced, encouraged, and prevented and through this, migration is linked to other social and economic processes (ibid.). This chapter provides an overview of the history of immigration in a key period of labour migration to Great Britain following the Second World War in 1945, a time when all the East African countries in question were still colonies. A detailed discussion of earlier migration control in the UK is given by Anderson when she explores how the British monarchy – an institution that predates the current British state – tried to regulate and somehow keep out the figure of the vagrant whom she likens to "one of the ancestors both of contemporary 'failed citizens' and 'migrants'" (Anderson 2013, 13–28). As Linda McDowell noted, the years immediately after the end of World War II are vital to an understanding of how new and complex interconnections were established between ethnicity, cultural traditions, skin colour, class, and the rights (or not) of citizenship (McDowell 2009). Such issues remain at the heart of the definitions of 'Britishness' that are always being contested through the established discourses of a multi-ethnic or multicultural Britain and by the decisions that lie at the heart of the managed migration policies introduced by the New Labour government since 1997 (McDowell 2009, 22–23).

The pioneers of labour recruitment in the late 1940s included high income countries such as the United Kingdom, France, Switzerland, and Belgium, followed by Germany,

the Netherlands, and Austria (Castles 2006b). Similar to other European states, the UK faced labour shortages in reconstruction, food and health among other sectors following the Second World War. In 1946, preceding the recruitment of migrant workers, the government appointed a Foreign Labour Committee to examine, in light of existing manpower shortages, the possibility of making increased use of foreign labour, particularly in essential industries which were finding difficulty in recruiting labour (see McDowell 2009, 24). This Foreign Labour Committee was similar to the current Migration Advisory Committee that advises the government on shortage occupations and other issues related to migrant labour that might affect the public. The manpower shortages made it necessary for the post-war government to recruit migrant workers from within Europe, with schemes such as the European Volunteer Workers Scheme (EVWS), and to a limited extent by recruitment from its colonies, famously for workers in the newly founded National Health Service (NHS) (Hampshire 2009; Rivett 2015). In the UK, migration management schemes were in place as early as 1946, whereby female white workers were recruited as 'unfree labour' and as 'volunteers' from Europe for the provision of health related services, e.g. nursing and domestic labour. The NHS, established on 5 July 1948 (National Health Service 2015), somewhat anachronistically identified domestic service in private homes as important parts of the service sector that were short of labour (McDowell 2009, 22). As such, between 1946 and 1949 about 83,000 migrants from Central and Eastern Europe were permitted to enter the UK under the auspices of the EVWS, thus doubling the foreign born population in just four years (McDowell 2009, 21). Before establishing the EVWS however, the UK had to revoke the previously existing individual work permit system[11].

The EVWS was variously a labour policy and a refugee resettlement scheme for stateless people from displaced persons camps established in Germany and Austria, the majority of whom did not want to live in the states that had been reconstituted as 'behind the Iron Curtain' (Anderson 2013, 54–55; see also McDowell 2009, 21). The UK ingeniously recruited these experienced refugees as labour to replenish its population and boost the British economy (ibid.). McDowell describes the European migrants as a commodity,

[11] The individual work-permit was reintroduced in the late 1970-2000s as I show further below.

with little choice but to be employed by the state and be directed to manual employment in which their value depended on their fit and young bodies (McDowell 2009, 24). European refugees were considered by some UK policymakers as having the right values and freedom loving, since they wanted to remain in the West instead of returning to 'unfree' conditions, a preference that was seen as constituting the spirit of making Britons (Anderson 2013, 56). This demonstrates the UK government's preference at that time, for white female refugees, under the EVWS programme, who were seen at that time as 'clean', and potential wives and mothers of Britons (McDowell 2009, 25).

5.1.1 Colonialism, racialisation and curtailing immigration

The growth of capitalism contributes to its continuous search for cheap labour (Eades 1987). Capitalist states such as the UK turned to colonialism to acquire goods and cheap labour. During the colonial era, peripheral areas in Africa and Asia, were primary sources of raw materials, cheap goods, and contributed to the reproduction and "export of cheap labour" to meet the needs of British capitalism (Eades 1987, 5–7). Labour shortages generated by Britain's relative post-war affluence were filled by colonial workers who took advantage of privileged immigration channels created by the country's citizenship laws (Hansen 2007). While capitalism continued to expand, some of the cheap labour in nations such as the UK was in the form of other non-white subjects from its colonies in the Caribbean, Asia, and black African subjects who were needed but not wanted nor welcome, due to their racialisation and legal construction as non-white.

Colonialism played a major role in creating 'race' and racial categories, with whiteness constructed as the national identity 'at home' and a marker of privilege, better values and power when compared with blackness that was deemed foreign and belonging 'abroad' (Anderson 2013, 36). Additionally, Anderson asserts:

> Colonising European states, with the UK amongst the foremost, were concerned with constructing an 'internal' racial homogeneity and the constitution and maintenance of whiteness, but related to this, they were also concerned with the

> management and regulation of heterogeneity outside of the 'motherland' (Anderson 2013, 36).

The UK was interested in controlling migration of non-white British subjects from the colonies to ensure that UK remained predominantly 'white' (see McDowell 2009, 22–23). Attention to the governing of mobility within the British Empire reveals that British subjects were racialised, and the ownership of property and education was an important mechanism for managing the contradiction between claims of the equality of subjects on the one hand, and racist hierarchies on the other (Anderson 2013, 34). Blacks, including those from East Africa and the Caribbean, were constructed by policymakers and within the law at that time as not having the correct values required by the UK and so not worthy to be accepted in large numbers, even though they were UK subjects as they belonged to its colonies. This also demonstrates the creation of a racialised citizenship using practices of differentiation within the UK immigration model during both the colonial and post-colonial era. Thus, the EVWS served the purpose of providing cheap and 'unfree' labour for that period until the (mainly black) Caribbean-born population of the UK started to swell. This contributed to the scheme ending in 1949.

As Anderson notes: "The role of law (and not only immigration law) in the creation and hardening of the conceptualisation and categorization of 'race' points to the importance of the relation between race and the nature of the state" (Anderson 2013, 35). The British immigration law and policy preceding and during that time focused on fixing racial or ethnic identities that were intricately expended to assert orderly movement within imperial territory, such as that in India and East Africa (see Anderson 2013, 36). Further, race was a shadow on immigration to the UK, as seen with the legislation implemented, e.g. the 1905 Alien Act, and the 1962 Commonwealth Citizen Act, which focused on regulating movement of non-white immigrants, thus closing the door on black Commonwealth citizens to the UK (Fine and Ypi 2016). These laws and policies included the British Nationality Act of 1948 (Hampshire 2005). The British administrators in East Africa racialised and ethnicised people in their colonies by dividing people according to race (foreigners from outside East Africa) and ethnicities

(for native East Africans) (Mamdani 2013). By emphasising property rights for certain races such as whites and Asians in East Africa, the rights discourse was a part of colonial domination, confirming stereotypical views of African tribal life while at the same time introducing new sources of division among the native population. Defining racialised legal and political subjectivities and identities of different British subjects was one way of ruling and dominating the colonial subjects, and was constructed in Empire law (for a discussion see Comaroff 1995, 196). In former colonies and territories such as Kenya and Uganda, people were ordered through systematic ethnographies. Native populations were controlled and classified through categories such as hierarchy, linked to their territories, differentiated by culture and race, or by ethnicities tied to territories (Anderson 2013, 36).

Notably, during the first half of the 20th century, the movement of British subjects (mainly from the Old Commonwealth, in particular Canada) to the UK was unregulated, and the limited movement from the New Commonwealth (including, for example, Kenya and Uganda), was largely viewed by the UK as temporary and mainly for purposes of study (Anderson 2013, 38). Later, the UK was interested in maintaining British subjecthood in the face of the movement of former colonies towards independence (Anderson 2013, 38). The Labour Party's British Nationality Act of 1948 was the first act to define British citizenship, and it allowed 800 million Commonwealth citizens the right to reside and work in the UK (ibid.). Here the law had the primary function of constructing Britishness, and due to this law, East African nationals had the same citizenship rights and free movement as native-born British nationals. It was later when large numbers of the New Commonwealth citizens began moving to the UK that the laws shifted to focus on curtailing this movement, as I show below.

Unlike other high-income countries, the UK did not develop large-scale ‘guest worker’ programmes to recruit from overseas. This was the case with North America e.g. the USA with its Bracero programme (1942-1964) and European countries such as Germany with its Gastarbeiter programme (1955-1973), where millions of workers were imported on a temporary basis (Castles 2006b). These programmes were state driven and aimed

to boost the economies of these countries. The governments sought to recruit labour but as Swiss author Max Frisch asserted "we tried to import labour, but human beings came" (as quoted by Zou 2015), a poignant reflection of the unintended consequences of the guest workers programmes. Following these programs, more migrants from poorer countries arrived and stayed on legally in contrast to the government assumption that they would leave after a set period of time. This contributed to the programmes being described as having failed (Castles 2004b; Zou 2015; Castles 2006a).

The limited extent of the recruitment by Britain from its colonies and former territories including those in East African territories is summed up by Hampshire as follows:

> This amounts to the claim that racial demography was central to immigration policy-making. While only extremists made explicit their desire to 'keep Britain white', the wish to prevent, or at least limit, Britain from becoming a multiracial society was widespread and often deeply held…At the heart of government, colonial immigration was, from the first, considered as a 'problem', and this problematization was bound up with racial ideas (Hampshire 2005, 47).

Most of the immigration during the 1950s and 1960s unfolded spontaneously as migrants from the Caribbean, South Asia, and parts of Africa made their way to the imperial motherland, which according to James Hampshire were migration 'flows' that were not wanted, and certainly not encouraged (Hampshire 2009). Similarly, British nationals at the time shared a common idea that immigrants were a threat to the employment of British workers and thus opponents of immigration contradictorily asserted both that "They'll take our jobs", and that "they will not work" (Hampshire 2005, 87). Interestingly, these negative discourses and views vilifying refugees and so called 'economic migrants' are still prevalent today within some parts of British society, as revealed by opinion polls and tabloid newspapers. Despite years of research to the contrary, repetition by politicians and the media means some members of the public still believe that migrants take jobs from locals, create unemployment, bring crime and

illnesses, or come to the global North with the intention of syphoning social budgets (Crépeau 2014).

Over the years, migrants to the UK including East Africans have experienced different treatments partly due to racialisation. By late 1967, as a result of the Kenyan government's imposition of work permits on non-Kenyan citizens and the threat of deportation, over 1,000 Asians a month were fleeing to Britain[12]. There were demands to curb this migration from the former colonies after Uganda and Kenya attained independence, in 1962 and 1963 respectively. Race was a shadow on immigration to the UK as seen with some of the earlier legislation implemented, e.g. the 1905 Alien Act and the 1962 Commonwealth Citizen Act that focused on regulating movement of non-white immigrants and closed the door on black Commonwealth citizens to the UK (Fine and Ypi 2016; see Feldman in Anderson and Keith 2014). During 1968, Enoch Powell a Conservative Party Member of Parliament (MP), made a notorious speech criticising large-scale Commonwealth migration, which became known as the 'Rivers of blood' speech (Hampshire 2005, 39; Tölölyan 2011, 7; see Feldman in Anderson and Keith 2014). He had condemned the entry of large scale immigrants, especially from the black Commonwealth countries in the Caribbean, Asia, and Africa. Racialisation is embedded in immigration history, which continues to haunt Britain, resulting in various policies and related legislation.

Four years later, the UK received over 250,000 Ugandan Asians (most of whom held British passports), expelled by the totalitarian President of Uganda at the time. He blamed Asians for Uganda's economic woes that independent Uganda had inherited from Britain. During the colonial era Britain had segregated British and Asian migrants from Ugandans. At the same time Kenya (which also had significant Asian populations) and India (the original sending country) refused to receive them, claiming that they were the responsibility of Britain.[13] The expelled Asians sought refuge in Great Britain, where

[12] See "A Brief History on Kenya." http://www.kenyarep-jp.com/kenya/history_e.html last accessed 01.01.2017.
[13] These events are documented by Ugandan media for instance see http://www.monitor.co.ug/SpecialReports/ugandaat50/-God--tells-Amin-to-expel-Asians-as-dreams/1370466-1513314-s55lrp/index.html last accessed 02.02.2017.

British nationals and policymakers were concerned about the effect this large-scale migration would have on race relations in Britain[14]. This legacy from the colonial past is observed in the present day, with countries still closing borders to refugees and migrants fleeing armed conflict and poverty.

The period between the late 1960s and 1970s is intriguing for migration, labour relations, and social movement studies. From 1962, the government imposed increasingly strict immigration controls, mainly in response to growing racist pressure (Connolly, Marino, and Lucio 2014). During that time, trade unions did not take up black migrants' causes, for instance against racial discrimination, immigration controls, and racism in the workplace as a part of the British labour movement's struggle (Smith 2008, 370–71, 383–84). At that time British unions supported (or failed to oppose) racist immigration laws, and often tolerated racist practices by their own officials and representatives (Connolly, Marino, and Lucio 2014, 14). On the one hand, native British workers opposed immigrants as unwanted competition within the labour force, while on the other they were opposed as burdens upon the labour force (Hampshire 2005, 87). Due to these reasons, migrants found it difficult to access unions in the UK (Yuval-Davis, Nira; Marfleet 2012, 70).

Migration is an arena where members of the working class have not been able to form a united or uniform identity against capitalist employers (Castles and Kosack 1973). Official union policy was that immigrants were workers like any others, and that special arrangements would be divisive (ibid.). From the early 1970s, Asian and black workers led a number of high-profile strikes against discriminatory employment practices, at times against official trade union resistance (Connolly, Marino, and Lucio 2014, 14). Partly in response to these disputes, and reflecting the growth of a cadre of black trade union activists with their own informal structures, many unions began to develop anti-racist policies and practice (ibid.). By 1974, most Western European governments including the UK followed Germany, which had suddenly stopped migrant entry in 1973

[14] See the BBC "UK did not want Ugandan Asians" http://news.bbc.co.uk/2/hi/uk_news/2619049.stm last accessed 04.12.2016.

after the oil crisis, which was seen as the onset of a period of economic stagnation and high unemployment (Castles 2006b).

From the 1980s, collective organisation in the workplace, local trade union groups and networks, trades councils, labour clubs, and associated sporting and cultural activities were greatly diminished via legislation (see Marfleet in Yuval-Davis, Nira; Marfleet 2012, 70). Migrants had earlier found these spaces of local social and political organising difficult to access due to racialisation and the unions' failure to reach out to them, as I elaborated earlier. So migrants organised themselves according to religious groups depending on their 'faith capital' (ibid.) while others mobilised according to their countries of origin. These mobilisation practices continue today.

5.1.2 Tracing racism in the evolution of the Points-Based System

The UK sought to recruit workers primarily from Europe rather than its former colonies. This was a shift away from, for example, the case when between 1896 to 1904 the British Empire, as the UK was then known, recruited around 32,000 Indian labourers to construct the Uganda Railway in its East African territory (Gunston 2004). This is interesting from a critical race theoretical perspective since the workers at this point were still 'British subjects' from India who were going to work in Africa and not in Europe. It is arguable that Britain at that time did not want tens of thousands of non-white workers migrating and working in Britain, but found it reasonable for them to work in its foreign territories. Labour migration, like other forms of immigration to the UK at the time, was being controlled or regulated based upon racial considerations of UK politicians to discourage non-white colonial migrant labour and privilege white European labour (Hampshire 2005; McDowell 2009).

To counter unwanted migration from the colonies, the post-war governments – both Labour and Conservative – repeatedly discussed how to restrict colonial immigration in the 1950s. They deployed measures in an attempt to reduce the numbers of migrants including the consideration of legislation as early as 1955 (Hampshire 2009, 1). This shows that as early as the 1950s the government had sought to employ law and policy

to restrict or control migration in a similar way to the present situation in Britain. Hampshire notes that the legislation was not passed earlier on due to *imperial realpolitik*, that is, a concern not to alienate some of the recently independent former colonies including India and Pakistan that were now voluntarily organised under the auspices of the Commonwealth Organisation (ibid.).

Hampshire argues that beneath the gloss of 'citizens who do not belong' lay an intent to restrict the entry of non-white colonial immigrants, and similarly argues that immigration controls did indeed have a racial demographic purpose (Hampshire 2005, 47–49). He notes that the United Kingdom's imperial citizenship was without any foundation in a substantive idea of belonging, whereby Britishness, understood as belonging to the national community, was a racialized notion: in the minds of British officials and the British public at large it entailed whiteness (Hampshire 2005, 20). An example of these racial dimensions in controlling or managing migration is given by McDowell, who notes that the volunteer schemes to recruit nurses and domestic labour (the EVWS) were characterised with 'whiteness' as the determining factor of privilege and a matter of social construction by the then policy makers (McDowell 2009, 21).

As a variety of British colonial subjects were already considered by policymakers as racialised others, they were perceived to be anything but uniform in their belonging to the British national community, and the architects of the British Nationality Act of 1948 had unwittingly created an obstacle to future immigration controls (Hampshire 2005). This Act was enacted by the then Labour Party and it allowed more than 800 million Commonwealth citizens the right to reside in the UK. In spite of this, the Act proved to be a "sandy edifice against the tides of change that broke the British Empire apart" (Somerville, Sriskandarajah, and Latorre 2009). It facilitated the development of a new migration policy aimed at 'zero net immigration' that was based on two pillars: limitation and integration (ibid.). Not only did this Act render any future immigration to Britain from its colonies an exercise of legitimate citizenship rights, but it simultaneously foreclosed the possibility of controlling such immigration without primary legislation, either superseding the category of Citizenship of the UK and

Colonies (CUKC) or discriminating between holders of CUKC passports (Hampshire 2009).

The unintended and 'tentacular' effects of the British Nationality Act of 1948 would be felt throughout the post-war period (Hampshire 2005). In June 1948, around eleven Labour Party members of parliament complained to the then Prime Minister, Clement Attlee, about excessive immigration. In June 1950, a cabinet committee was established with the terms of reference aimed at finding ways which might be adopted to check the immigration into this country of coloured people from British colonial territories (ibid.). However, in February 1951 that committee reported that no restrictions were required to curb the movement of coloured people from the colonies. This campaign was to continue from the 1950s into the early 1960s with the aim of limiting immigration flows of workers from Commonwealth countries (Somerville, Sriskandarajah, and Latorre 2009).

Until 1962, Commonwealth citizens had unrestricted right of entry into Britain, and the steady inflow of settlers were responding to the almost continual growth in demand for unskilled industrial labour (Ballard 1987, 24). Following popular protests from the indigenous majority, a whole series of measures to control the influx of (non-European) immigrants has since been taken (ibid. 25). According to Will Somerville, the post-war UK policy model of immigration was established between 1962 and 1976 when three restrictive immigration laws and three antidiscrimination laws were passed (Somerville 2007b). The immigration laws had an official objective of 'zero migration' and the three anti-discrimination laws, at least partly inspired by the US civil rights movement of black African Americans, were instituted to improve what is commonly called 'race relations' among the increasingly multicultural British society, creating a two track or dual policy approach (Somerville 2007b). The presence of 'anti-racism legislation', something that migrants could draw upon to seek restitution, was the avenue for migrants to utilise to access more rights for themselves. For example, aiming to tackle discrimination in the 1970s, adverts in Britain specifying 'no coloureds' were forbidden,

while in Germany or Switzerland one could still find in some places with posters displaying 'no foreigners' (Castles and Kosack 1973, 33).

For the UK case, race played a major role in shaping the development of immigration policies and related citizenship laws in that period. The interconnections between demographic change and attitudes towards immigration demonstrates how racial ideas informed immigration policy-making in post-war Britain (Hampshire 2005, 45). The post-war immigration controls were directed primarily at colonial immigrants; the most salient fact about these immigrants in terms of attitudes and policy decisions was that they were non-white, and that racial demographic concerns trumped other considerations, such as the need for increased population and labour (ibid.).

The 1960s legislation was an attempt to address the central problem of the 1948 British Nationality Act that had created a remarkably broad citizenship category – Citizen of the United Kingdom and Colonies (CUKC) – which extended residency rights to all colonial subjects (Hampshire 2009). At the time, mass immigration had not been foreseen, but this legislation (1948 British Nationality Act) now acted as a constraint on attempts to control immigration of CUKCs. Racial prejudices therefore played a major role in the evolution of the policies leading up to establishment of the PBS, as I elucidate here. In 1961, the UK applied to join the European Community. In the same period, the UK started imposing stringent controls on immigration from its colonies and the British Commonwealth. This was evident in the introduction of the first Commonwealth Immigrants Act in 1962 that was passed as a result of a political campaign to control non-white immigration from the New Commonwealth (Layton-Henry 2004, 301). The Act introduced categories for Commonwealth immigrants. According to Rogers Ballard, the 1962 Immigration Act largely failed in its purpose, as thousands of non-European migrants who had attained British citizenship had an unchallengeable right to reunite with their families in Britain. Thus these mostly Asian male migrants were later joined by their wives and children, and what was meant to be temporary migration become more permanent (Ballard 1987, 25–26). Due to this family reunification, there were even

more insistent demands from the white majority that immigration should be reduced to the lowest possible level (ibid.).

In the early 1970s, the British government under Margaret Thatcher's Conservative Party, like others in Europe, tried to suspend labour migration as a way of controlling unemployment (Hollifield 1992, 7). They created a work permit system that stopped family reunification or pathways to permanent residence. This was facilitated by the 1971 Immigration Act which, with a few minor exceptions, repealed all previous legislation on immigration and still provides the structure of current UK immigration law (Somerville 2007b; Somerville, Sriskandarajah, and Latorre 2009). Following this legislation, all work permit applications made to the British Embassies were to be subjected to severe scrutiny (Commission for Racial Equality 1985). Furthermore, entry clearance officers were supposed to be convinced that *all members of the family* were related to the applicant, but in many cases remained unconvinced, leading to many visa application rejections (Ballard 1987, 26). Similar to this Act, the UK immigration law also accords the Home Secretary with significant rule-making powers on entry and exit (Somerville 2007a).

Although labour import was a key element in the UK and other countries in Western Europe's long economic boom (1945–1975) (Castles 2006b, 743), this did not stop the governments of these countries from curbing the importation of foreign labour. The recent caps on non-EAA labour recruitment and migration under the PBS are thus not a new phenomenon; the UK had previously stopped recruiting migrant labour in both the 1930s and in 1949 under the EVWS schemes that it had been using to recruit this labour. By 1974, most Western European governments including the UK followed Germany, which had suddenly stopped migrant entry in 1973 (Castles 2006b). The ostensible reason was the 1973 oil crisis, seen as the onset of a period of economic stagnation and high unemployment (ibid.). In fact, more fundamental factors were at work. As a result of the economic crisis or recession in the 1970s, nation states stopped or reduced their recruitment programmes of foreign workers. During that time, temporary labour migration had fallen into discredit after the experience of the 'guest-worker' era, when

many of the guest workers who were present at the time of the first oil price shock remained in the host countries where they had found work, rather than returning to their countries of origin.

The period between 1976 and 1997 – when the Conservative party was mainly in power – was one of continuity in immigration policy in an era of major economic and social political change (Somerville 2007b, 3). However, the most salient policy shift was over the target of the policy: a shift from 'all immigrants' towards specially targeting asylum seekers, with the major policy objective to curtail the number of individuals seeking asylum in the UK (ibid.). Failed asylum seekers were referred to as 'bogus applicants', a practice that continues today. It was in 1978 that the Prime Minister, Margaret Thatcher spoke of some British people's fears that they might be inundated by people of a different culture, a fear that in many towns and cities remains prevalent, not just in Britain but across Europe (Phillips 2011, 47).

From the 1980s onwards, UK nationals reflecting the concerns of other Europeans became increasingly focused on issues affecting ethnic minorities, such as social exclusion, labour market segmentation, residential segregation, and high unemployment – something that had not been seen since the recession of the 1930s (Castles 2006b, 744). There were several race riots such as those that occurred in Brixton in 1981. Manifestations of conflict continue today, triggered by the resettling of Syrian and Iraq refugees, including extreme right-wing movements such as Britain First clashing with anti-racism protestors, institutional racism, and minority riots for instance among the youth – in France in 2005, and in London in 2011 (see Muir and Adegoke 2011). Such conflicts contribute to a widespread belief that temporary labour recruitment should be avoided since it could have unpredictable social impacts (Castles 2006b, 744).

There were some changes in recruiting low-skilled labour such as domestic and care labour which was always devalued and reveals the contingent, gendered, and racialised nature of what counts as work and the contradictions that emerge when it intersects with immigration controls (Anderson 2013, 159). For instance, from 1980 onwards migrant

domestic workers were admitted into the UK under a concession which permitted wealthy (migrant) employers to bring their domestic workers into the country as 'visitors' or as 'persons named to work with a specific employer' (Wittenburg 2008, 11). The reality was that migrant domestic workers entered the country under a variety of visas and were always extremely dependent on their employers, which meant they suffered much abuse, including non-payment of wages, long working hours, physical and psychological abuse, sexual abuse, confiscation of passports, and threats of imprisonment and deportation (ibid.; and see Anderson 2013, 159). All these human rights violations and restrictions are widely documented and yet continue to happen in the care and domestic sectors (McGregor 2007).

During the 1970s and early 1980s, the Conservative government began to construct migrants as criminals when they stayed longer than the duration of their visas. This was colloquially termed as 'visa over stayers' (Home Office 2006; Ruhs and Anderson 2010; Koser 2009; Kubal 2013). The British government then tightened its immigration system by adopting a narrower definition of British citizenship, denying the right to immigrate to most of its former subjects and refusing to permit free movement of non-EU nationals under the Schengen Group protocols, unlike other Western European countries. The UK government's capping of migration under the programmes in the 1970s was as a result of many interrelated factors. Many industries were becoming structurally dependent on migrant labour, whereby temporary workers were being recruited to meet permanent labour demand and the 'rotation' principle was breaking down (Castles 2006b, 759). During those times, Western European countries found they could not dispense with migrants despite the existence of high unemployment, partly because migrant workers were concentrated in jobs which locals were unwilling to do, for instance care work and domestic work. The government was cracking down on migration yet at the same time could not totally stop migration due to the demand for workers in these areas that cannot easily be cheaply outsourced to other countries. Also, as migrant families grew, they needed family housing, schools, medical care, and social facilities (Castles 2006b). After staying long in the receiving countries, migrants were

more aware of their rights to access these services and make demands on the government to address their concerns, as I will elucidate further below.

Migrants began voicing their discontent against the discriminatory treatment and demanded redress, especially at work. They joined trade unions or created their own unions based on their countries or regions of origin and participated in a wave of labour militancy in the early 1970s (see Smith 2008), which made the government and the employers realise that this labour was no longer a low-cost option. This was teamed with the increasing social and cultural costs linked to these long-term disadvantaged residents (Williams 2009, 13). There were speedy reunifications with members of their families that they had left behind, who also settled and formed ethnic minority communities (Castles 2006a). Countries that previously described themselves as 'not countries of immigration', i.e. Germany, accepted the status quo. These historical developments remain relevant for understanding the current situation and experiences of East African migrants in the UK, some of whom are now UK citizens after initially starting out as workers under temporary migration schemes in the late 1990s to the 2000s. Tracking the evolution and development of these programmes reveals what has changed and what remains the same regarding the ideas of controlling and/or managing labour migration to the UK.

Many migrant workers turned into permanent settlers for a variety of reasons. Firstly, because migrants' objectives were linked to the life cycle: young single workers originally intended to stay for a few years, but as they grew older and established families, their plans changed (Castles 2006b). Secondly, migrant workers had been partially integrated into welfare systems: entitlements to unemployment benefits, education, and social services made it worth staying despite worsening employment prospects. Thirdly, in liberal democratic societies in Western Europe, governments could not simply expel legally resident foreigners: the courts protected their rights to secure residence status and to live with their families (ibid.). Finally, a coalition of pro-immigrant forces, embracing trade unions, churches, and civil rights organisations, influenced policies through their links with social-democratic and liberal parties in

Europe (Castles 2006b, 743). Castles notes that another significant element of the guest-worker system in the 1970s was that it had been based on the inferiority, and the separation or exclusion of the migrant as the 'other' or foreigner (ibid.). Western European societies did not integrate immigrants as equals, but as economically disadvantaged and racially discriminated minorities (ibid.).

The issue of exclusion of migrants, especially racial minorities in the UK, was gradually changing, perhaps as a result of the legislation to improve race relations. As Roger Ballard notes, in the 1980s migrants in UK were in a more secure position whereby most of them acquired permanent rights of residence, while those from the Commonwealth became full British citizens despite popular support for right-wing movements, which advocated for their repatriation (Ballard 1987, 20). This was in contrast to many other parts of the world such as the Middle East where the expulsion of migrants during this period was common, as workers had short-term contracts (ibid.).

Under the phenomenon of spatial segregation, immigrants tended to settle in specific neighbourhoods marked by inferior housing and infrastructure, which can be observed when one looks at certain neighbourhoods (Harsman and Quigley 1995; Hickman, Crowley, and Mai 2008), where the majority of the native populations have left since the arrival of migrants. Ethnic enterprises, and religious, cultural, and social associations developed in these areas have replaced what was already there. The inherent contradictions of the guest-worker system led to today's ethnically diverse but socially divided European societies (Hansen 2007). Manifestations of conflict include the rise of extreme right-wing movements and institutional racism, which has contributed to a widespread belief that temporary labour recruitment should be avoided since it can have unpredictable social impacts (Castles 2006b).

Furthermore, in 1981 the UK changed its Nationality Act (c.61) to exclude former colonial subjects from claiming British nationality (Somerville, Sriskandarajah, and Latorre 2009). That legislation introduced a requirement of having one parent or a grandparent born in the UK in order to claim British citizenship. Specific common-law

pathways to citizenship, such as birth, were also changed (ibid.). In the 1990s, skilled migrant workers who migrated under work permits and were constructed as exemplary migrant subjects under state policies and law, such as the British Nationality Act, could easily settle (in the UK) upon fulfilling certain conditions. Particularly with the Borders, Citizenship and Immigration Act, the government implemented proposals for a new 'path to citizenship' by amending provisions of the 1981 British Nationality Act[15] relating to naturalisation as a British citizen. The government enacted this Act so as to further limit and reduce the numbers of former British subjects, for example from East Africa, who could easily claim British citizenship once they migrated to the UK under the work permit schemes that operated in those days and thus settle in the country.

5.2 'Managing migration' and restricting migrant rights

After coming to power in 1997, the then Prime Minister Tony Blair of the Labour Party embraced a doctrine of managed migration. This was composed of liberalising the economic migration system; increasing restrictions on asylum seekers; more control measures for unauthorised immigrants, together with expanded security measures; and a reorientation of the official position on 'integration' (Somerville 2007b, 3–4). Managing migration became the major policy development plotted in the 2001-2003 period under Blair, and it worked hand in hand with a major commitment to economic migration. In this period UK immigration policy shifted from immigration control to migration management (Layton-Henry 2004). Yet, the implementation of such policies was nevertheless problematic: they lead both to the violations of fundamental human and labour rights, and to the institutionalisation of a dual migration regime, in which unskilled migrants have only access to less attractive migration channels, while their highly skilled counterparts access greater rights. The commitment to economic migration was accepted across the political divide, and consequently limitation and restriction on immigration was no longer a prerequisite for UK migration policy, and economic considerations were reincorporated into labour migration (Somerville 2007b).

[15] See the British Nationality Act 1981 chapter 61. Available at: https://www.legislation.gov.uk/ukpga/1981/61.

From 2001, new schemes to facilitate the entry of both high-skilled and low-skilled migrants were introduced. One aspect of the labour changes was the extension of opportunities for citizens of countries outside the European Economic Area (EEA) to work in the UK on a temporary basis (Wagner 2012). Although shifting between the various Labour and Conservative governments, it was under the Labour government between 1997 and 2010 that most immigration policies and laws relevant to East African migrant workers were enacted (Somerville 2007a). From 2010 to 2015, there was a Conservative-Liberal Democrat coalition government, which made it more difficult for non-EEA migrants including East African migrants to enter and work in the UK or even remain in the UK as workers. Some of the numerous changes to the legislation and immigration policies from 1997 are outlined in Table 5.1.

Table 5.1: Legislative and policy time line 1998-2016

Legislation	**Type**	**Time**
Human Rights Act	Parliamentary Act	1998
Immigration and Asylum Act	Parliamentary Act	1999
Race Relations (Amendment) Act	Parliamentary Act	2000
Prevention of Terrorism Act	Parliamentary Act	2005
A points-based system: Making migration work for Britain	Policy strategy	2006
Identity Cards Act	Parliamentary Act	2006
Racial and Religious Hatred Act	Parliamentary Act	2006
Immigration, Asylum and Nationality Act	Parliamentary Act	2006
Borders, Citizenship and Immigration Act	Parliamentary Act	2009
Equality Act	Parliamentary Act	2010
Immigration Act 2016	Parliamentary Act	2016
Immigration Rules	Home Secretary	2016

Source: Adopted with modifications (Somerville 2007a, 24; Home Office 2016).

During major general elections in the UK, campaigns by different parties urging the reduction of the number of migrants are visible. Most of the political parties' leaders, whether conservative, labour or liberal-democratic, widely campaigned for restricting and reducing the numbers of migrants coming into the UK. This is done in order to sway and influence voters who might see migrant workers as a threat to their jobs. Another aspect is migrant workers being seen or portrayed as welfare parasites (Hampshire 2005, 87). By doing this once elected, these politicians may effectively contribute to further restrictions on the rights of migrant workers – for instance, the duration that one can stay in the country before they can attain permanent residence, whether a visa category will still be valid at the time of next application and/or the amount of money that a migrant can have in order to qualify for visa renewal.

In 1997, the EU merged the Schengen agreement on borderless travel (initially concluded among a smaller group of member-states) into the Amsterdam treaty (Brady 2008, 18). With this, border and immigration co-operation became legally binding, but still with a requirement for unanimity, and Ireland and the UK chose to remain outside Schengen (ibid.). Following the election of the New Labour government in 1997, UK immigration policy focused on attracting more skilled migrants, while decreasing the number of family-tie immigrants and asylum seekers (Somerville 2007a). Later, the government made attracting more international students, part of its immigration strategy. This position has changed over the last few years with the state seeking to reduce the number of international students and restricting their access to work after their studies in the UK. This affected many East African migrants that migrated in the late 2000s under the points-based system, including some of the respondents who ended up leaving the United Kingdom after changes to the post-study work programme in 2012.

Throughout the early 2000s, an increased number of traditional work permits were granted, and new temporary schemes were introduced for high skilled non-EU workers such as the Highly Skilled Migrants Programme (HSMP) in general, and low skilled workers in specific sectors (Somerville 2007b; Boswell 2008). Other migration routes

included specialist student schemes such as the Science and Engineering Graduate Scheme (ibid.). The pressures of globalisation and networks of employers were also factors in these policy decisions (Somerville 2007b). Later in 2004, in fulfilment of its EU rights and obligations, the UK implemented policies granting permit-free access to its labour market to nationals of the eight EU accession countries. This lead to a population movement described as the biggest single wave of inward migration over a two-year period in British history (Ruhs 2006a, 3; Brady 2008; Somerville, Sriskandarajah, and Latorre 2009). This provoked a heated debate about the scale and impacts of immigration, and especially about the consequences of the continuing inflow of workers from the new EU member states (Ruhs 2006a). On the other hand, for non-EEA nationals the UK sought to 'control' or 'manage' their migration by turning to so-called temporary labour migration programmes, as I elucidate and contextualise further below. Notably, the promotion of free movement between the EU and the UK is seen to justify restrictions for non-EEA migrant workers (Paul 2015, 181).

Expanding security measures was necessary following the September 11 2001 terror attacks in the USA and the July 7 2005 London bombings (often referred to as 7/7). The UK government at that time, like other governments around the world, became stricter on who could come to the country, which possibly also affected labour migration across sectors including healthcare. Following these events, border controls were more crucial than ever, with the Blair government steadily increasing resources for securing the borders (Somerville 2007b; Ford, Jennings, and Somerville 2015). This was seen as especially critical due to the estimated 430,000 undocumented immigrants in the UK at the time of the attacks. Yet during this time ministers still refused to cap the number of legal immigrants entering the UK (Somerville 2007b, 4). There was a heavy investment in technology for border security, including the spending on biometrics as part of a vision of 'identity management' that checked each unique person coming in and out of the country (ibid.). More actors from different professional universes including computer analysts, border actors, and the navy were employed to defend the national order and curb would-be migrant terrorists (Bigo 2010b). One can wonder what this has to do with healthcare professionals. Surveillance, tighter immigration controls, and

border checks do not discriminate among migrants of different skills categorisation or social economic status, as I examine further in chapter six.

In 2006 despite the labour movement's demand for equal rights for all workers, the then British Labour government minister for immigration publicly denied that undocumented migrants have any workplace rights beyond the most fundamental human rights (Shelley 2007, 9). This was not surprising, as the wider context of UK government attitudes to migrant labour (as reflected in the issued legislation and policies) revealed that policy prioritises the policing of migrants over their rights and increasingly conflates issues of migration and immigration with law and order (ibid.). The UK government adopted a migration regime in ways that - further racialised it and eroded workers' rights, especially in times of economic uncertainty or crisis (Shelley 2007; Kofman et al. 2009).

In 2007, the government announced its plans to break up the Home Office into two departments, a Ministry of Justice and a new streamlined Home Office focusing on crime, immigration, and terrorism. Following this, on 2 April 2007 the new Border and Immigration Agency opened for business (Somerville 2007b). The agency had greater operational freedom in handling migration matters. In 2013 the UK Border Agency which had replaced the Border and Immigration Agency was changed again to the UK Visas and Immigration. The UK Visas and Immigration manages applications for people who want to visit, work, study or settle in the UK (Home Office 2013).

Tony Blair's tenure brought about significant changes to the immigration model. These policy developments can be summarised as a strong commitment to the management of migration for macroeconomic gain, and the development of a tough security framework that combats unauthorised migration and reduces asylum seeking, coupled with an institutional shake-up (Somerville 2007b, 3). Another policy was the prevention of asylum seekers from working and limitations placed on migrants accessing benefits, which has been described as a wider trend towards increased selectivity in migration policy (Hampshire 2009). Conversely, emphasis was also put on fighting racial discrimination through the then Race Relations (Amendment) Act 2000, and laws such

as the Human Rights Act 1998 made equality a tenet of general policy making (Somerville 2007a; Kofman et al. 2009). A lot of emphasis was also placed on multiculturalism as a way of life in the UK given the diverse UK population.

In spite of the promotion of multiculturalism in the UK, during the period from 1998 to 2008 the New Labour government relentlessly pursued the managed migration policy which was a liberal utilitarian economistic migration policy (McDowell 2009). This policy introduced further distinctions between different so called 'economic' migrants depending on their labour value (McDowell 2009, 33; Anderson 2013). For low-skilled jobs from 2004 onwards, Europeans from the eight EU accession countries were legally and politically constructed as the most suitable workers, thereby excluding low-skilled migrants from the rest of the world. The policy arguably established a stratified hierarchy of privilege based partly on skin colour (ibid.). This development of managed migration policies was partly due to the state and other actors involved at the time socially, administratively, legally, and politically constructing categories for migrants with different rights and entitlements (Goldring, Berinstein, and Bernhard 2007, 240). Different categories of migrant workers having different qualifications may find themselves receiving different treatment and rights under the PBS, under civic stratification. According to John Salt, the main source of entry to the labour market over which the government exercises a large measure of control was the work permit system, which became Tier 2 of the new managed migration system in November 2008 (Salt 2013).

5.2.1 A points-based system for non-European Economic Area workers

In 2008, the UK introduced the new points-based system (PBS), which replaced the previous various routes and categories for migration (Home Office 2006; Hampshire 2009). Modelled on the Australian General Skilled Migration (GSM) programme, this system has four operational Tiers, whereby Tier 1 and 2 are used by highly skilled workers, while Tier 5 is for low-skilled workers. Tier 1 is for highly skilled, self-sponsored workers that migrate independently without a job offer in the UK, Tier 2 for people with a job offer sponsored by a UK employer, and Tier 4 for students who can

work for 20 hours during term time, and full time during vacation. The last operational Tier is Tier 5, which covers low-skilled workers that can only work for a year in the UK (Somerville 2007b, 35). A Tier 3 that was meant to cater to low skilled workers such as domestic workers was never implemented, as the government argued that all of the UK's low-skilled needs could be met by migration from within the EU, especially from the post-2004 member states. The UK's concentration on a 'bifurcation of skills' meant that migrants with gendered skills, such as domestic work that could not easily be classified as either highly skilled or low skilled, were excluded from the PBS. In this way, immigration status reveals domestic labour and caring work as both work and not work like any other in the UK, the outcome being that visas that not only trap migrants in ambivalent social relations, but also affect the sector generally (Anderson 2013, 11).

Table 5.2 illustrates some of the migration routes to live and work in the UK, and the restrictions and conditions on non-EU migrants, whether highly skilled migrants or low-skilled migrants, and other categories under the UK immigration rules (Home Office 2016). These conditions can be viewed as restrictions on the right to work and other related rights such as non-discrimination on different grounds.

Table 5.2: Routes to work and migrant restrictions in the UK 1998-2016

UK Points-Based Programmes/Policies	
Highly-skilled	**Low skilled**
Tier 1 and 2 – can work in the UK for 2-5 years (no recourse to public funds).	Tier 5 – can work for up to two (2) years (no recourse to public funds).
Migrants can attain indefinite leave to remain (permanent residence) if they remain in UK lawfully and earn £35,000[16] annually.	Migrants cannot easily use this Tier as a route to permanent residence and citizenship.
Tier 2 migrants initially bonded to an employer issuing a Certificate of Sponsorship.	Also residential status tied to employer initially.
Migrants can bring dependants with conditions of available income for themselves and each of their dependents.	Migrants cannot bring dependants.
Can extend visa upon fulfilling conditions while in UK.	Restrictions on visa extension – migrants have to return to their country of origin re-apply if they want to work in the UK.
Caps on entry from outside the UK from 2011.	East Africans rarely apply under Tier 5.
*Tier 4 – Students Visa enables migrants from East Africa to both study and work (without recourse to public funds). Students supply the UK market with both highly skilled and low-skilled labour for instance as student doctors, nurses, as carers in nursing homes and as nannies.	
Exceptions to the above categorisation (PBS) Dependants of highly skilled applicants can work after acquiring visas as their sponsored spouses.	

Source: Own compilation.

Over the years, the government through these programmes has relied on migrant labour albeit restricting their rights using the law and policies with different statuses and categorisation ascribed to them. The low-skilled workers have been the lowest class while the highly skilled fit within the middle class, although they also experience precarity with relation to their visa status (see Anderson 2013). At the time of the inception of the PBS, the government also created the Migration Advisory Committee

[16] See Richmond Chambers (2016). "The truth behind the £35,000 minimum salary requirement". Available at: https://immigrationbarrister.co.uk/the-truth-behind-the-35-000-minimum-salary-requirement/ last accessed 12.09.2017.

(MAC) to provide it with advice on occupations with labour shortages and to inform the allocation of points for Tier 2 applicants. These were the applicants that could be sponsored by a UK employer upon satisfying the Resident Labour Market Test (RLMT) in some cases. The MAC is similar to a proposal in 2005 for a 'Skills Advisory Body', which was to be a pseudo-independent body providing impartial labour market advice to the Home Office (Somerville 2007b, 35).

The PBS is meant to manage migration and demonstrate to the public that the immigration laws and policies are effective in choosing the best migrants that the UK needs. However, in performing this function migrant workers on the lower scale of the system such as those under Tier 5 were often disadvantaged and had the most restrictive conditions on their rights. Additionally, the PBS contributed to the precarisation of migrant workers that were deemed low skilled as they could now only stay in the country for a shorter duration before having to leave to re-apply to come back. Another effect of the PBS relates to the UK's ties with its former colonies that were organised under the auspices of the Commonwealth, an organisation that voluntarily brings together all independent states formerly colonised by the UK. According to Regine Paul, one salient aspect was that through the programmes the UK could sever its ties to its former colonies (Paul 2015). Previously, East Africans (mainly from the elite classes, as sponsored students and later as refugees from the former British protectorate) (for details of formation of African diasporas in UK see Binaisa 2011), were able to migrate as British subjects, but with the introduction of the different legislation and labour migration programmes these movements were gradually restricted.

The UK government took measures in the early 2000s to support and retain highly skilled migrants. The policymakers knew that it was beneficial to have highly skilled migrants whom they were competing for with other migrant receiving states such as the USA, these migrants could move to the UK with their families and could easily be fast-tracked through the temporary work visa route to secure permanent residence in the UK (Findlay 2006). As mentioned earlier, during major national election periods, right or left parties make use of the policy platform, and intervening in who can migrate and

work in the UK partly influences labour migration laws and policy changes regulating migrant workers under the PBS. This intervention thereby contributed to migrant workers having their rights either restricted or some migrants facing situations where they had access to some rights and social provisions from the onset of moving to the UK, while others did not (ibid.). The UK government has to demonstrate the ability to exert control in a context of uncertainty and risk produced by the globalising processes, and to give the impression (and assure public opinion) of being able to measure migration benefits against costs (Kofman et al. 2009, 16). Additionally, the government has to prevent racial tensions within the society.

5.2.2 Anti-racism legislation and differentiation of migrants

The codified body of law in the UK relevant to migrant workers includes Acts of Parliament, smaller pieces of larger legislation, international treaty agreements, and the vast body of immigration regulatory law, which is promulgated by the state, and local agencies such as employment tribunals. This section examines the law, the agencies that administer and develop the law, and the policies that influence the development of current law. During Tony Blair's tenure, from 1997 to 2007 a total of five new immigration laws were introduced, which was much more legislation than in any other area of social policy (Somerville 2007). These Acts were the Immigration and Asylum Act (1999), the Nationality, Immigration and Asylum Act (2002), the Asylum and Immigration Act (2004), the Immigration, Asylum and Nationality Act (2006), and the UK Borders Act (2007). The titles given to these laws clearly reflect the discourses in the UK at the time of deliberation and formulation. According to Christina Boswell, these changes were rendered possible at that time by a relatively acquiescent opposition and media, which had generally accepted the economic arguments for labour migration (2008). However, the situation was different after the economic crisis.

The UK has codified its laws into statutes that reflect the changes within the society that judges follow when adjudicating over matters of human rights violations. The laws regulating migrant workers coming to the UK are the immigration and labour laws, which are contained in different statutes. Another relevant law is the Human Rights Act,

which covers all individuals in the UK. In 2010, the UK introduced the Equality Act[17] with a goal to tackle the issue of racism and discrimination on all grounds. With this Act, the UK sought to reform and harmonise equality law, eliminate discrimination and harassment, to prohibit victimisation in certain circumstances, and ensure that there was an increase in equality of opportunity (UK Government 2010).

The Act is a legal and political tool that promotes equality, as through it all state officials are expected to perform their duties without discrimination and to reduce socio-economic inequalities. In spite of the existence of such laws, in practice there is continued discrimination of some categories of migrants, for example migrants classified as low skilled. This is particularly important due to their lack of equal access to economic, social, and cultural rights, especially when compared to UK citizens, permanent residents, and European nationals within the UK (Kofman et al. 2000, 2009; Morris 2003). Even at the inception of the PBS there were distinctions in access to certain rights between migrants deemed highly skilled and those deemed as low skilled. Restricting migrant workers' rights under UK migration law is against principles of international human rights law that have acquired customary status and are binding on states to observe them whether signatory to international treaties or not. These human rights principles include the promotion of equality and non-discrimination and are domesticated within UK Human Rights Law.

Notably, under the policies some elements of discrimination remain visible, for instance among women and men depending on their skill levels, income, language skills, and in the past even their age, when the Highly Skilled Migrant Programme was still operational (Sumption 2014). The fact that extremely wealthy or upper classes of people can easily move across countries irrespective of where they come from is another reflection of the discrimination promoted or encouraged under the PBS and similar policies. The PBS, like most TLMPs, has some common features with past guest worker programmes such as the Bracero in the United States and the Gastarbeiter programme

[17] The Act is available at: http://www.legislation.gov.uk/ukpga/2010/15/contents last accessed 02.12. 2018.

in Germany – for example, there are discriminatory rules that deny certain rights around family reunification to low skilled migrants or to migrants that do not meet the yearly salary prerequisites (Castles 2006b; Weinstein 2002). Such migrants find that they are also always under the control of the UK immigration laws. Migration continues to test the boundaries of who belongs to the 'community' or nation, and moreover, migration from outside Europe tests the boundaries of inclusion and exclusion within Europe itself (Anthias and Cederberg 2006, 3; Anderson 2013). In a globalised era marked with migration crisis, there is a resurgence of the nation state, which is concerned with controlling or managing immigrants' lives and mobility through bureaucratic legalised practices, and at the same time both restricts and promotes human rights for some migrant categories.

Similar to the UK laws and policies, the lists of shortage occupations are always getting changed and updated by the MAC to reflect the UK labour demands. Due to this, a migrant under Tier 2 could easily find himself or herself thrown out of the category regardless of work sponsorship, thus even under Tier 2 migrants are not free from precarisation. Such situations of rapid changes of immigration policies and law reveal the precarious nature and status of migrant workers. Additionally due to their skin colour some of these migrant workers face discrimination.

Some work permits and visa systems tie migrants to employers which leads to inequality of treatment of workers. François Crépeau, gives examples where some work permits are 'tied' to the person sponsoring the migrant (this was the case under the UK old work permit and Tier 2, which some of the interviewees spoke about), who then wields enormous power, as the employer can have the migrants deported the moment the contract is terminated (Crépeau 2014). Most countries do not adequately address irregular employment, tolerating underground labour markets where undocumented migrants are exploited, such as in the USA, although the UK seems to be the most serious on seeking to control irregular migration. Access to citizenship is often denied, even to long-term residents, often resulting in statelessness. Additionally, by restricting the rights that specific workers could access while in the UK, some migrant workers

may end up having precarious legal or migrant status in case they do not fulfil the terms and conditions of their visas. As Goldring and Landolt (2012, 29) note, research on the links between immigration and labour market insecurity offers some explanations of how legal status becomes a source of stratification, inequality, and worker vulnerability. Immigration policy imposes formal restrictions on the labour rights of migrant workers, so temporary migrant worker programmes are by definition an instrument that can be used to differentiate the labour pool (ibid.). The migrants with precarious status will not be able to renew their residence permits and may be disempowered by the whole visa application and extension process.

Migrant workers find themselves in a precarious status and at the mercy of the state's migration policy. This is most pronounced at the time when the migrant workers under the PBS are waiting for a decision on their application to change between visa categories or attain permanent residence in case they have legally lived longer than five to six years in Britain.[18] Such vulnerability is encapsulated in the UK government position that citizenship and related rights are privileges, further evidenced in the introduction of a 'probationary citizenship' scheme that some elite migrants such as the highly skilled, British family members, and some refugees can earn if they do not break the law, among other conditions (for a discussion of citizenship and immigration see Joppke 2010). This scheme was introduced with the enactment of the Borders, Citizenship and Immigration Act (UK Government 2009). Additionally, the UK introduced the Immigration Act 2016[19], which according to the Migrants Rights Network (2015) increases the powers of immigration officials to detain individuals, to seize property, to interfere in several everyday activities, and encourage further discrimination against minorities, whether British citizens or migrants.

[18] This was the case for some of the interviewees from East Africa and is elucidated within the empirical research findings in chapter seven.
[19] See: Immigration Act 2016 available at http://services.parliament.uk/bills/2015-16/immigration.html last accessed 10.05.2017.

5.2.3 Crisis and caps on non-European Economic Area labour migration

Since 2007, most countries were hit by recession and sharp increases in unemployment rates. Rising unemployment has compelled states to take various measures to stimulate job creation, or at least to avoid job destruction. In view of the crisis, the attitude of governments towards the growing number of immigrants in the labour market has also changed (Lambillon 2014). In the period after 2008-2009, the UK government decided to further restrict the numbers of migrant workers that could come to work in the UK. These restrictions were enforced by further limiting migration under the previous PBS such as through the Highly Skilled Migrant Programme (HSMP) scheme. These schemes were similar to their predecessors, as they served the economic objectives of both sending and receiving countries, the social conditions for foreign workers were substandard, and migrants generally had limited rights (Preibisch 2010, 409). Moreover, in 2008 the UK government attempted to tighten the rules regulating the acquisition of permanent residence by highly skilled migrants by trying to increase the amount of time from four to five years that one needed to be in lawful employment before they could qualify. After 2009, the UK announced that it would 'cap' migration under the PBS, which is similar to the programmes that other high income countries such as the USA and Australia already have in place (Murray 2011).

It must be noted that in the years following the economic crisis of 2008 through to 2012, the UK government started talking about reducing the different migration routes or visas in order to decrease the number of non-EU migrants coming to work in the UK. It also went ahead and capped labour migration from outside the UK under certain Tiers, for instance the Tier 1 (Work) visa. In 2012, the then Home Secretary Theresa May issued a speech that called for the need to have a migration system that works in the national interest.[20] Additionally, due to further restrictions placed on employers employing workers from outside the EU in the country after the crisis, many migrant workers and students that had converted to the Tier 1 (Post-Study Work) visa found themselves in a

[20] Speech is available at https://www.gov.uk/government/speeches/home-secretary-speech-on-an-immigration-system-that-works-in-the-national-interest last accessed 11.11.2015.

catch-22 situation where they could not easily access professional work, and some ended up working below their qualifications in, for example, care homes. Other migrants were working in supermarkets and factories, which the government felt did not qualify as jobs in which highly skilled migrants should be working (Lambillon 2014; Sumption 2014).

A different position is put forward by Christiane Kuptsch, who claims that the crisis years of 2008 to 2012 led to a shift in perspective of the state and its role in economics from that of undesired to useful. Previously prevailing neo-liberal thought relegated the state to the high politics of sovereignty and security issues. Kuptsch argues that the crisis highlighted labour market issues, and migrants were now increasingly portrayed as economic agents instead of security threats (Kuptsch 2012). Kuptsch added that migrants are usually the most hit by economic downturns for several reasons. From an economic perspective, migrant labour tends to be used as a cyclical buffer much like other macro-economic policies aimed at maximising growth and minimising unemployment: migrants are often the last to be hired and the first to be fired; their employment relationships are frequently non-standard (Kuptsch 2012, 16).

This offers room for the state to assert its protective role vis-à-vis migrant workers, and although this would be a welcome development it is debateable whether this is the case, since migrants as non-citizens may be excluded due to this status. During times of crisis, migrants are usually viewed negatively and not 'requiring state protection', especially those that fall at the lower end of the PBS: those considered low skilled. The media discourses on migrants imply that migrants are unwelcome and in some cases are seen as taking British jobs, which are 'supposed to be for British workers' in times of economic recession (Somerville and Sumption 2009; Sumption 2014; Lambillon 2014).

The UK reduced admissions under Tier 2 by removing certain jobs from its labour shortages lists. In 2015, the list focused on specific job categories, most of which required a high degree of specialisation (Migration Advisory Committee 2015b). The UK coalition government made it more difficult for non-EEA migrants to enter and work in the UK through its UK Visas and Immigration. The UK Border Agency (now known

as United Kingdom Visas and Immigration) was established as a single agency combining borders and immigration, which was intended to make border operations more efficient (Lambillon 2014). The successive governments after Labour, such as the Conservative-Liberal Democrat coalition government of 2010 to 2015, continued oscillating from managing migration to control. Overall, the focus was placed on controlling and managing migration in general, and as Hampshire notes:

> The predominant discourse for most of the second half of the twentieth century was one of immigration control, whereas today government officials are more likely to refer to 'migration management' (though it is notable that in the context of the economic recession and upcoming general election the phrase 'controlling migration' is once again cropping up in policy statements and speeches) (Hampshire 2009).

To date, there are more restrictions on migrants' rights under the PBS than there were in the early 2000s under the different migration schemes such as the work permit for highly skilled workers and family reunification visas. Furthermore, in addition to dominating the different political party's campaign agendas and discourses in the 2010 general elections referred to by Hampshire above, immigration is one of the topics that dominated the 2015 General Election (CLASS and Migrants Rights Network 2015, 3). Migrants continue to face systematic cuts to the ways that they can address perceived government 'wrongs', such as lodging appeals against immigration decisions, accessing legal aid, and securing financial support for community organisations, which risks further isolating communities (Grove-White 2010, 2). Such cuts reduces migrants' abilities to organise and participate actively in struggles to claim or assert their rights alongside other social forces involved in migrant rights movements, such as trade unions and NGOs, aspects that I examine in detail in chapter seven.

Additionally, in June 2016 Britain held a referendum to leave the European Union, which was curtailing some of the British state's sovereign powers to determine migrant rights including those of third country nationals, i.e. non-EU family members of EU

nationals. One of the primary reasons for this development was the 2015 migration crisis that was repeatedly portrayed in racialised discourses by the right wing and nationalist politicians. The leave campaigners racially constructed EU migrants and refugees fleeing Syria as 'brown' and as invading migrant 'others'. From a review of policy developments in the UK, it appears that mobility, residence and social citizenship rights are being eroded, not only for non-EU nationals, but increasingly also for EU migrants (see Alberti 2017, 2–3). Notably the UK is not the only country in Europe where migrant rights are increasingly restricted as it seems to be a wider trend around the world. In spite of transnational dimensions of human rights, there are limitations to their application, especially in the context of national resource constraints (for instance in times of economic crisis) and a pervasive emphasis on control (Morris 2003). This emphasises the strict theory of national sovereignty that is manifested in a state's capacity for control over entry and rights of migrant workers, and through the continuing symbolic and material significance of national citizenship from which nationals, for example British and most European Union nationals, derive and enjoy more rights when compared to non-EU migrants.[21]

5.3 Conclusion

The points-based system (PBS) came into existence through the UK's continuously changing regulation and immigration policy that effectively sought to restrict who could come and work in the UK and what rights they could enjoy. Previous UK governments sought to control and restrict the entry of non-white migrants and emphasised the practice of differentiating human beings and the rights that migrants could access once in the UK territory. Migration regimes including the UK's remain exclusionary and arguably discriminatory, as seen with the different regulations, sets of different conditions and rights for the highly skilled migrant workers who are solicited or wanted migrants, and those migrant workers that are deemed low skilled. Such construction of migrant subject positions is one practice of differentiation, which is a result of the

[21]European Union nationals in the UK are increasingly racialised or discriminated following Britain's decision to leave the EU and their access to residence in the UK will depend on the outcome of the negotiations with the remaining EU members.

different policy actors collectively implementing their ideas about which migrants are desirable, ideal, and can migrate to the UK. This is highlighted in the discourses on both highly skilled and low-skilled migrants. This differentiation along skills categorisation is evident from the UK's development in the early 2000s of some of the most active recruitment policies for highly skilled labour migrants, while introducing sometimes draconian measures towards low-skilled migrant workers and asylum-seekers.

In this chapter, I have employed an historical analysis of the ideas, discourses, and events leading up to the PBS, and later its implementation to expound on the legislated selection of migrants from outside the European Union and the implications this has had for migrants from East Africa. By examining the developments of the immigration laws and policies as structures, we see the power relations at play whereby different actors including legislators, policy-makers, and trade unionists played a major role in the racialisation practices that differentiated among migrants in the UK over the years. The PBS as a LMP was built on a historical genealogy to cut postcolonial ties to racialised former colonies. These racialisation practices are seen in the background of how mainly black non-EEA migrant workers were constructed as migrant subjects in comparison with white migrants such as female nurses from Eastern European states through the 1940s and the 1960s. Today, migrants from Europe enjoy certain privileges and preferential treatment under European Union free movement regulations, in comparison to migrants from former British colonies such as East Africa, although this is changing following Britain's leaving the European Union. The UK continues to apply this hierarchised grouping of migrants and their rights depending on their countries of origin, a phenomenon which I turn to in the next chapter.

6. East Africans encounter the tiered points-based system and law

> Law is only one of many sources of normative authority in people's lives, religious groups, cultural traditions, customs, economic analysis, and certainly other forms of meaning influence what we choose and what compels us… In a pluralism of legal worlds, legal authority depends at least in part, upon our own participation and our own choice about what to accept and what to resist (Minow 1991, 66–67).

The above quotation sets the pace for a discussion on migrants lived experiences, what they accept and what they resist (see the related next chapter seven) in their struggles with racialisation upon migration and navigating professional belonging as individuals with various qualifications. The chapter draw on an analysis of the interview data and field observations for the differentiation of migrants' access to rights based on their skills, social class, and the visa categorisation that they fall under but reveal migrants' own conduct and self-governance when moving across borders. East African migrants' transnational legal consciousness involves knowledge of laws and rules in addition to practices of either accepting laws or resisting them and other factors that structure their experiences as migrants. In addition to the formal legal framework and state policies of the UK, with this chapter I will elucidate further on some of the other issues, such as specific media discourses, racialisation, and cultural boundaries of migrant's belonging within society and professionally, which structure the dynamics of migration and migrants' everyday lived experiences. The chapter is premised on the earlier stated guiding questions on what the lived experiences of East African migrant workers related to rights are and their perceptions of law, at the time of visa application, on arrival and taking up residence to work in the UK. Further, on the question how do economic, political, and socio-cultural factors (e.g. racialisation) influence or structure migrants' lived experiences?

Applying Brian Tamanaha's approach to a socio-legal study of law and related socially constructed phenomena necessitates an analysis of the function of law – that is, what it does in constructing the states' suitable migrant subject, how it is perceived, and what

migrant East African health sector workers in the UK do with the law or what they take to be the law (see Tamanaha 1997, 128).

The chapter is organised as follows: The first sub-section maps out the migration process from the perspective of the individual migrant with restrictions beginning with the entry clearance application, upon arrival, taking up residence and working in the UK. In the second part I look at the situation of labour rights by contrasting different narratives of migrants, and therein I also deal with the intersectionality between racialisation and professional belonging in the workplace as experienced by both female and male migrants. I decided to concentrate mainly on labour related rights for pragmatic reasons. The last part of the chapter examines migrants' perceptions and dealing with law while also navigating through aspects of racialisation. This part includes a discussion of what can be seen as migrant workers' 'before the law' legal consciousness and what may appear as 'indifference to the law' legal consciousness that is revealed in their reactions to rights related conflicts.

6.1 Negotiating visas and 'borders' to the labour market in Britain

Before East African migrants migrate, they have to meet the conditions to be accepted as suitable migrant subjects that can migrate under the UK's managed migration policies and law. By deciding to make the migration journey, whether individually or collectively within their family networks, and after making connections with social networks and with other actors in the healthcare/migration industry including hospitals, universities, and colleges, migrants begin their journey into acquiring paperwork and documentation to prove themselves which is a form of migrants' self-governance. A reconstructing of their transnational lives shows how migrants construct themselves to become migrants. In most cases, migrants or would-be migrants experience restrictions even before they take up residence in the UK, and later when they begin living and working in the UK under its migration regime. This inbuilt insecurity even before migration is an important feature of UK's immigration system that serves as a means to discipline future migrants, displaying the power of immigration systems. For non-EEA African migrants to the Europe and some other developed countries, migration is a

privilege and reserve of the upper classes or middle classes who could easily demonstrate that they have the documents required to make the journey. Some of the lived experiences are well documented and I list some as follows:

Table 6.1: Migration experiences and rights conflicts in Britain

Concerns	Experiences and rights related conflicts
Immigration status	Residence and work permit connected to sponsoring employer for Tier 2 loss of migration status if no employment contract (unemployed), precarious legal status.
Migrant rights issues	Discrimination, criminalisation of movement, no family reunification, inability to travel to country of origin if they find themselves undocumented in UK.
Social welfare	No recourse to public funds especially in first year of migration or if on student Tier 4 visa.
Economic and labour rights	Flexibilisation of work, long work hours; discrimination in the workplace, exclusion from professional belonging due to non-recognition of qualifications from countries of origin.

Source: Own compilation.

Unlike migration from major migrant sending nations that have bilateral programmes, migrants from East Africa mainly migrate autonomously under the PBS after applying from overseas, meeting the conditions, and supplying the evidence to meet the terms of the Tiered visas as introduced in chapter one. Many migrants mentioned what they had to do in order to secure their entry permits before migrating and what they did to renew their residence permits once in the UK:

> *I didn't have to prove anything. Everything was asked before the visa was issued so by the time I came here it was only a matter of asking me questions and to see whether I was consistent with what I told them at first* (Sulaimani, Mental Health Support Worker).

Sulaimani's statement above shows that he had to be consistent in his answers on the visa application even before he migrated to the UK. Such consistency alludes to being *law abiding*, a process repeated by other respondents when questioned on the conditions accompanying their application and residence in the UK. On the other hand when I asked interviewee Akini whether or not she was satisfied about the entire residence permit renewal process:

> *Not really. I think the laws change too often and they tighten for no tough reason really. I just think they toughen because they want to please numbers and address immigration. The population here certainly wants the government to talk and act upon immigration* (Akini, Health Trust Manager and former student).

Her assertion speaks to the difficulties BAME migrants face in meeting the terms of rapidly hostile and changing immigration regulations which are a key part of the managed migration policy at the time. It also points to the figure of the migrant in data where by migrants are portrayed in statistical data that European governments, including the UK, usually rely on in addressing citizens' concerns about migration control and management. It is not only non-EU African migrants that are affected by rights restrictions this as we have seen with European nationals being at the receiving end of reform policies to fight welfare dependency in the UK like in other OECD countries (Alberti 2017).

Migrants have to provide appropriate evidence of, amongst other things, educational qualifications, work experience, past earned income, and their achievements in their chosen fields specifically - healthcare. This is done in order to ensure that they can be considered as legal migrant subjects and remain as deserving migrants that would make a significant contribution to the UK economy and society through employment, self-employment, and engagement with business. On visa application and upon arrival to the UK, migrants from East Africa usually have the responsibility to demonstrate how they are ideal migrant workers that can work in the UK.

Under the points-based system, individual migrants have different migrant subjectivities that ranged from students, main applicants, dependants, and as workers in the healthcare sector. For instance Akini an African female migrant with qualifications in healthcare and social work, working as a Manager in a healthcare trust, performed care work during her student days to earn money to maintain her Tier 2 visa. She also has experience as a Senior Support worker. She described the care work that she did as a student as "*not highly skilled and that the employers were just taking anybody that had a bit of experience with care work"* (Interviewee Akini). Through care work she was able to pay bills and save towards her visa renewal when she later transferred to a Tier 2 visa and then she could sponsor her husband as her dependent to join her after proving sufficient funding. While migrants classified as low-skilled found it difficult to meet the conditions most of them could not afford family reunification i.e. to bring their family members (i.e. wife or husband and children) upon migration.

Upon setting up residence in the UK, migrants categorised as highly skilled or low-skilled by the UK for visa purposes (for all workers regardless of classification) find themselves with 'precarious legal statuses as a result of rapid changes to immigration laws and policies, and visa renewal conditions. In addition to determining precarious legal status, these laws and policies are the avenue of civic stratification of migrant workers and their rights (Morris 2003). The hybrid category 'precarious legal status' lies in between legal and illegal status. It has also been termed elsewhere as semi-compliance or semi-legality (Ruhs and Anderson 2010; Kubal 2013). Semi-legality can also be found in the narratives of migrants describing their relationship with the legal system of their host country, where it presents itself as a site of contestation of the invincible role of the law in defining individuals (Kubal 2013, 583). Through immigration law some migrants are prohibited from switching employers and are 'tied to a sponsoring employer' (bonding) – normal expectations for respondents that had Tier 2 visas. For instance, Kato initially had a work permit that he later changed to a Tier 2 visa. He felt he was dependent on his employer under the Tier 2 visa through the 'certificate of sponsorship'. According to him: *"They* (UK Home Office) *call it a Certificate of Sponsorship which is given to the employer and then the employer just gives you a copy*

to use to apply for the visa." (Kato, Sonographer). These certificates of sponsorship can be withdrawn at any time by UK Visas and Immigration (UKVI), which forces businesses to pay for frequent legal advice about their employees' residence statuses (Murray 2011, 6). During that time, Kato had permission to stay in the UK if he still worked for the sponsoring employer. Additionally, with the Tier 2 visa (at the time of the first interview) he could easily lose his legal status in the UK at the will of his employer.

For students, the Tier 4 visas have restrictions that mean they find it difficult to access the labour market and pay for their livelihood. In interviewee Malia's words having a *"no recourse to public funds"* status means that some groups are disproportionately affected by rules on prohibiting access to public funds and benefits eligibility which exclude non-EEA migrants (Kofman et al. 2009, 136). While Teopista who had a different experience with a similar visa as she was recruited directly by the NHS in 2004 as a student nurse mentioned how easy it was to get jobs after meeting the security background requirements:

> *In the health care sector, it wasn't so difficult. The only thing, you have to wait for a Criminal Record Check to be done. But every job I have applied for in health care I have got. That's how easy it is. But first they have to do what they call a CRB before you get it. I find the wait when you are waiting to start is the difficult part but of course they have to do it for security reasons. So you have to wait sometimes even up to six weeks until the CRB comes back then you can start working* (Teopista, Registered Nurse and former NHS recruited student).

Clearly most migrants were aware of these restrictions on their rights – some even expected them and were okay with the status quo *under the law*. As long as they could remain employed, whether under the PBS or outside it, they did not mind having some restrictions to their access to some labour rights and standards – for instance, the majority of the female interviewees were not interested in collective organising under

unions, since they felt it took up the time they had to work and maintain a steady income in case they had to reapply for their work visa.[22]

Documented migrant workers are differentiated from those constructed as having 'illegal' status, and then they face either advantages or benefits, or difficulties, which are determined using the social constructions of the migrant category. One example of this is *always being on the run from the law* or *avoiding the law* in the form of immigration or border staff. This narrative came from Susane who worked as a care worker with mentally challenged and disadvantaged youth:

> *I never wanted to play around with my visa… Yeah because I found it a bit hard. People who were here illegally. People are hiding, all the time its police, running away, hiding there and there. So I thought: "I don't think this is health. This is not normal". But I found it very hard… hiding myself and then you need to look for somewhere to work. There are no jobs* (Susane, Carer and Support worker).

Susane had two routes in order to remain working in the UK whereby she could either stay as an undocumented migrant and hide from the law, or work within the law. This speaks to migrants being governed or disciplined by the law but at the same time self-governing in order to remain as workers working legally in Fortress Europe. Susane's decision to remain in the UK with the right documentation meant that she had to return to her country of origin earlier in order to reapply and return to the UK under another scheme. The fear of precarious legal status, and being constructed as an undocumented immigrant or as a worker without papers, means that many undocumented migrants may become anxious about police, spending their days hiding from them. Migration status determines the ability to work legally in the UK. Susane chose the alternative to *conform to the law*, and secured a Working Holiday Visa in 2005, which at the time was open to almost all non-EEA nationals including East Africans. In avoiding undocumented status,

[22] I examine migrants' representation and empowerment strategies within unions and associations further in chapter seven.

Susane's behaviour can be interpreted as her drawing upon her legal consciousness and what her law abiding personality to resist getting on the wrong side of the law.

6.1.1 Migrant lives governed by immigration law

Both female and male migrant workers from East Africa as empowered actors with legal awareness migrate freely and outside of bilateral agreements upon identifying and proving how they can qualify to be ideal migrants to be granted work permits to legally work in the UK under the PBS programmes. The programmes function to govern migrants' lives yet at the same time basing on the governmentality approach addressed in chapter two, I interpret this as partly migrants' own self-governance and constructing themselves into migrants by proving the necessary requirements under the labour migration programme. Although there are several actors that are involved in the disciplining and construction of ideal migrant subjectivities, including recruitment agencies, the state, and social networks (Rodriguez and Schwenken 2013), here I concentrated on the state and migrants specifically due to my sample restriction.

The hierarchical construction of fitting migrant subjects and their rights are visible on examining the PBS. There is competition to access the UK labour market between migrants from least developed and developing countries with those from developed countries (e.g. Canada and Australia). This is exclusionary since the salaries in the latter states are higher, and they may easily qualify under the PBS. This exposes the stratification of hierarchies (probably set at time of policy design) (Ingram, Schneider, and DeLeon 2007) of preferred types of migrants under the PBS (Kofman et al. 2009). Migrants that perform "caring roles" that require varying amounts of practical and theoretical learning or "care work" are further hierarchized according to professions and skill set covered therein (Valiani 2012). From the professional perspective, males dominate the top of the hierarchy ('highly-skilled' consultants and doctors, for example), while the bottom of the hierarchy (including nurses, carers and senior support staff) is mostly staffed by females. The 'unskilled' category includes carers (previously they could apply under the PBS). So-called 'low-skilled' healthcare professionals such as care workers were excluded from the shortage occupation lists that can be sponsored

by a UK employer under Tier 2. This bifurcation of skills within the interview sample was obvious, as female migrants tended to work as nurses and carers, although, had I interviewed a larger sample group perhaps the findings would have been different. Nonetheless, this study is only representative of the narratives of the group I interviewed and does not try to represent the situation of all East Africans in the UK.

Similarly, on the different statuses and categories of migrants, Leila Ezzaequi and Yasmin Soysal note that migrants can be categorised differently: migrant workers, migrants admitted for purposes of family reunification, as refugees, as students, or migrants without documentation, and therefore state policies on migration vary with the nature of the migrant or the classification of the migrant (Ezzaequi and Soysal 2011, 3). The most vulnerable groups under subordinated transnational migration processes are undocumented migrant workers and refugees (Tamanaha 1997, 228). All these socially constructed statuses and categories are related in one way or another when they are controlled, created, and maintained by the law.

Migrants from East Africa have made use of these different PBS visas and have indeed moved to the UK for work under the different Tiers. Undocumented migrants can only work without authorisation. Illegal status is a result of the labour migration law that determine who can work legally in the UK. This illegality creates hardship for the migrants who might have other grounds for migrating in the first place. One interview partner, Namu, a female East African nurse, told me she could not return to her country due to political and private reasons and yet could not meet the conditions under the PBS and thus decided to migrate to the UK using a different route. Kofman et al. mention violent and/or oppressive familial or marital relations that women wish to escape, and furthermore point towards the fact that constraints of gender roles and normative expectations more generally may act as powerful factors in women conceiving of migration in terms of emancipation and greater opportunities (Kofman et al. 2000). For Namu awareness of the different ways in which one could migrate to work in the UK was key to escaping her country of origin and notes:

> *Everyone's case is different. Because like some people they come here with sponsors, you know. Some people come as students. They get married. Some people like me apply for asylum. So everyone is different really. It's just luck. If you have bad luck and everything, things don't work out* (Namu, trained Nurse working as a Carer).

Meanwhile Akini mentioned how easy it was to switch from Tier 4 (student) to Tier 1 (post study) in 2008: "*So automatically when I finished in 2007, I immediately got my post-study visa and that's how I ended up going into work. To get into work I presented to them my post study visa which was allowing me to work".* (Interviewee Akini). This points to the various pathways to documented categorisations. Most of the interviewees mentioned how they researched about the requirements under the visas that they were interested in applying for before going ahead and making the application. As mentioned earlier, the UK's PBS appears to be neutral and not biased by class, with migrants wishing and willing to work in the UK simply being required to meet certain points in order to qualify to apply for the visas that permit them to work in the country. The types of visas under the Tier 1, 2, 4 and 5 require a migrant to meet certain points and fulfil certain conditions to qualify to move to the UK. This has a controlling effect on would-be migrants even before they migrate to the UK.

Under the different visa types within the tiered system, some migrant workers' rights are seen to be restricted in part because of their skill statuses. The UK is more interested in highly skilled migrants who access more rights (e.g. family reunification) than low-skilled ones under the PBS. So highly skilled migrant based on educational qualifications can be seen to be constructed as a desirable type of migrant. Due to this desirability, such migrants enjoy certain rights and arguably privileges at same level as citizens that migrants constructed as low-skilled may not access. For instance, they may be allowed to come with dependants who can access the job market in any skill setting outside of the entire PBS. Yet a dependant's visa does not have any restrictions and dependants of main applicants can work legally once they come to the UK or to join their spouses (the main applicant under the PBS) (see Home Office 2016). One

interviewee, Kato noted with humour: *"Can you imagine if I get a visa and then you come on it as my dependant you are free to work for anybody...But me the owner of the visa, I am limited to work for one person*". (Interviewee Kato). Within this statement by Kato, we observe the bonding of even very highly skilled workers to employers who would be their sponsors. It should be emphasised that most of the migrants from East Africa already have high qualifications and education and when they end up working in care to make ends meet, it does not mean that they are low skilled as the visa system would have us believe.

From the Immigration Rules, both female and male migrant workers and former students classified as highly skilled (such as Kato above, Dr. Menya, Akini and Dr. Petero), could bring their dependants over to the UK after proving that they earn enough to support themselves and each additional person (see Home Office 2016). These are at the upper end of the civic strata. Most of the highly skilled migrant interviewees who were previously under the Tier 4 student visa and later transferred to the Tier 1 (Post-Study Work) visa (which was capped in 2012) told me that they initially travelled by themselves because even if they wanted their spouses to be with them they could not afford it. Here, the immigration laws and regulation explicitly plays a role of controlling family relations of migrants, British citizens that are married, or partners with non-EU spouses. These families including their children are separated from each other due to the visa status ascribed to the partner and the conditions that come along with that status. By setting high minimum income thresholds, the government seems to prohibit such students and migrant workers from bringing their spouses and partners. They can be compared to British nationals within the lower income threshold who under UK law must earn a minimum income of £18,600 before they can bring their non-EU family members over. Critics argue that the law, introduced in July 2012, penalises 43% of the UK population and means British citizens in full-time employment on the minimum wage cannot enjoy the right to live with their families in the UK (Elgot 2016). Such regulations contradict the right to family life that is provided for in Article 8 of the UK Human Rights Act. As the Home Office expressed: "family life must not be established here at the taxpayer's expense. The level of the minimum income threshold reflects the

income at which a British family generally ceases to be able to access income-related benefits".[23] On the other hand, EEA nationals residing in the UK at that time had no such restrictions under EU legislation.

Most interview participants classified as low skilled stated that what they earned following taxation in the UK was not enough for them to bring dependants over. This civic stratification conceptualisation demonstrates rights in context, especially socioeconomic rights, which occupy a contested terrain and an issue implicated in the distinction between genuine and 'bogus asylum' seekers, and between refugees and so called "economic migrants" (Morris 2003). These migrants accepted the status quo and felt it was fine because even if they could not come with their families they could continue working in the UK. Meanwhile, the UK was determined to retain elements of its sovereignty in a contested arena of international migration law, maintain a steady flow of precarious workers, and hence resort to this civic stratification of migrants and their rights. This showed the compromise migrants have to make in order to attain work. Their perceptions on trading off their rights to family life for work is confirmed by a growing body of literature on migration law and policies being used within the UK and elsewhere to acquire, stratify and will cheap labour with restricted rights (Ruhs and Martin 2008; Ruhs 2013, 2005; Morris 2003). Additionally, the supply and demand structures of specific types of migrants (e.g. for the healthcare sector) follow gender stereotypes and roles (Piper 2007, 16).

The UK's migrant selection and construction of ideal migrants is explained by Kato, a male sonographer. He previously had the HSMP visa and at the time of interview had the Tier 2. In his words: "*They only want specific migrants that they need to come... They only want a certain set or group of migrants with certain skills to come, not everyone."* (Interviewee Kato). These regulated skills include medicine and nursing and appear on a yearly shortage occupation list, where the related regulations can determine

[23] See: UK: Children harmed by income rule for family migration says Children's Commission for England. Available at: https://ec.europa.eu/migrant-integration/news/uk-children-harmed-by-income-rule-for-family-migration-says-childrens-commissioner-for-england?lang=de. Last accessed 03.02.2018.

professional belonging (Migration Advisory Committee 2015b; Hausner 2011). Upon arrival in the UK, migrants' access to entitlements is determined by formal and informal sets of rules and regulations defined by law, social norms, and conventions (Piper 2007, 16). When the social dimension is incorporated into the analysis, it brings to the fore broader issues in migration and reminds us of the daily reality and the actual situation of migrants who need employment, housing, and education (ibid.).

This notion of neutrality of the PBS by applying the concept of civic stratification to examine the mobility of disadvantaged, non-citizen populations (Morris 2003). According to Morris, Britain grants both labour market access and settlement more readily once migrants have negotiated entry, but is more restrictive in other ways, for instance applying conditions to the family reunification of citizens, imposing tighter exclusions from rights (e.g. the denial of social rights in the probationary year), and also the absence of support for rejected asylum seekers that are unable to leave (Morris 2003). This granting of entry is evident from the drive to get the best migrants in the late 2000s, a time when interviewee Akini could easily be recruited by her employer as 'fresh talent' after graduation from her postgraduate degree programme (see Kuptsch and Pang 2006). The situation completely changed with the economic and financial crisis. In 2012, these visas were modified under a new name Tier 1 (Entrepreneur) to prevent what the Home Office termed as abuse of the system under Tier 4 by migrants working in low-skilled jobs even if they are highly skilled. This perception of migrants does not take into consideration of their right to decent work or even earn a livelihood in the face of a hostile and restrictive immigration environment where the playing field is not even – their access to work coming after European nationals and permanent residents.

From the analysed data, two examples spring to mind: Kiconi and Malia, both East African female migrants in their late twenties who were at one time employed in domiciliary care while pursuing (and later while possessing) expensive University degrees from the UK. Kiconi (and other migrants in her position) lost the possibility to acquire permanent residence following the change in law, since she could not get sponsored by her employer as a 'low-skilled worker' with the work classification of a

carer or support worker. In 2011, Kiconi was ineligible to switch to Tier 2, could not get a work permit or a Certificate of Sponsorship reference number (UK Visas and Immigration 2015, 14). Malia, meanwhile, was working as a nanny, without a contract at the time of interview, with a migrant family and later got the third care job in a nursing home. Both Malia and Kiconi were unable to get jobs matching their qualifications due to the restrictive requirements of meeting the RLMT by employers, and their non-EU nationalities meant that they could not compete equitably when it came to applying for jobs and undertaking interviews. Following the change to the policy on the post-study work visa in 2012, interviewees Kiconi and Malia found themselves with precarious legal status. Though they had rights to work freely in any occupation under the Tier 1 (Post Study Work) visa at the time, there were left in a precarious situation, having temporary residential status with no chance of renewal at the time. This was a form of migrant rights being clawed upon by the new regulations. While other European countries were extending post-study work visas with similar conditions as the UK to non-EEA nationals, the UK government cancelled this route to work (for majority of students) in 2012. The government effectively excluded such students from claiming 'their right to work' in the UK by altering the types of permit and introducing new requirements for migrant students wishing to continue living and working legally in the country.

Like other points-based systems used around the western world, for instance in Canada, USA, Germany and Australia, the PBS inspires public confidence by using seemingly clear and measurable criteria for economic and labour market integration objectives (Murray 2011, 16). The UK government similarly uses this system to convince migrants of its neutrality in admission of the ideal migrant who would have met the set points which makes the system appear very flexible and neutral to class, race, and gender interests. This inherent flexibility of the system makes it easier for governments to be seen to be responding to changing economic or social circumstances (ibid.). Furthermore, by awarding points for a job offer, the government provides an incentive to migrant workers for immediately entering the workforce in a highly skilled capacity – reducing the perceived risk of Tier 1 migrants taking less skilled posts, which would

also ensure that businesses rather than bureaucrats determine 'the brightest and best' to be admitted up to the cap ceiling (Murray 2011).

However, in 2011 when students could still easily switch into the Tier 1 post-study work visas, many students from African countries, on failing to get highly skilled positions or even not getting selected by employers due to the requirements of the Resident Labour Market Test (RLMT) (for the statistics at the time see Salt 2013, 90–91), easily switched into this category. Due to difficulties in accessing the labour market, some later worked in jobs that were deemed low skilled, despite them holding a Tier 1 visa that was meant for highly skilled migrant labour (Home Office 2006; Migration Advisory Committee 2009a; McIlwaine 2010). An example of rights restrictions can be seen in the way the UK determines which skills qualify someone to be able to migrate to the UK under the PBS. For instance, as of 5 April 2015 carer and support worker occupations were not listed on the UK Shortage Occupation List (SOL) (Migration Advisory Committee 2015b) while in 2016 nurses were back on the list. At the time of my interviews, several post-study migrant visa holders worked as carers in nursing homes and with mentally disabled children, earning more money than they would have earned in their own countries, while others worked part time as nursing aides in hospitals, and others as nannies for migrant families, due to the existence of readily available nationality based networks and migrant communities.

The UK PBS remains a political tool in managing labour migration to help the government communicate its control of its borders, systematically limiting the level of migration while allaying concerns from the public over opening up to migration and preserving the desire of the bureaucracy to remain in control (Murray 2011). Herein, bureaucracy is used in a Weberian sense and refers to the seemingly neutral operations or management and public administration over the visa and immigration services where offices are occupied by unelected government officials of the UKVI. Below I turn to another form of governance over migrant populations that some BAME migrants encounter within the UK.

6.1.2 Borders and criminalisation in migrants' daily lives

Migrants may encounter the UK border every day – not only by physically travelling to the UK but also by encountering boundaries in their daily lives such as stop and searches that differentiate them according to their skin colour in comparison to other nationalities. These stops were a form of exclusion that some interviewees described as encountering borders in their daily lives. Interviews with migrants, including Kato, Sulaimani, Akini, and Dr. Petero revealed this criminalisation of migrants, regardless of the fact that some have been living and working in the UK for over ten years at the time. Taking one narrative from a female migrant we see this as an example of securitisation of migration and criminalisation of racialised migrant bodies:

> *Here they have what they call "stop and search"... I can't say they are racists but because of the colours, because this is not a black country so they will stop you to search you. They call it stop and search. They said they have the right. You are rushing for a bus, to go and work and then they stop you. "Identify yourself. What is your name? When did you enter this country?" I can't sometimes even recall when I entered the country or need to tell them these exact things because they move with a tiny laptop. They will just type in your date of birth and they will know exactly (...) but you need to tell them each and everything. They start asking your whole history, just wasting your time. First of all they have found out that you are not illegal in this country but still they are asking you more questions. "How did you get that visa?" You know. I just walked into the embassy and got it.* (Susane, Carer).

Such encounters as the one described by Susane above point to migrants' encounters with European states' practice of policing and disciplining migrant bodies. The African interviewees that mentioned these stops pointed out that their different skin colour was a ground for their being stopped. This defies the notion of analysing migration without taking into consideration the category race or skin colour. Examining race reveals aspects of the nature of the state. As Bridget Anderson notes: "The role of the law (and

not only immigration law) in the creation and hardening of the conceptualization of 'race', points to the importance of the relationship between race and the nature of the state" (Anderson 2013, 35). Modern nations in Europe, were built on notions of shared identity and values, constructed or otherwise, whereby the UK similarly as a modern state, is a "racial project, bound up with making and maintaining of racial difference, and immigration controls are deeply implicated in this project" (Anderson 2013, 47). Defining, making and managing difference is central to the study of both society and governance.

Further the elements of who can freely move determine a mode of subjectification concerning 'who we are when we are governed in such a way' and what freedoms we are asked to exercise (Guild and Bigo 2010). The imperative of freedom of movement is overwhelming and penetrates even places, for example airport waiting zones, in which the government insists that individuals are free to leave, and in which you are not detained, but merely retained under your own will to stay there (ibid.). The BAME individuals irrespective of class, gender, and skill status are easily apprehended at airports following the securitisation of migration. Biometric scans, data collection, surveillance are all part of the increased techniques of managing deportable migrant subjects without citizenship claims to the host country (De Genova 2004; Bigo 2010b, 2010a; UK Border Agency 2011). Citizenship can also be revoked when migrants are deported and many interviewees mentioned how claiming citizenship is a way out of deportability and move towards more legality (see chapter seven). This exclusion of non-citizens through deportation also shows citizens that they still have some privilege (Balibar 1988). Notably it is not only migrants that experience these stops and searches although if you are of Asian, Ethnic or Black ethnicity you are likely to be stopped and searched (House of Lords commenting in Gillan, Regina (on the Application of) v Commissioner of Police for the Metropolis and Another 2006). The Judge in that case noted that since it was clear that the terrorist threat came from certain ethnic groups it was justified for the police to stop and search.

Religion is another aspect of intersectional belonging relevant in this study. It relates to matters of racism and migration and remains prominent in contemporary discourses and practices of racialisation and the struggles against them (Yuval-Davis, Nira; Marfleet 2012, 4). Following the 9/11 attacks in the USA and the 7/7 bombings in London, attacks in East Africa (2010 Uganda and later in Kenya), religion in general and Islam in particular have occupied a special role in constructions of the racialised 'other' (Yuval-Davis, Nira; Marfleet 2012, 5). Many interview participants, especially those identifying themselves as Muslim, even when not questioned about it specifically talked about the relevance of their religion and how it also affects how they are treated at the airport, or by some members of British society and at work.

The respondents mentioned how they were expected to prove their "law-abiding nature" when making visa applications, upon travelling to the UK and meeting the border at the airports, and when applying for housing and jobs, irrespective of their marital status. One interviewee, Berona, mentioned that she was sometimes upset at the airport because of all the questions she had to answer to prove that she was who she said she was (interview with Berona, carer). Berona, a female care worker, mentioned that she felt controlled by "*Bakigato"* (meaning the people with the shoes) and "*Abenyumba*" (landlords) with reference to the Home Office officials (interview with Berona, Carer). The language she chooses to name the government and its bureaucrats illustrates her perception of them as controlling, monitoring, and restrictive of her freedom to live freely in the country as an immigrant. She felt as if she was criminalised from the very beginning, since she was not treated as innocent by immigration officials but as guilty until proven otherwise. I relate these experiences with the contested border spaces ideas on security advanced by Didier Bigo (Bigo 2010b). These controls of the border remain both external and internal (Boswell 2008, 8).

States including the UK have historically resorted to criminal law in order to regulate social life. This regulation of social life extends to controlling movements of migrants regardless of the sectors where they work. In an era dictated by securitisation of air travel, migrant workers in healthcare are no exception, as anyone can be viewed as a

'terrorist', a concept that falls squarely within the jurisdiction of criminal and anti-terror laws that are used in many countries to track would be criminals. Kasiye a migrant working under Tier 2 as a nurse within a care home explained that he felt as if he was a criminal whenever he had to travel to his home country (something he does twice a year) and pass through the airport. He explained that he felt as if migrants were treated by the British entry clearance officials as if they were criminals (Kasiye). The treatment of some migrants at airports – where they are criminalised or excluded through questions that they are asked to answer in order to prove that they are not "illegally seeking to enter the country" nor "criminals" beyond reasonable doubt – is as if they are in criminal courts.

Didier Bigo details the border controls and their assemblage, and talks about security and control by Border Agents collecting bio data and computerising migrants' information as a form of legalised control or surveillance (Bigo 2010b; Guild and Bigo 2010). Bigo argued that this governmentality of unease works through every day to divide the population into categories of those non desirable, unwanted groups that are to be either integrated in a way of assimilation or to be banned, excluded and removed (Bigo 2010b, 18).

Criminalisation of migration does not segregate according to professional categorisation or visa/residence status as long as someone appears "different", for instance religious identity, skin colour and dressing (interviewees on applying and coming to UK at the airport). Additionally, I observed that this treatment at the airport (which I equate to being an outlier of criminal law) seemed to occur mainly to male migrants than it did to the female migrants I interviewed. The majority of the female interviewees mentioned that they found it easy to get clearance for the entry clearance officers, hardly experiencing any bureaucracy or even getting subjected to these "criminal trials". This discriminatory treatment of migrants continues upon settling in the UK in the form of mandatory identity checks from landlords (Home Office 2015b) and police checks or stops and searches (Crépeau 2014; Palidda 2011). The female interviewees expressed that they easily passed through the border as manifested in the airport on presenting their

passports and resident cards in addition to explaining the purpose of their travel, whether it is was their first time in the UK or as a returning migrant worker. So some migrants experience constraint on their movements whereby male migrants may encounter more stops and searches while travelling arguably due to their skin colour.

This section revealed the different interests that law serves, especially in maintaining the binary of differential access to freedom of movement between UK nationals, EU citizens and migrant workers under labour migration programmes on the other. It additionally touched on the securitisation of movement and law enforcement in the form of stops that may affect some immigrants. Below, I turn to an examination of migrant's experiences related to discrimination in the workplace.

6.2 **Labour rights and discrimination in the workplace**

The healthcare sector is an increasingly flexible and precarious sector while at the same time BAME workers continue to experience discrimination in the workplace. In this section I examine issues of discrimination and professional belonging within the workplace and how the East African migrant workers negotiate and dealt with instances of racism and professional exclusion in case their qualifications are not recognised. Herein, the concept of 'othering' demonstrates how some of the interviewees are perceived or constructed by their colleagues in the workplace. As one nurse states, when asked how she felt about living and working in the UK as a migrant:

> *As a migrant, most of the time it's alright. But sometimes I am made to feel foreign. Sometimes that's with work because I work in the health care sector. Some of the staff, sometimes, can be funny. Some of the patients... But I must say that most of people are not ignorant. But then you do find a few who pick on you because you are foreign, which is not good but I guess it probably happens elsewhere in the world as well. I do not know* (Interviewee Teopista, Nurse).

Although Teopista has a positive outlook of her life in the UK, she revealed how she felt treated differently by her peers in the workplace. From her admission and

perspective, it is evident that Teopista seems resigned to be constructed as "foreign" or as a part of the "other" that does not belong and is not one of the colleagues. Some of the experiences of racialisation occur because migrants are perceived by some members of the society as the 'other', being seen as neither nationals nor citizens. Teopista knows it is not right but also figures it is happening elsewhere in the world, which would make it seem normal. She has embraced this categorisation just like the young men in Jensen's study identify themselves as the "other" (Jensen 2009). Although this is perhaps her coping strategy with the 'othering' that occurs in the form of discrimination as a result of being viewed as a 'foreigner'. While the male migrants mentioned experiencing racist incidents in the workplace:

> *That happens every day normally. At work, on the bus. I was stabbed one day in X (location hidden). Some families don't deal with black men because he thought I was going out with his sister. I regarded that as a racist incident... Black boys and girls are violent. You are rapists, you are drug dealers. Hey you black man I sell weed. It's like black men do bad... It is not connected to the visa or migrant status because they do not know what status you are on. I think it is just the colour of the skin…* (Fadempa, Nursing Aide).

> *Well being discriminated ... but indirectly being discriminated or being disrespected. I think if I could put it that way, yes because you are working with people, you are working with English or Europeans here* (Sulaimani).

Racial prejudices and other factors such as professional belonging also structure the experiences of migrant workers at work and in the communities that they live in. As already discussed in chapter five the UK continues to apply law and policy strategies to curb discrimination and racism through enacting and implementation of different legislation to promote non-discrimination and good racial relations (Ashtiany 2011; Sian 2017; Kofman et al. 2009). Most interviewees revealed that they had experienced instances of racism – both explicit and implicitly, some based on skin colour with the care users.

Here the concept of "others" in relation to "values" are useful as they provide a critical understanding of migrant reflections on how they view some key "British values" in light of persistent racism, but also on how migrants compare their own values and cultures with those of others. Some of the 'fundamental British values' are: democracy, the rule of law, individual liberty, and mutual respect for and tolerance of those with different faiths and beliefs and for those without faith (UK Government 2014; see also Anderson 2013). According to interviewee Kaz:

> *It seems to be harsher on the people from other communities apart from Eastern Europe. It seems to be much more lenient. I wish they could see us in the same light as migrants from Europe. And now they've got limited space, limited resources just like any other country. But it also doesn't give the immigrants a chance to contribute positively to their society because once your time is done, you are out. Whereas in countries like America, they sort of, they engage the immigrants a lot better, and they contribute a lot to their system than the UK does* (Kaz, Senior Support worker and Manager).

On the one hand, I found from my interviews with the East African migrants that they also compare their own "values" to those of others, for instance work ethics and being more hardworking with those of the others (white British, West African, and Eastern Europeans among other nationalities that they work with or are neighbours with). This can be explained as prejudice against other nationalities on the part of African migrants as well. On work ethics, one interviewee, Sulaimani, stated that migrants were more hardworking than the British, emphasising some stereotypes on *British 'benefit scroungers*' – something that is racialised in the UK to a large extent. Stereotypes on undocumented migrants who are often portrayed in UK conservative media as similar or no different from unemployed British natives that claim benefits are commonly referred to as "scroungers" (Anderson 2013, 6–7).

In international human rights law and norms, equality of treatment is an inclusive principle whereby, all nations are obliged to protect the equal and inalienable rights of all members of the human family.[24] However while the British Conservative party speaks of equality of opportunity for "every single individual in this country" (see S. Spencer 2010), this is far from the case upon examining migrants' experiences. As Sarah Spencer asserts: "Equality is not, the intention of any government for one section of society: migrants. Their conditions of entry spell out the terms of their inequality, imposing limits on their right to access jobs, public services, social assistance and participation in elections" (S. Spencer 2010, 2014). So without implementation of anti-discrimination measures and policies against migrants, migrants continue to experience discrimination, exclusion and inequality of treatment as follows below.

The respondents revealed experiencing discrimination when seeking work and upon attaining work. Discrimination was mentioned by most of my interviewees when talking about their dealings with other nationalities, for instance with British elderly care receivers, patients, migrants from other nationalities working within the sector, duty managers, and supervisors of care homes. Some interviewees reported that employers expected them to speak English with a crisp British accent at the time of the job interview. Kaz:

> *She hadn't actually even asked me what my residence status was, but because I walked through the door and I was black and possibly I didn't have a British accent, so she immediately knew that I hadn't been in the country for long so the first thing she asked me is how long l have been in the country. I think by then I had been in the country for three, four years. But as soon as I told her four years, she said "I am sorry you can't apply, you can't proceed with this application. We need people who have been here longer." Now that tells quite a lot* (Kaz).

Kaz' experience above points to the experiences of new migrants who have to adjust the way thy spoke the English language or take pronunciation lessons in order to fit into the

[24] See FN 3, Preamble of UDHR.

expectations of the British employers. While at the same time East African migrants also compared themselves to other nationals specifically low skilled Eastern Europeans who they felt did not even speak English and were expensive to the government. This partly reveals the prejudice against low-skilled categories of workers in other sectors for instance fruit pickers in comparison to workers categorised as highly skilled in economic migration debates. In contrast to other nationals:

> *People come in as doctors, we need doctors. We need lawyers. They are really educated, they are trying to expose what they have studied despite the low skilled people because the more you get the people with the low skills, the more costly it becomes to the government for example people are coming in from countries who don't even speak English as a first language and then when they come in here the government has to facilitate them to make sure they learn English or to pay for translators if they need to go to GPs which is really expensive* (Gladis, former student and Carer).

What remains undisputed is that during job interviews, some prejudiced employers turn down migrant workers with excellent qualifications and even with permanent British residence because they have foreign sounding names or accents (Kline 2016). In the language of human rights law such discrimination is prohibited under UK law, international human rights norms. In spite of this prohibition and anti-racism legislation, the narratives of discrimination and racialisation based on the black skin colour widely circulate in the migrant communities transnationally.

Almost all interviewees regardless of skill categorisation mentioned experiencing racialisation at work, in spite of racism being prohibited under the UK Equality Act. Maurine, a female care-giver articulated: *"...Racist employers or some racist elderly people who were not used to seeing black people and possibly don't like you because of that. It will always be like that"* (Interview Maurine, Carer). Maurine was working as an undocumented care worker at the time of interview. She attributed the racism within the workplace to elderly people not being used to seeing black people and that this would

not change. Another female migrant nurse said that some "old people" do not like nor want to be touched by a black nurse which incident she later reported (Teopista,). Maurine and Teopista were resigned to this type of treatment and that they could not do anything about it other than report it. This type of acquiescence to a racialisation environment is a coping strategy at the workplace. On the other hand as an undocumented migrant waiting to claim asylum at the time of the interview, Maurine's reaction and behaviour could be attributed to her being afraid to use legal channels, for instance reporting to her supervisor, hiring a lawyer (an approach she deemed expensive from the onset), or even to claim any form of redress, and thus preferred to continue working in her workplace despite always feeling that she was being subjected to racist abuse. Another migrant, Lupenzi, expressed that he had been abused by an elderly client who called him a "*baboon*" although he dismissed it saying probably it could have been as a result of it having been his first day at work. This name calling was experienced by almost all interviewees regardless of ethnicity and gender.

Scrutinising the category gender alongside race also reveals how gender inequalities in destination countries affect the experiences of migrant women and men and what steps must be taken to ensure equal opportunities and outcomes for them (Boyd 2006, 1). There is an intersection of the two categories race and gender where, for instance, black women from East Africa might be subjected to double discrimination based on their gender and skin colour. In light of the mentioned deficits relating to gender in immigration policies, the government consults with academics such as those within the MAC in order to seek ways of promoting gender balance of incoming migrants and within the society (Grosfoguel, Oso, and Christou 2015; Migrants Rights Network 2008).

Some migrants were constrained by the "professional status" ascribed to them or their ability to attain professional recognition and belonging. Doctors, nurses, and other healthcare practitioners face barriers set by the UK before they can fully work in the country. According to Sondra L. Hausner in her study on the migration of Nepali nurses to England, the issue of "professional belonging", which is regulated by the NHS, is

more contentious than their aspiration to belong within the social sphere (Hausner 2011, 6). Professional belonging might influence migrant workers' access to or enjoyment of decent work, especially if while they are trying to advance themselves on the career ladder and attain professional recognition, their peers do not view them as professional equals. And yet, the state also excludes them, as Hausner asserts:

> The great irony of nursing migration is that professional women pose as students, and pay agents to facilitate their move, even though their skills are needed – solicited – by the British government. This construction, surely, constrains a foreign nurse's hopes of belonging. Indeed according to the British Government, she does not belong, either to the country in which she now lives, or to the national health care system she now works. All in her own best interest (Hausner 2011, 6).

From my interviews, some of the respondents revealed that they have had similar issues and work in private nursing homes, since public hospitals cannot hire them because of their visa status. Some respondents faced difficulties with issues of having foreign accents in spite of having good knowledge of language, accreditation, deskilling, and/or having to work below their skill level. So professional belonging, an aspect that is strongly regulated, also plays a big role in shaping migrant workers' experiences of decent work or lack thereof.

Furthermore, migrants similar to other workers all over Britain are expected to complete Diversity and Equality Monitoring Forms or Equality Opportunity Forms. These forms are required when one is seeking employment in the UK. Such forms are a way of monitoring and preventing racism within the workplace with respect to the workers' ethnicity or skin colour and countries of origin. The forms can have equality implications for migrants in the UK, (Kofman et al. 2009) whereby they may be used as a ground to deny employing a person of a certain nationality, race, or colour. One respondent felt put off from even applying for jobs because of the requirement to fill in these forms. She said:

> *It's mainly when it comes to giving out jobs, you notice that these jobs go to people, who... of course they first consider nationals, then the EU nationals... It is not fair to make me fill in an equal opportunity form, when they are not going to respect that, like equal opportunities. I don't really think that they follow this through. It's like the moment someone reads your name, that's the end of the job. That seals the deal. So really, I feel that's a bit unfair* (Malia, former student, Nanny and Carer).

Malia felt that the forms were exclusionary, as through them the employer acquired private information which was then used to deny her most of the jobs that she applied for. She felt that the moment they read her name and it sounded foreign she would not be employed.

On the other hand, one migrant, Kasiye, a male trained teacher worked as a Nursing Aide in a hospital (and from time to time in a nursing home), expressed feelings of discrimination and not relating well with his peers professionally. He felt that the female nurses at the nursing home did not respect him since he was working as a "mere nursing aide" (interview with Kasiye). Helma Lutz's study on masculinities has also shown how migrant men, in fulfilling their dominant gender role of breadwinner, accept employment at the bottom of the occupational ladder where they endure racism and heavy exploitation (Lutz 2008).

Kasiye's qualification from his country had not enabled him to pass the qualification test to work as a secondary school teacher, and therefore he ended up working below his qualifications and only held down the job to meet ends with the hope of attaining professional recognition in the near future. This experience of 'de-skilling' is shared by other migrants, for instance most Zimbabweans working as carers were stressed and frustrated due to deskilling and a loss of status, and feel trapped in care work, with little prospect of using their qualifications in the UK (McGregor 2007). For men such as Kasiye, who trained as a teacher in his own country, but has to perform caring roles that

are required with his nursing aide job, these feelings can be heightened by the double humiliation of having to do not only dirty and demeaning work, but also what is perceived to be 'women's' work. (McGregor 2007, 802). In Kasiye's opinion, he felt that the women at his work were looking down on him.

The irony remains that while law might appear to legitimatise racism within institutions and practices by immigration bureaucrats, it is also used to curb racism as provided in the Equality Act 2010 (see UK Government 2010; Kofman et al. 2009; Satterthwaite 2004). Racism in the UK is not institutionalised as such but has a powerful impact on migrant subjects as they may experience it when dealing with other nationalities in the UK, from potential recruiters, from patients (service users) and colleagues at work.

6.2.1 Legislated precarity and restricted rights before the law

Migrants' enjoyment of rights is connected with their ability to work and maintain their visa while in the UK. This linkage of the legal status in a country to work means that migrants are easily in a state of precariousness in case they lose their job and other sources of income (Goldring and Landolt 2012; Valiani 2012). This implies that in the debate on citizenship, laws appear objective in protecting migrants, but in fact may lead migrants to a precarious status, as migrants continue to experience precarity as a result of immigration regulation (e.g. requirements of employers to sponsor the visa process in case of the Tier 2). Their wellbeing is connected to work and in times of crisis they can hardly enjoy a positive work-life balance or welfare. From my interviews, almost all migrants talked about how life in the UK was mainly just about one thing: work. Kato recounted how he always travelled back to his home country to re-apply for the visa under the work permit system and later applying from within the UK under Tier 2. He was sponsored by his employer, the NHS, for both visas. He always kept up to date with the changes in the laws and policies because he had at one time been denied extension of his then Tier 2 work visa because his employer had not filled in the right job description, even though his professional documents and contracts stated this. Kato narrates:

> *In case your job was not on the list of shortage occupations, they (employer) usually have, I think to show that they have advertised the job and resident workers have failed to apply. So the criteria widens. But if it is on the list of shortage occupations, all you need is a job offer and that's it* (Interviewee Kato).

Here, precarious legal status following this mishap is attributed to the employer who had not employed due diligence when applying to the Home Office for a sponsorship certificate on his behalf. His job was included on the national shortage occupation list, and if a migrant was constructed as belonging to this list during that time, employers were obliged by the labour laws to grant them employment and sponsor their Tier 2 application.

The British regulation of the PBS creates migrants with precarious legal status. Highly skilled migrants can find themselves with this status in case they lose their sponsorship. For instance, migrant nurses experience precarity partly as a result of state regulation of the profession to maintain quality. As a developed state, the UK implements some restrictions on the recruitment and employment of nurses from developing countries – although it is not exactly illegal to come as a nurse to the UK from a less developed country, you cannot be recruited by or work for the UK government or the British NHS. As Hausner elucidates:

> You're on your own. Or rather, you have to come on your own dime, pay your own way, remunerate the agent that places you, work in a private nursing home (or in palliative care rather than in a hospital at skill levels much beneath your experience), and be paid lower wages than your skills would merit (Hausner 2011, 5).

Migrant workers from East Africa are part of citizens of states whose currencies are much weaker than the British pound and so are likely be willing to work for very little – especially as there may be almost no job prospects in their own home countries. Interestingly, workers – especially care workers – have to go through the market through

employment agencies rather than the government, even though healthcare is nationalised under the National Health Service.

In an interview with Maurine an undocumented migrant she explained her job as a Carer as an *okay job involving looking after old people* that she *felt compassion for* (interview with Maurine). She had no option to work within the sector of her previous qualification: "*so you must do the job you get*". She had signed a work contract with a care agency before she started the work and only did the job because she was "*desperate for a job and at mercy for work*". She added that: *"It was easy to get the job because she had the training and necessary qualifications*." At the time of the interview, she had a permanent job in the domiciliary sector.

The regulation of work that healthcare professionals for instance nurses can access also makes BAME migrant nurses from East Africa legally precarious. Due to the implementation of the 2003 Commonwealth Code of Practice for International Recruitment of Health Workers[25], some migrants might prefer working in a hospital, but are limited to employment in a private nursing home or other private healthcare facilities. Through the Department of Health Code, international recruitment of healthcare professionals is regulated (Department of Health 2004). The Department of Health Code covers some, but not all private sector employers, and does not prevent health professionals taking the initiative to apply for employment in the UK, or to come to the UK for training purposes. (Buchan and Secombe 2006)(Buchan and Secombe 2006; Buchan and Dovlo 2004). Under the Code, hospitals are restrained from hiring healthcare professionals from developing countries. There is need for more palliative care for an elderly population, which, being brown and female, migrants are considered well suited to, although they may be a trained nurse with decades of experience (Hausner 2011, 5). This regulation keeps them in a precarious status, not belonging to a category that can work for the regulated NHS but for the mushrooming nursing care homes and

[25] See: The Commonwealth Code of Practice for the International Recruitment of Health Workers. Available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/events-documents/2440.pdf and see: Policy Perspectives. http://www.bpb.de/gesellschaft/migration/kurzdossiers/58122/perspectives-and-conclusion Last accessed 22.12.2017.

often under the supervision of unscrupulous agencies (McGregor 2007; Stilwell et al. 2004; Lewis 1996).

Examining some of the lived experiences of non-EU migrants, both within and outside of the UK PBS, we see the intersectional effects on migrants of their social-economic class, gender, and race, together with different UK laws and policies. Though seemingly neutral, i.e. 'classless' and 'raceless' (Anderson 2013), due to requiring all non-EU migrants meeting specific points, they in fact contribute to less rights for specific migrants, especially those deemed low skilled. The restrictive conditions migrants must fulfil to remain in the UK under the PBS mean that although these immigration policies seem neutral (since one only has to prove that they meet specific points or have a certain income), in reality they emphasise the gendered and racialised effects of migration processes. For instance, these restrictions mean that some female nurses could not easily meet the points under the PBS because of maternal leave or low salary in their country of origin. They could only migrate (for work) as dependents of holders of PBS visas who can work in any sector, or as visitors and thus work in an illegal capacity.

At the same time, some African migrant workers' work permit applications were highly likely to be rejected by immigration officers. Kato talked about how he felt penalised by having his work visa application rejected because his employer had not written his job description and the visa issuing agency mistook him for a dependent instead of as a lead applicant. In such cases migrants find themselves with a precarious legal status during the time when they have to wait for their visa renewal applications to be processed by officials and bureaucrats working within the Home Office (Interviews Akini, Berona and Kato). In cases where the officials make a mistake, it is the migrant who pays the price. Kato stated that because of immigration officers at the UKVI he had had to apply for his Tier 2 visa twice and it always came back with errors. He said he was disturbed by having to apply for the same documentation saying:

> *So they had written in my visa, 'dependant' yet I was the main applicant. They made a mistake when they were issuing it. So in fact even my employers they had*

just asked me to start work straight away and then I said I had a problem with my visa and that I need to get a new visa (interviewee Kato).

The interview extract reveal how that simple human mistakes and incompetence on the part of bureaucrats working within the Home Office directly affect migrants who have to pay extra in both time and money to correct these mistakes. Another migrant student and carer, Malia, that I contacted again in 2012 to inquire whether she had transferred to the Tier 1 (post-study) visa mentioned that indeed she had received a similar treatment after waiting for four months, without being able to work – on checking, the card, she found it had an error about her gender. Later the error was corrected by the Home Office and she could continue working in the UK.

Additionally, the persistent changes in immigration law and policy adversely affects migrant workers' health and welfare irrespective of whether they fall within the highly skilled (upper strata) or are classified and labelled low skilled (lower social class), as I observed from my interviews, in particular with Akini, Birena, Lupenzi, and Kato. From field observations, I was able to understand some of the causes of migrants' precarious legal status, a restricted labour market with the regulation of professional belonging excluding some migrants "out rightly" (Kasiye). Meanwhile, undocumented status under immigration law excluded Namu from working as a nurse and meant she could only work in a care home and in private households. The immigration and background checks that migrants have to satisfy in order to open a bank account or to get a library card membership, or rent accommodation, also affected their enjoyment of their rights and their wellbeing. Furthermore, the intersection of law, gender, race, and social class positioning and migration status determined both how migrants can move from documented to undocumented or precarious legal status (and even vice versa), and how migrants negotiate precarious legal status, which I expound further in chapter seven.

Migrant workers whose occupations were excluded from the list of shortage occupations still have to prove that they earn 35,000 pounds to extend their visas or else leave the UK. Some of my informants, under Tier 2 were "lucky" that their nursing occupation

was again re-classified as falling under this list in 2015 (Migration Advisory Committee 2015b). Others mentioned that their wellbeing is negatively affected by the fact that under the UK law and immigration they are expected to always remain in employment or else lose their legal stay in the UK under the Tier 2 visa, in addition to restrictions on claiming benefits – and yet they pay taxes (Kato).

Sectors occupied by women such as private care, which is subject to deregulation and informality, in turn means that the private households (including private nursing homes) are a site where people with the kinds of ambivalent immigration statuses can find precarious work (Anderson 2013, 159–63). Domestic work illustrates the relations between race, poverty, and immigration, and the gendered consequences of the limited conceptualisation of skill and the nature of the labour relation (Anderson 2013, 176). It is a reminder of the heterogeneity of migrants, whereby many of the employers of domestic workers are themselves 'migrants', but given that they are wealthy their experiences of immigration are very different (ibid. and field observation). Some of the interviewees hired fellow migrants as child-minders, whereby some of these workers could be categorised either as occasional domestic workers or care givers, while at the same time they were students for visa purposes under the PBS. Highly skilled migrants with a higher social class status employ fellow migrants as caregivers (for elderly family members) performing reproductive work; and when the former violated the later migrants' rights, it reinforces their precarity. This reproductive work mainly performed by female migrants involves mental, physical, and emotional labour, and refers to the perpetuation of modes of production and social reproduction, with their associated relations including those of class, race, gender, and generation (Anderson 2013, 161).

Zimula, a 50-year-old female working in door to door care work with migrant communities and receiving payments in hand she did not have "papers" (undocumented). She was easily exploited by an agency that she had registered with in the beginning when she begun working in the UK. The agency withdrew her salary on realising that her she had no work visa, as they did not want to pay the huge fines that would be imposed on them for hiring an undocumented migrant. Zimula had worked

under a visit visa even though under this visa migrants are not allowed to work in the UK (see Home Office 2016 for the UK Immigration Rules). This visa had expired at the end of 2010, but she could not report this to anyone for fear of deportation, since she said she had broken the law. She had used the visit visa to circumvent the requirements of the PBS, having been told by "friends" in the UK that with the visit visa she could work. These experiences highlight the situation of migrant workers with the most precarious status, (the undocumented) who cannot access the law or seek any form of redress since they have acted outside and against the law, and would rather avoid the law rather than engage or resist it.

For migrants with undocumented status, the existing laws meant that they hid from law like entities and did not participate in movements to claim rights. This was not the only response identified, because while they did not institute court cases, some of them sought out their local area Members of Parliament (MP) to seek assistance in getting legal status or permission to stay in the UK, which I examine in the next chapter. So the lack of recognised legal rights for individual migrants (e.g. Namu and Zimula) meant that they could turn to what appear as non-legal means to take advantage of the law-making officials in the UK in order to gain legitimisation of their residence status.

From the interview data, one dominant view of law for mainly the undocumented migrants was that it was necessary to hide from the law or to avoid it. Some migrants were indifferent or even ignore rights-related conflicts because they want to continue working and earning an income in the UK, something which has been expounded as part of migrants trading off rights for work. Migrants' experiences with precarious legal status is one example of the role of immigration law (control of immigration) to create immigration statuses and categories that distort legal status and access to rights in another legal regime, i.e. labour law, which is meant to protect all workers irrespective of immigration categorisation (see Schwenken 2013, 134). Migrants with a precarious legal status or who were undocumented chose not to seek legal redress for rights violations as they were more comfortable with continuing with their work and not challenging the exclusionary immigration law system.

Furthermore, migrants' ability to enjoy a greater work-life balance is limited in cases where their employers discriminate them or do not recognise the intersectionality of various factors or structures, which hereby include immigration laws operating against labour and human rights laws, racialisation, gender biases, religion, and age. As shown herein, the concept of precarious legal status is applicable to migrant individuals in a range of visa categories including the Tier 1-4 visas and skill levels, who may also experience shifts between different types of legal statuses over their duration of stay in UK. Thus periods of legality and semi-legality often alternate, for example for students on student visas who are allowed to work a limited number of hours or days but who periodically exceed legal limits. This semi-legality is experienced on a daily basis by students that work as carers and nannies and whose universities also have to report them in case they miss lectures (Interviews with Malia, Gladis and Kaz).

In addition to the precarity, Migrant interviewees commented on the different treatment of fellow migrants depending on skills categorisation:

> *They* (low skilled migrants) *should be treated the same and I am sure they are treated the same. The only problem should be that they think they are treated differently because they earn probably less than what the skilled workers earn. As far as human rights are concerned everybody should be treated the same. That doesn't make me happy really if some have different human rights* (Interviewee Dr. Menya, Medical Doctor).

Most of the interviewees were aware that the UK had laws and policies that they felt where restrictive and interfering with their ability to access work there. Taking the example of narrations by Kaz, a male manager in a nursing home, we see that migrants compare their experiences across countries where they have visited or already lived or plan to live:

> *I find it very strange that they can, in this day and age, they can still limit migrants to that level, I mean it's bad in some countries, worse than the UK; but being a first world country, being a developed country it should be a lot more easier or lenient to people. It should be more engaging and embracing communities which is not the case.* (Interviewee Kaz)

Although other interviewees when probed further about what they thought caused these restrictions on their rights indicated that they did not know which specific law or policy it was. Some including as Kaz took law to include the state law and policies on immigration and that this extended into all aspects of their lives as migrant subjects under immigration laws with relation to the different visa categorisations and statuses that they could apply to come to the UK under, as I expand herein. As explained in chapter three, the concept of legal consciousness analytically refers to the understandings and meanings of law circulating in social relations, that is: what people do as well as say about law, and is understood to be part of a reciprocal process in which the meanings given by individuals to their world become patterned, stabilised, and objectified (Silbey 2008). Some of the initial elements of migrant legal consciousness include migrants' practices in navigating, coping and dealing with law in their daily lives. Some of the coping strategies revealed in migrants' decisions to accept what appear as 'rights violations' and not to resist are related to the migrants' desire to avoid conflict and their interest to remain living and working in the UK. This can also be equated to migrants' emerging 'avoidance of law' or 'before the law' legal consciousness, especially for migrants who are undocumented and those that are experiencing precarious legal status (e.g. at a time of unemployment or while waiting for a decision on a residence and work permit renewal). These individuals may also choose not to participate in demonstrations at work for fear of drawing attention to themselves due to factors beyond their control or for having acted against the law, thereby acquiescing to a state of rule of law.

Migrants' transnational legal culture from their countries of origin and that acquired upon settling in the UK affects their responses to perceived rights conflicts. For instance,

migrants that were already aware of their legal rights before moving to the UK were more likely to speak out about rights violations than those who expressed a lack of awareness of rights even before moving to the UK. For instance, Sulaimani stated*: "Well my rights, these are the basic rights everywhere you go… So I was definitely acquainted of my rights here"* (Interviewee Sulaimani). While Dr. Menya stated: *What rights? I expect the United Kingdom to have the same rights as the rest of Europe* (Interviewee Dr. Menya). Most of the interviewees were well versed with the UK immigration policies and they felt that some of these 'laws' were restrictive and interfering with their ability to access work while also enjoying family life (for instance the regulations on family reunification).

Other migrants, indicated their knowledge of labour rights and how to conduct themselves in case of a perceived rights violation within the workplace. For instance Fadempa:

> *I've got to discuss with my line manager, whenever this happens to you, you have to fill in an incident form. It's a yellow form and a green form. You fill in one and you give one to the line manager... So this patient who spat at me or this patient who slapped me, I had to fill in the form - one to the manager and one to my file so they've got evidence* (Interviewee Fadempa on reporting under NHS regulations)

Here Fadempa was seen to comply with NHS regulations, which structured his behaviour as a support care worker and discipline him in how he behaves towards the hospital patients.

On suing by patients:

> *Suing culture – that is going on. We have got to be careful. Families and relatives have got this culture of suing if anything happened to their family member or someone develops an ulcer or pressure sore how it happened and if it turns*

into...The reason is the person was sleeping in the bed. You have to be careful. Some of them are old people... You need to explain how that happened. Sue you on that and then you can get fined on your wages (Interviewee Fadempa)

Awareness of the repercussions such as suing in case one failed in the duty of care to the patients meant that migrants took extra care in order to avoid getting sued by family members.

Thus, this section revealed the different interests that immigration law serves within the UK – especially in power relations – such as maintaining the binary of differential access to rights between UK nationals, EEA citizens, and permanent residents on one hand, and migrant workers under the points-based system (PBS) on the other, in addition to criminalising specific aspects of migrants' lives. Critically analysing migrants' *before the law* legal consciousness illuminates the experiences of marginalisation and exclusion of migrants in developed states. It also contributes to the dominant discourse of migrants not accessing rights under the law in developed states premised on the rule of law. The 'before the law' elements revealed through this section require a further examination of East African migrants' responses to the constraining structure of discrimination upon migration which I turn to below.

6.2.2 Hybrid responses to discrimination

Migrants have different responses to racial discrimination by service users and employers. The 'intersectional othering' of migrants is equitable to racialisation herein, and migrants' reactions (agency) include embracing it and identifying themselves as the 'other', while others resist it by dis-identifying from the identity of the 'other' (Jensen 2009). From these different subject positions, it is evident that 'othering' is not a straightforward process of individuals or groups being interpellated to occupy specific subordinate subject positions (Jensen 2009, 25). For instance, Sulaimani equated migrants' being described as economic migrants in a derogatory way to similar to being called a black person. He stated: *"That's what we are. That's who we are. Definitely*

there is no doubt about it. It's like calling me a black man. What am I going to do about it? I am a black man." (Interviewee Sulaimani). Yet another male migrant revealed the humiliation of being addressed as a black man and finding it a negative experience. Fadempa revealed a similar experience at his workplace: *"People at work calling you – "hey you* black man*!" You don't have to call me a black man you just call me hey you man. Don't mention my colour because that puts me off. I define that as racism"* (Interviewee Fadempa). These two different experiences point to the two juxtaposing positions where black is both a political identity and a racial one.

I understood Sulaimani's reaction as his embracing his identity as a black migrant as part of his individuality that he could not change nor be bothered by it. While Fadempa preferred not to be referred to by his colour calling it racism and preferring to be referred to as just a "man". Fadempa resists such treatment equating it to racism. For migrants, agency is always at play, and people do not always accept becoming the other self, but rather othering can be embraced, capitalised upon, resisted, or dis-identified from (Jensen 2009, 26). While Dr. Menya affirmed: "*It is so. We are economic migrants. There is nothing wrong with that."* This points to an acceptance of the dominant discourse of migrants as economic migrants but also to an awareness of the reasons that make East Africans leave their countries in search for their economic livelihood in a peaceful environment. Yet Namu expressed displeasure at the term 'economic migrant':

> *We really contribute a lot in this country. We do most of the work. Like in my place it is only Indians and we Africans. We don't have any white person in my workplace and any European people. There is no British person there. Most of the hospitals its always Black people or Indians or whatever. So we really contribute a lot in this country.* (Interviewee Namu)

Her emphasise on migrants doing most of the work points to the economic utility approach of migration echoed in the debates on economic migration about the benefits of migrants to the economies of receiving states. It also points to how migrants form the

lifeblood of the healthcare sector in the UK i.e. in both the public (NHS) and private sphere (for example e.g. the nursing home where Namu works).

As shown above some of the migrant interviewees' responses to othering included embracing their racial identity, while others resisted the negative racial connotations that their fellow workers were subjecting them to. Depending on the gravity of the situation, resistance to and ignoring racist remarks and actions were mentioned and are some of the circulating ideas on how to deal with racism in the workplace.

> *In relation to staff, you've got experiences of different people. Some people may accept you and able to relate to different backgrounds and so on and others would do things that are quite discriminatory so it's up to you the individual to either give it a brushoff, basically feel ill about it but if you don't mind you move on. But some are approachable, some are willing to help you in whatsoever and that's it* (Interviewee Sulaimani).

This is a usual response of some professional workers, as they do not want to involve themselves in conflicts or may not want to define every conflict as racism. Such responses are determined partly by their social class status and gender. Responses whether resisting and speaking out loud or remaining silent reflect the diverse cultures from the countries of origin where some may respond loudly in face of conflict while more conservative ones find it dignified to remain silent in the face of confrontation.

Other migrant interviewees both female and male, directly resisted and reported to managers and supervisors in the hospitals and care homes and were they were working about the racist incidents. These responses to racist workmates and care receivers, reflect a transnational action of resisting racism by speaking out about it as opposed to silence that Sulaimani had recommended to his colleague at work.

While Fadempa, in choosing to resist and report racism, complies with NHS regulations:

> *I've got my rights but I have got to express my rights under the NHS rules. So if I go beyond I will get fined. I have got a right of defending myself against someone not to call me a black or a black monkey or whatever as they call us. I have got that right to defend myself, but I don't have the right to beat someone or to hit someone because he called me a black man... So that means you have gone over the NHS rules. That is regarded as being offensive. So you need to exercise that right within the NHS rules* (Fadempa).

Similarly Hajati, a support worker, described her negative experiences as related to racism linked to colour differentiation and name calling: *"What I can describe is, for example, our colour black and white. So someone can say 'you black monkey'. Why would you bring that*?" Another reported instance of discrimination in the workplace takes the form of Islamophobia. This occurs when migrants are discriminated and treated differently by fellow employees because of their religion (for discussions on this see Boswell 2005; Kofman 2004). Hajati explained that she had also experienced religious discrimination from her workmates. She described a negative experience at work when she prayed during her lunch break, saying:

> *I have also experienced the racism of religion because I am Muslim. For example at my place of work I am the only Muslim there. When I am going to pray, it is always a bit hard for other staff, for the people I am working with, to tell them that I am going to pray. They don't really see it as something important to me.* (Interviewee Hajati, Support Worker).

As seen above, basing on her religion, she had also experienced instances of Islamophobia at work when she was bullied by her colleagues. She reported these instances to her manager. Such instances of migrants experiencing Islamophobia in Europe as either religious discrimination and as cultural racism are now well documented (Grosfoguel, Oso, and Christou 2015; Bayrakli and Hafez 2017).There remains anti-racism legislation at the national and international level to protect minorities groups including women specifically but there remain difficulties in

implementation of anti-discrimination legislation globally where there might be counter groups arguing against the rights of minority groups. Tackling these issues in detail remains a ripe avenue for further academic research.

6.3 **Conclusion**

This chapter contributes to the existing research on migrant experiences of being governed and their own conduct as part of their legal consciousness in accessing entry and work permits to the UK. For migrants there is no clear right to decent work as it is affected by politics in the form of restrictive immigration management law and policy, then socially due to discrimination within the society and economically – inability or restricted access to the labour market. Migrants have to negotiate and struggle with immigration policies to access work, manoeuvre Resident Labour Market Tests, and deal with landlords for accommodation and immigration status checks. This chapter examined how migrants become legal migrant subjects and teased out the power of the legal institutions. As elucidated herein, the implementation of such managed migration policies is problematic: they lead both to the violations of fundamental human and labour rights, and to the institutionalisation of a dual-migration regime, in which unskilled migrants have only access to less attractive migration channels, whereas their skilled counterparts enjoy more rights. The UK's practice of differentiating migrant workers' rights thereby contributes to migrants' precarisation under mainly immigration (and other) law due to their migrant and status as non-citizens. By examining the experiences of skilled migrants in different sections of this chapter, I have elucidated on precarisation of workers working in jobs classified as highly skilled and low skilled as a result of mainly immigration law and related policies, in addition to an intersection of other factors including racial discrimination.

The specific experience with law determines which subjectivity, migrants will draw upon and determine the response that migrants with different statuses take in cases of rights conflicts. The data analysis reveals East African migrants' migration to the UK where they demonstrate to visa officers that they are highly skilled professionals and with a high income or high economic social class status. Migrant workers' lived

experiences with civic stratification of rights, coping with discrimination and their perceptions of various facets of the law were revealed. In addition to the legal framework, regulations, and state policies of the UK, other issues such as global inequalities determine the construction of the highly skilled migrant as the mainly the ideal migrant subject that easily migrates and is granted more rights upon migration. While the community of value discourses and cultural boundaries contribute to a migrant's exclusion from the society where migrants are discriminated, treated as 'racialised migrant others' and shape the dynamics of migration for migrants in their everyday lives.

In the following chapter, I will go further and discuss a counter-version of the legal consciousness identified in this chapter as a part of rights-claiming and coping strategies that are carried out through law, and the responses of migrants, whether individually or in collaboration with other actors, to their problematic human rights situation under UK laws. In that chapter, I examine proactive migrant strategies where migrants have been able to realise their human rights interests – for example, by instituting legal claims. Ultimately East African migrants choose what they accept, what they deal with silence or subtly and what they resist upon migration for instance resisting discrimination. Other normative orders e.g. the gender orders, politics and cultural practices from the countries of origin may act to restrict their enjoyment of certain rights upon migration.

7. Migrants' rights claiming, resistance practices and strategic litigation

This chapter analyses East African migrant workers' transnational legal consciousness as including practices of claiming or mobilising rights under the UK's migration management policy. Having linked migrants' precarious legal status to the state's immigration regime, and examined how migrants accessed less legal rights in the previous chapter, here I examine the explicit strategies of migrant workers to claim rights regardless of restrictive conditions under immigration law and policy. This chapter addresses my fourth and fifth guiding questions. By taking this approach I combine migrants' legal consciousness to struggles for migrant rights in the three aspects affecting their transnational lives (for instance dealing with racial discrimination, indecent working conditions, and arbitrary criminalisation of migration) that I examined in the previous chapter. Migrants rely on their transnational legal consciousness in the face of conflicts, for example racialisation and restrictions on rights from the state under immigration law.

The chapter is divided into three parts dealing with circulating narrations of migrants' legal consciousness. In the three parts I discuss the interview extracts and for what I considered as amounting to migrants' proactive legal consciousness (where they turned to law or rejected structures of oppression), analyse the literature and the related law and policy. In spite of the dominance of repressive immigration law and policy and application of labour law there are instances of migrants' subtle resistance to law and related structuring phenomena (Sarat 1990). Examining proactive legal consciousness, this chapter focuses on mainly legal mobilisation, judicial review, and transnational dimensions of migrant workers' rights. Analysing law and rights in practice as experienced by migrant workers includes examining their individual and collective actions.

7.1 Rights consciousness and playing the game of law

Migrants' coping strategies are found to include both individualised and collectively organised strategies of coping with for example discrimination and precarisation at

work. Awareness of rights and avenues to claim rights in the UK is key for migrants' ability to assert their rights. As Silbey noted: "The experiences of law in everyday life may be rendered irrelevant by an abstracted, rational, and reified conception of law as expressed in the story before the law, but the power and relevance of law to everyday life is affirmed by the story of law as a game" (Silbey 2005, 350). Acting individually, interviewee Namu did not hide from law and its 'enforcers'. On arrival in the UK she out rightly told the Entry Clearance Officers at the Airport that she wanted to claim asylum and her job in her country of origin (nurse) which the officers did not respond to and which meant that after she was granted entry. She later explained:

> *I was here illegally up to last year, I then put in a new application for long term residence because if you've been here for a while you have to apply. If you haven't left the country but you have to prove that you've been in this country all this while. Then I applied for the long residence but up to now I haven't got my response yet* (Interviewee Namu).

At the time of her application for regularisation, she knew that under UK Immigration Rules, she could obtain indefinite leave to remain after living in the UK for more than 14 years. At the time of writing, under paragraph 276B of the Immigration Rules (see Home Office 2016), undocumented migrants such as Namu could obtain indefinite leave to remain after 14 years' residence, irrespective of their construction under the law as 'illegal'. This is why she kept collecting letters from her MP and different documents that could support her case. Similarly the state through the immigration bureaucrats seems to be playing with the time in delaying to respond to her claim for regularisation. This delay and long waiting period for decision making can arguably deny Namu accessing regularisation.

Legal consciousness in Namu's case is key to her residence as an undocumented migrant within the shadowy radar of the government, state laws and so perhaps this is why she does not avoid the law while "playing or breaking immigration law". She explained what I interpret as the rules of performing the immigration law game:

> *The first time when I applied I didn't get a work permit to allow me to work. So, most probably you have to show that you have been working, like paying tax, you haven't been depending on the government. You have to show that you've been able to look after yourself, which has been difficult for me because I can't lie* (Interviewee Namu).

As a repeat performer, Namu endeavoured to remain in the UK under the regulations on regularisation of undocumented migrants. She also knows she has to show 'she has good values' and will not claim benefits or depend on government funds (i.e. 'benefit scrounging'). She emphasised that she could not lie, which points to migrants that claim asylum always having to perform specified roles in order to be accepted as honest migrants. Undocumented migrants' subordination is ensured not only through their official exclusion from the labour market and other well-protected domains of the nation-state, but also through the discipline imposed by the threat of detention and deportation – what Nicholas de Genova called "deportability" (De Genova 2004, 161). However, in recent years, there have been cases in the UK where migrants have been deported even after spending over 14 years in the country. The UK government has made agreements with various states to deport 'foreign criminals' who are nationals of those countries (UK Border Agency 2011). Such examples show that immigration law is still a shadow hovering over migrants without permanent residence status and those who are undocumented.

Some undocumented migrants and others with precarious legal status specifically may turn into repeat players of law. Such repeat players usually have resources to pursue long-term strategies and plan for legal problems by arranging transactions and compiling a record to justify their actions (Silbey 2005). Repeat players of the game of law in this sense can also orchestrate litigation to produce rule changes in their favour. From my case study, I found that some migrants may not have such resources or wealth but were repeat players or were expected to perform certain roles by the state. For example Namu, Maurine, and Fadempa in navigating precarious legal status and undocumented status

or Susane collecting documentation to support an appeal application on a rejected visa application before the migration journey, are repeat players of the game of immigration law.

Specifically, here I focus on Namu's path to regularisation in the UK. Firstly, Namu managed to become 'less illegal', remained in the UK and dodged deportation by partly holding down jobs as a carer (in spite of her nursing degree from her country of origin). She was further incorporated into the direct social environment and also accumulates formal traces of long-term presence and good conduct, especially with a view to future legalization (Chauvin and Garcés-Mascareñas 2014, 422–23). According to Chauvin and Garcés-Mascareñas some of migrants' strategies to become less illegal include:

> … not committing petty crimes such as public transportation fraud so as to avoid interaction with the police; not committing serious crime so as to avoid becoming a priority for removal programs; paying taxes and keeping tax receipts; being faithful to one's employer with a view to future sponsorship; keeping the same constructed identity over time so as to build a consistent trail for legalization; being in contact with institutional third parties that may act as grantors and guarantors of deservingness, whether by signing certificates of good conduct or by providing "proofs of in contact with institutional third parties that may act as grantors and guarantors of deservingness, whether by signing certificates of good conduct or by providing "proofs of presence" to be included in legalization applications (Chauvin and Garcés-Mascareñas 2014, 426).

Migrants are able and capable of claiming rights if they are aware of these rights. Migrants' capabilities to claim their rights means that reliance on rights can strengthen migrant workers' position of advocating for their rights. The circulating narrations pointing towards this awareness of migrant rights in the UK are summed up by Kato as follows. As Kato mentioned about his migrant status at the time:

> *It's a temporary thing, I mean when you are a migrant, your rights are restricted for a certain time. You are given rights after a certain time. There is a process through which you can go through to attain full rights. So to a certain extent they are right to do it… But maybe what they should do is reduce the initial period which is like probation.* (Interviewee Kato).

Kato is aware of his partial status in accessing rights and introduced an element of probational citizenship and further differentiated access to rights (civic stratification) that the UK later implemented. Migrants that have spent over five years in the UK no longer have an automatic claim to apply for citizenship but must 'earn it' under UK laws and policies and prove they have not broken any UK immigration laws (for example living illegally in the UK).[26] Further from Kato's assertion above we see an awareness of the stratification of rights according to citizenship and immigration status that means that certain rights are held by certain groups, while other groups such as migrants who have just arrived in a country only enjoy or access limited rights depending on the Tier of the PBS. Most of the migrants interviewed were well versed with playing the game of immigration law. Kato was empowered by his knowledge of visas and immigration law, which he demonstrated when he was applying for his Work Permit and Tier 2 work visas and was faced with some difficulties.

Through their transnational legal consciousness, migrants are aware of various facets of law. Some aspects of this consciousness include knowledge of law as protecting individual migrants who may comply or respect it and hold it in high esteem, to the extent to which it protects them. We see this in Kato's acceptance of the probational period within which migrants are denied access to rights with an awareness that once that period is over then, then they can access rights which he interprets as right or lawful. On the other hand migrants' experiences at work where they stated that they had not experienced any rights violations, points to how the law is upheld and respected in the UK. Gladis stated that she had not experienced any human rights violations in the

[26]See: Apply for citizenship if you have indefinite leave to remain or 'settled status'. Available at: https://www.gov.uk/apply-citizenship-indefinite-leave-to-remain Last accessed 12.09.2018.

workplace (care home at the time) and that *at least there are laws governing everything in the UK (…) In that people are trying to do whatever they do according to the law because the law protects you. You have the right to sue anybody"* (Interviewee Gladis, Carer).

With this statement, we see that Gladis is aware of UK law as a useful empowerment tool that protects (Calavita 2006). Her statement also points to the overreaching arm of state law in 'governing everything' which she respects and complies with. This points to the role of law as a tool of social control. State law coincides with substantive values and moral principles from individuals such as Gladis, which can be used to access and critique state law (for collective dissent and decentering state law see Halliday and Morgan 2013, 9). Gladis who is a 'committed complier' (ibid.) and user of the law, later mentioned that she had a tenancy dispute with her landlord over a deposit on rent and had 'sued' the landlord to recover her deposit:

> *She didn't know about the law and she was only interested in stealing people's money…She doesn't really have any defence. All she was saying was she found somebody in the house and because she was only passing over the responsibility to somebody else and only what she was doing is receiving money into her account. She didn't know about the way I got into this house. So the first contract I had for me to get into this house, we were two people renting the house, and then after sometime the other person left and I had a contract by myself which she signed. So the contract did not specify that you are not allowed any visitors to come into the house* (Interviewee Gladis).

Gladis' compliance with law is explained by her resorting to legal avenues such as seeking out a lawyer for a minor dispute. Gladis consulted a lawyer on her conflict with her landlord and later took the landlord to a small claims tribunal for refusing to refund her deposit.

Trials as visible *legal battles* are the outliers of the law's more routine activities (Silbey 2005, 332). Gladis connected her landlord's reaction to her immigration status assuming that her landlord "*thought she had no documents*" and that she "*would not take her case further*", which demonstrates the precarity some migrants face under the "rule of law" when they are undocumented, and the "hegemonic tale of not having rights" (Schwenken 2013, 136). On the other hand, it also demonstrates the landlord's own "legal consciousness", the all permissiveness and abuse on the assumption that migrants are undocumented and not able to claim or demand their rights. In the UK, where it is now is illegal to provide housing to undocumented migrants, sublets are provided at higher rents (Chauvin and Garcés-Mascareñas 2014, 425). Further although most regular migrants have a passport for personal identification, many may not have proof of permanent address (for example, they may rent rooms in multiple occupancy houses where the rental cost includes utilities, so they will not all have their names on a tenancy agreement or utility bill) (Kofman et al. 2009, 134). This is the case for mainly newly arrived migrants (interview and field observations).

Most interviewees complained of being unable to appeal against failed visa applications on behalf of their family members. The majority of the interviewees mentioned that they were unable to access judicial redress in courts, processes which they found expensive. Furthermore, as migrants are barred from appealing immigration-related applications under UK laws, this means that access to justice through the law for migrants may be a privilege that they cannot easily access. This is as a result of the reduction in the possibility for migrants to lodge appeals against home immigration officers' decisions – part of the UK's systematic cuts to the ways that migrants can address perceived wrongs or rights violations, which include accessing legal aid and securing financial support from community organisations (Grove-White 2010).

From the interview sample, it was female migrants that mainly turned to lawyers and litigation to seek redress against immigration laws. Akini mentioned how she hired a lawyer to represent her interests at the Home Office. Following the Home Office's decision to deny her application for a Tier 2 visa extension, Akini filed an immigration

appeal to be able to continue living and working in the UK (Interview with Akini). Akini's reliance on the lawyer to file her immigration application was premised on her being the main applicant on her immigration application and that she had dependants (husband and children) who were relying on her to remain in the UK.

While Fadempa reported the instance of stabbing mentioned in chapter six and went to court. When I asked him what was the response to his reporting, he replied: "*they arrested him straight away because he was wanted for another charge. I was brought into court with my bandage."* Later, he mentioned that he was satisfied because his attacker was put behind bars: Fadempa's reliance on the law to punish the criminal can partly be explained by how it can be easier for individuals with a higher social class status to institute legal claims in the courts and put others behind bars in East Africa and elsewhere.

Such cases brought to courts and tribunals are the visible outliers of the law and to get to what lies beneath is what is exposed with analysing legal consciousness, as seen with the example from Gladis, Akini and Fadempa's instrumentally resorting to law or legal means of redress above. In states premised on the 'rule of law' such as the UK and the East African countries of origin that the migrants originated from, legal avenues remain one of the mechanisms of claiming rights. This shows the dominance of legal mechanisms as avenues of seeking redress for 'rights violations' or conflicts. Some of the complaint mechanisms available to claim rights include employment tribunals and courts. Migrants can access these arenas to claim redress for rights conflicts and/or to realise their rights. So state courts, and international courts and norms can and do play a role in resolving disputes among parties, for instance in cases of disputes over employment contracts.

For other individuals that are unable to access rights using courts, local area Members of Parliament (MP) have been supportive. For instance, Namu who later claimed asylum in the UK mentioned the important role played by her then local area MP. Namu said:

> *I went to the MP because I am on the voters' registrar. Since I am on the voters' registrar the MP has to help me…Initially they* (Home Office bureaucrats) *were not writing to me but they know where I live and everything, so they've been writing to the MP…when the MP writes to them, then they write to the MP* (Interviewee Namu).

Irrespective of her semi-legal status, the MP helped her by writing numerous letters to the Home Office on her behalf and even did this while knowing "she had no papers". Namu seems to be a repeat player of law by always knowing how to access the MP, and her knowledge of being on the voter registry (which means she is present in the UK, and thereby covered by the Human rights Act 1998). Namu turned to immigration legislation as a route into regularisation (Kofman et al. 2009, 64), although the UK rarely grants or publishes its systematic regularisation of migrants that are illegally in the UK for more than 14 years (Ryan 2009). In this way, migrants are able to exercise agency within restrictive circumstances and turn to policy makers for help in regularising their status in the UK (Ryan 2009, 285).

For Namu the MP was very useful to regularise her stay and avoid refoulement. Namu was aware that since she was on the voter's registrar it showed that she was present in the UK and so had a right to access her MP. I analyse this as her awareness of the civil and political rights to representation which are strongly developed in European and other western states (Schmidt and Halliday 2004), while economic, social and cultural rights that require states to provide for migrants are increasingly restricted especially for migrants categorised as low skilled. This rights consciousness points to the state of human rights in the UK, where all people have rights under the international human rights norms and the UK Human Rights Act, but these rights are limited in practice by "immigration status" to claim rights, e.g. freedom of movement to another country without restrictions.[27] So even where migrants appear powerless due to the restrictions on their legal status within the state, in defiantly claiming their rights by moving to another country such as the UK, migrants are able to both resist restrictive laws in their

[27] See Footnote 3; UDHR Articles 13 and 14.

countries of origin (for those that claim asylum e.g. Namu) and in the receiving country (immigration laws restricting or criminalising claiming asylum). The section below examines migrants' struggles with immigration bureaucrats implementing restrictive immigration law.

7.1.1 Migrants' responses to verdicts of migration bureaucrats

Migrants meet the 'UK regulatory law' when they apply for the visa to enable them migrate to the UK or to extend the duration of their stay once in the UK. According to Alps and Spire consular staff and the officials that determine the decision of visa applications in their daily work, engender regulatory norms that become almost as important as the legal texts in determining how street-level bureaucrats deal with law (Alpes and Spire 2014, 272). Regulatory norms stemming from bureaucratic practice both influence and complement the textual foundations of law in migration control (ibid.). Hajati narrated this about her first application for a visa to work in the UK: "*I had to find a lawyer to help me to go through it, then we put our application in and then after six months that's when they gave it to me"* (Interviewee Hajati). Migrant healthcare workers may hire lawyers to help them deal with preparing documentation of their visa applications and extensions.

Following the decision to migrate, migrants may meet officers in their professional habitus who are eager to keep the unwanted migrants out (the officers' own interpretation of migration policy and law) and this could negatively affect the migrants' applications. Some respondents repeatedly mentioned how their visa applications had been denied more than two times, with a majority simply reapplying as opposed to appealing against the decision of the Entry Clearance Officers who determine migrants' applications. The positive and negative experiences depend on the type of personalities of both the migrant applying and the bureaucratic officer handling the application. As the UK government seeks to manage migration statuses and rights contradictions, and fulfil its transnational obligations under the international law regime, it puts in place bureaucratic agencies such as the UKVI to handle migrants' applications, cutting across

all these visa statuses and categories. Migrants' encounters with bureaucratic agents handling visa applications and renewals are examined below in a bid to shed more light on the structures of inclusion and exclusion generated by implementation of immigration law and policy by immigration agents or officers.

In the past, migrants have appealed against the Home Office following unfounded visa denials. The delays in response on visa applications mean some migrants found themselves in a legal limbo, always applying, waiting and reapplying (Kato, Akini, Fadempa and Susane). Most interviewees talked about always having to repeatedly prove who they were as they left and on return from holidays. Some were not able to leave due to not having the right documentation that would enable them to return to the UK (Interviews with Namu, Maurine, Fadempa - at one point during his stay, and Zimula, and my own field observations). Proving of identity also means that undocumented migrants cannot travel outside of the UK, in order to continue having the (required number of years for regularisation) in the country. The technologies that 'connect' the monitoring and management of human mobility in the territorial borderlands of Europe – with the territorially detached manifestations of 'border surveillance' that work through the 'stretched screens' that connect an emerging European network of public border, immigration, and law enforcement officials and private 'unofficials' (Broeders and Dijstelbloem 2015, 2). These technologies have been further outsourced to countries in East Africa, which monitor migrants' movements and have got biometric collecting devices that are partly funded by the European states.

Through its laws and rules that are enforced by officials with its immigration bureaucratic body, the UKVI, the UK divides migrants (for admission purposes according to countries of origin, i.e. non-EU versus EU) and the bifurcation of migrant skills into highly skilled and low-skilled categories for admission of non-EU migrants under the UK PBS (see Paul 2015; Piper 2007, 16). For instance, Meeme, a registered nurse who had migrated to the UK under an NHS sponsorship scheme mentioned how she found the process: *"quite straight forward if you followed the rules. It's just that it has limitations that if you have a work permit, you can only work for that organisation."*

(Interviewee Meeme, Registered Nurse). She makes two points in connection to law and claiming a right to migrate and work in the UK: Firstly, in order to have visa, migrants have to follow rules (rule of law) and secondly work permits tie migrant workers (even the highly skilled) to employers. Awareness of these conditions is a way of dealing with bureaucratic decisions or practices in advance and a crucial element of legal consciousness as a strategy of claiming rights from street level bureaucrats, etc.

I observed that the female migrants mainly turned to the law as a solution to seeking redress to the denial of the right to enter the UK on flimsy grounds. Susane, for instance, talked about how she appealed the Entry Clearance Officer's decision to deny her application for a Working Holiday Visa in 2005. She availed me with a copy of her appeal to the Asylum and Immigration Tribunal through which she challenged the decision of the said officer in denying her application, the worker stating that "he was not satisfied on the balance of probabilities that the application met the requirements of the Immigration Rules" (Susane's Immigration Appeal). The Immigration Judge decided the application without a hearing at Susane's (the appellant) request because she was in her country of origin at the time. One of the grounds upon which her appeal was determined was that she stated she was a "*Christian and a genuine, honest, obedient and trustworthy*" twenty-eight-year-old, which meant she was at the upper age limit of the scheme that took only migrants aged 17-30 years. The judge found her to be an honest person and indeed she returned to her country of origin after the expiry of the programme in accordance with the Immigration Rules at the time.[28]

Susane also expresses the requirements one needs to have in order to acquire a job which include the work permit from immigration bureaucrats, by saying: *"You need to present this paperwork; you need a permit"* (Susane). While Meeme mentioned the process to permanent residence as involving a work permit (and later Tiered visas under PBS) and yet it was not enough reason for migrants to remain employed as they needed to have both the permit and leave to remain:

[28] She only returned to the UK again under different grounds as I expound in the next section.

My workplace actually got for me the work permit. However I had to apply for my leave to remain in the UK while I was on work permit. So having a work permit didn't grant me a leave to remain. So I had to go through the application process. You couldn't go to work until you had a work permit, until you had a leave to remain (Interviewee Meeme)

The only person I can recommend is if they already got their status when they are still in Africa, I wouldn't recommend anyone. Unless you've sorted out your papers before you come here (Interviewee Namu)

Processing all this documentation is part of a "papers consciousness" that most African migrants have to negotiate in order to navigate their immigration status and belonging in their transnational lives. Migrants such as Susane are always aware of both the policy and the immigration regulation on documentation that migrants require in order to remain working legally in the UK without falling on the wrong side of the state represented by government bureaucrats. Immigration status documentation is very important for migrants and many do not talk about them for fear of reporting, which can lead to deportation within migrant communities. Some migrants that had agreed to be interviewed declined on hearing that the topic was connected to immigration. Below, I examine migrants' resistance of precarious legal status that is connected to labour migration programmes and none or partial citizenship status.

7.1.2 Resisting precarious status via permanent residence and return migration

Through claiming permanent residence, migrants are able to avoid or dodge being deportable migrant subjects, and legal status. "*Once you have status you can do anything, you can go back to school or back to university. It is like a big change in life"* (Interviewee Fadempa). Citizenship from above is imposed by state that sets the structures but migrants claim it from below after spending a specified duration of time in the UK. Obtaining legal permanent status often requires complex and lengthy procedures. For some migrants – including, in the case of refugee status and humanitarian legalisation, permanent legal status thus serves as a reward for hard work

and an achievement based on successful performance of vulnerability (Chauvin and Garcés-Mascareñas 2014, 427). This was the case for some of the interviewees (Zimula, Namu and Birena). On her plans if her application for regularisation and amnesty was accepted by the Home Office, Namu for instance mentioned that she *"will feel contented if I could get my papers and I could try to ensure I bring my child here. And I could work and be independent, and I would like to go back to school as well"* (Interviewee Namu).

The narrations of interviewees of their lived experiences provided data on the UK naturalisation process which is the final stage that migrants might go through after living in the UK initially for more than five[29] years depending on their visa categorisation and income. For the 'migrants' to become British citizens, they were always expected to "prove beyond reasonable doubt" that they had the same British values like other UK citizens. This meant that the migrant workers partook in certain forms of social relations, in communities, and were "good citizens – that is, law-abiding, hardworking members of stable and respectable families" (Anderson 2013, 2–6). Gladis: *Avoiding being involved in conflicts or commotions and being a resident of good character* (Interviewee Gladis). Migrants in reemphasising these narratives of 'good members of society', or well integrated, reproduce these discourses of belonging (see Binaisa 2011). As Hajati stated:

> *Apart from being a British citizen, I think what is required of me is to try and live as a good citizen, keep within the law, I think that's all that I am most required of... I applied for naturalisation and I was granted naturalisation. After I naturalised I then applied for British citizenship. Then I got my passport. I am a full British woman* (Interviewee Hajati).

She referred to herself as 'fully British' while at same time having identified herself with her East African heritage. She had acquired this nationality which is framed in UK

[29] At the time of interviews, the UK was proposing to introduce the probational citizenship and increase duration in the UK to more than 10 years, before one could get permission to stay indefinitely.

citizenship laws. Some of the benefits of her nationality were that her children could study in the UK. Even with dual citizenship people such as Hajati can still get racialised especially in the workplace as seen in the previous chapter. Nationality is framed in law – for one to hold two nationalities, the country of origin and the UK must both recognise dual nationality which is now the case with most of the East African states. Here applicants must apply for dual nationality, which is a times an expensive and lengthy process in case one had to deal with corrupt immigration officers in the country of origin.

Migrants are always disciplined through the immigration law and policy which restricts and controls what type of organisation or employer they can work for, and for how long they can leave the UK, which also means they can't easily carry out circular migration and work in healthcare in their own countries of origin. Migrants mentioned meeting terms of their work permits and visas so that they could remain in the UK:

> *You can't do extra work from any other organisation and if you did, that will invalidate your work permit. And if you leave the country for more than three months that invalidates your work permit. Well it doesn't invalidate your work permit but it invalidates your application to live here, to remain, for the indefinite leave to remain* (Interviewee Meeme).

Through marital laws some migrants who could be described as "repeat players" of the game of law (Silbey 2005, 325) are able to claim residence status that would otherwise be denied to them under other sections of immigration law. Susane revealed that she only got permission to stay in the UK as a permanent resident after marrying an EU national. With this new status, she could work in the UK without restrictions and displayed her old passport that had the residence permit sticker in 2011 and a residence card (interviewee Susane).

In spite of working in healthcare, some of the elderly migrants (ages 50-59) repeated that they planned to return to East Africa to be cared for by their relatives. Some migrants, even though they had settled in the UK, felt that it would be better to return to

their own country upon retirement in order to enjoy their lives, something that they felt they would not be able to do in the UK. A similar experience is shared by other African migrants for instance from Southern Africa (McGregor 2007).

Most of the migrants confirmed the temporary nature of migration repeatedly stating how they planned to return to their countries of origin upon realising their goals and targets. As Gladis asserted when asked if she would recommend others to migrate: "*I would recommend them* (potential migrants) *to come provided they have targets."* Dr. Menya mentioned he would recommend people to *only migrate as skilled workers* to the UK and that the benefits of working in the UK include: *"Apart from having good work relations with the people you work with and maybe better money paid to you than what you would be getting in some other places. This place is not for me. It is cold anyway. So I would really be happier in a warmer place."* (Interviewee Dr. Menya). Many migrants interviewed such as Dr. Menya above stressed that the weather in Europe was not conducive for them, and was the primary reason they would return or chose to return to warmer East Africa. Joyi, Enersti and Azuri also cited discrimination and the cold weather as reasons in addition to family responsibilities in their country of origin that influenced their decisions to return home. The nurses Joyi and Enersti, a returning migrant couple that had supported each other's migration goals, with the Joyi working in the UK for close to ten years having originally migrated, and was followed by Enersti who only stayed in the UK for three years. Like other migrants interviewed in the UK, they also mentioned that they had met their 'migration targets', built houses and set up businesses in their country of origin including a private clinic and a kindergarten (Interviewees Joyi and Enersti).

As elucidated herein migrants can resist precarious legal status by claiming permanent residence while others return home, or planned to return to their countries of origin to avoid getting into such status. These are both individualised and collective actions involving transnational families and networks. Such actions of dealing with precarious legal status or lack of rights are part of their individual forms of resistance before organising collectively in other cases. In other instances migrants have formed self-

organisations to arrange social rights not available from the state, or joined already existing NGOs and trade unions and campaign against repressive laws and immigration conditions.

7.2 Migrant communities and collective organising

> *We have got a small organisation of about twenty to twenty five families and we tend to come together once every month and talk about the circumstances, conditions we are going through and we try to remind ourselves of the religion to which I belong.... Sometimes we call in preachers to teach us about this religion. Sometimes we just meet for a chat* (Interviewee Dr. Menya)

> *I belong to a religious organisation and another organisation I was volunteering with, dealing with people who are HIV positive. It's called XYZ. It deals with people in Africa who are affected with HIV* (Interviewee Namu).

Migrants' strategies of organising or claiming rights includes mobilisation in NGOs, community or religious organisations as elucidated by Dr. Menya and Namu above. They are able to address issues concerning their transnational migrant lives while at the same time addressing their spirituality and happiness or wellbeing. Dr. Menya was a member of the British Medical Association, the trade union and professional body for doctors in the UK [30] but according to him, this association could only meet his professional upgrading and training needs. So the community organisations provide more than collective organising of social rights, but are avenues where migrants can cope with the strains of their demanding work life. Dr. Menya:

> *It is hard to be, to be as happy as you would like to be because the workload is a lot and there is no time. The biggest problem for me is I think travelling. I tend to travel quite a lot between my home and work. So I don't have time to socialise with other people* (Interviewee Dr. Menya).

[30] See The British Medical Association. https://www.bma.org.uk/ last accessed 12.05.2017.

The cut to welfare expenditure by the UK means that even highly-skilled migrants face specific hardships, such as doctors working more hours and hardly having enough time for their families. Although other migrants expressed their collective participation in charity work (see Namu) and unionising in addition to other family commitments. Kaz:

> *No. I've done charity work. I've worked for a charity organisation but I am not a part of any trade union whatsoever. I volunteer for the Citizens Advice Bureau and while at the University I was also helping out quite a lot, a bit with the student union and a few other engagements. I think its lack of time to be honest from work I have got family responsibilities. I have got also my sporting engagements which is quite engaging and it's free. We volunteer. So, with that I just find that I don't have any time left* (Interviewee Kaz)

In the UK, East African migrants' collective organising practices are evident in their joining migrant community or religious-affiliated associations that organise access to welfare services that they are not able to access from the state or locally (especially when they are newly arrived in the country), as well as with NGOs and trade unions. As some migrants generally may not access certain rights in the UK due to their categorisation, they participate in community organising to arrange childcare around shifts and among fellow migrants, and skype with doctors in home countries in case they are restricted from accessing a General Practitioner (GP) by UK law. So even as I felt that not instituting legal cases was a passive action on the part of migrants in responding to their restricted rights under UK laws, their actions above meant that they were able to assert their rights albeit in a non-legal context in their ordinary lives to circumvent the conditions imposed on them under UK immigration law.

Years of central and local government budget cuts have in addition removed community centres, drop-in groups, legal advice, and race equality centres (see Marfleet in Yuval-Davis and Marfleet 2012, 70). This means that various NGOs fill the role of the welfare

state for some migrant workers with precarious legal status especially when they have problems with their applications for asylum:

> *And there is another group, it's in (place omitted). They are called (...) It's a French group. It has people with asylum problems and everything. Like if you go there, you register they will give you food parcels and everything. They help mostly Africans, or people who can't afford to have a meal or anything and they assist people who want classes, who want to learn English, tailoring…* (Interviewee Namu)

Furthermore, to counter the exclusion and inequality that migrants face, some migrants and organisations have set up self-help and support groups through community organisations and NGOs. Most of my interviewees were mainly organised within nationality-based associations, which provided useful networks for attaining employment. Moreover, a lack of citizenship or permanent residence status may not limit access to services if they are available through other public or private institutions (e.g. ethno-cultural and faith-based) (Goldring, Berinstein, and Bernhard 2007, 252). For instance, migrants are able to form organisations that assist them, for example, cope with their emotional labour as seen in the circulating narratives at the beginning of this section, repatriate deceased members to the countries of origin, and organise remittances.

While activism related to anti-deportation work mainly depends on the position of individuals (for example where an individual migrant is to be deported). In 2005, the campaigning groups begun to consider engaging the government to discuss large scale regularisation or amnesty policies such as those favoured in other European countries which have successfully grated substantial numbers of undocumented migrants legal residence status (Flynn 2006, 16). Key studies that insist on the agency of migrants and their use of social networks mention the key support of non-governmental organisations, and stress unauthorised migrants' participation in the underground economy (Chauvin and Garcés-Mascareñas 2014). An example of engagement and activism related to

migrant rights and issues is drawn from the local level in Manchester, where in November 2005, on the initiative of local trade union branches, a conference was held to launch a campaign within the union movement to build stronger support for refugees and people who are refused residence status (Flynn 2006).

There have been many organising campaigns designed to represent the interests of migrant workers – for example, the main public sector union UNISON established a Migrant Worker Participation Project; and the large general union UNITE founded a Migrant Worker Support Unit (Connolly, Marino, and Lucio 2014, 15). Both projects were funded by the Union Modernisation Fund, a government-funded grant scheme established in 2005 to provide financial assistance to union projects that contribute to a transformational change in the organisational effectiveness of a union (ibid.). Trade union incentives to engage with migrant issues is a positive development for migrants' rights in the UK.

Through forming and joining networks migrants are able to speak out about the problems that they face. For instance a network of nurses – the Overseas Nurses Network (ONN) – under the UNISON ably represented migrant nurses at the Scottish Parliament, narrating their unique stories: the difficulties in obtaining and reapplying for visas; racism and discrimination in the workplace; not having their skills recognised by employers; and starting their lives over in a foreign country (Taylor and Mcgeoch 2010). The presence of a labour government from 1997 to 2007 created greater situational and political opportunities for the migrant rights movement (Hilson 2002, 250). Unlike in the 1970s when the unions did not take up migrants' causes, some unions have made migrant workers a key target of their organising campaigns, focusing on those sections of the labour market (e.g. healthcare) that have seen the largest rise in migrant workers over the last two decades.

Workers' organising remains a core right and labour standard under labour law and under the ILO decent work framework. It safeguards workers' rights and wellbeing. In practice, integration of migrant workers into the wider union is as yet only tentative in

the UK (Connolly, Marino, and Lucio 2014, 15). Unionising is one way of organising and negotiating decent work available to workers in formal employment such as healthcare work. Yet the majority of the interviewees mentioned that they were not members of unions due to time constraints and monetary subscription requirements. Another reason explaining why highly skilled migrants do not join or actively join unions is perhaps the individualisation of workplace rights especially for migrants with partial status under neoliberal regimes. They may have more negotiation power at work, although they may not necessarily use it to demand restitution in cases of conflict in the workplace.

Migrant workers are able to seek change in their conditions through engaging in protests with civil society, i.e. NGOs focusing on social rights and trade unions. Partly due to the short duration of my stay in England, I met only one East African doctor (Dr. Petero) participating in a strike with other healthcare workers in London. Non-EAA migrants have strict requirements on their visas which make it hard for them to participate in strikes. Notably in 2018 the UK Government pledged to uphold migrants' rights to strike following a demonstration by UK University lecturers (Fabien 2018).

Few interviewees were active members of trade unions. Yokana, a male psychiatric nurse that I interviewed in Kampala during his vacation, provided information on organizing fellow workers, including migrants:

> *I am in one of the major unions in the UK called UNISON, which deals more with the public servants. It is the biggest union of the UK. The reason why I joined the union was to develop my knowledge about the rights of the workers... I wanted to know what my rights are as a public service worker* (Interviewee Yokana, Psychiatric Nurse).

Another male mental health support worker, Sulaimani, was registered with a union at his workplace but didn't actively engage with it. He said: "*It's just a union for workers. Just joined it for the sake… They are taking money from me. But the reason why I am a*

member is because I wanted to learn more: What do they do? How do they go about it? I decided not to cancel my membership" (Interviewee Sulaimani). Notably, at the time of the interview, Yokana was already a permanent UK resident while Sulaimani was about to become one, and perhaps this explains their membership in unions. These interviewees' engaging 'with the law' schema of legal consciousness (Silbey 2005, 357) is evident in their knowledge of unions and workers' rights, which are regulated by labour law and human rights law. Another explanatory factor is that when people are engaged in political activism (e.g. in unions) they tend to have an increased awareness of their civil rights (Halliday and Morgan 2013).

On the other hand, most females I interviewed were members of community based organisations but not that active in unions. For example, Gladis equated labour unionism as a part of politics saying, "*I hate politics."* This is not surprising because in East Africa some governments, for example in Uganda, quash opposition as observed during previous presidential elections, continuing criminal prosecution of members of the opposition in 2017; as well as in Kenya, where the medical doctors were prohibited by the government from striking and asserting their rights. It partly explains Gladis' equating trade unions with politics and something that she dislikes. Women's representation within unions has also been explained by cultural differences in countries of origin, union structures, and fear of politics (Taylor and Mcgeoch 2010).

Within some parts of the East African community, females predominately perform unpaid reproductive work in their homes which means that they may not have time for structured union activities, unlike community organizing. When asked about organising and trade unions, registered nurse Meeme said: "*Because I have not been exposed to them. I suppose that's why. And I have got little time on my fingers*" (Interviewee Meeme). Most of the doctors, nurses and carers work extra shifts, and this meant that they had limited time within which to engage in resistance actions organised by their unions and other organisations.

Yet female migrant healthcare workers such as Meeme are active within their national community organisations. Meeme was also very active in her community self-help group. I noticed that female migrants were mainly active in organising community and religious gatherings, which were useful for planning childcare, networking, accessing the labour market, and repatriating the deceased (field observation). Migrants may face difficulties in joining trade unions, partly due to their precarious legal status under immigration law and policy. Meanwhile, migrants without visa restrictions (especially permanent residents) are able to act as representatives in trade unions. For instance Yokana enthusiastically explained his position in the union:

> *I am a steward and a rep* (representative). *I tend to represent the workers from my area. I also find that I work beyond my workplace area because people will contact you when they have disciplinary issues, are not happy with work conditions and have issues with managers. You are working as a chain between the workers and your employer* (Interviewee Yokana).

Yokana is easily incorporated into the union structures because of his permanent resident status. The lack of state support for collective rights and regulation (for all workers regardless of immigration classification) remains a challenge for trade unions in the UK (Connolly, Marino, and Lucio 2014, 17; UNISON 2016).

Migrants' not participating in trade unions can partly be attributed to visa conditions, where migrants under the PBS are expected to remain employed in order to remain legally in the UK (Zou 2015). The interviewees repeatedly stated that they had to work to retain their work visa so they had no time to organize in trade unions and labour associations. The migrant healthcare workers that were not a part of a trade union or very active in a community association, mainly connected their experiences with not organising in their own countries of origin. These reasons were mentioned, especially by male interviewees. Kato:

> *I don't find them constructive in terms of enhancing anything about either my rights or my pay. I would be part of one if I thought they would be useful. But at the moment I don't see, because all workers' rights are legislated by the government, which is already there, so there is nothing the unions can do to the employer* (Interviewee Kato).

Kato's disinterest in unions arguing that all rights are legislated, further demonstrates the main legalistic view of rights on paper or in theory (Piper 2007, 18). Since rights are legislated (legal rights), it would appear that if they are violated then there is nothing that unions can do to get redress for employees from the employer. He accepts that the government has already provided for all workers' rights via "legislation" so there is no need for him to organise within a union. It supports one stance of law as detached and objective that has to be followed ("before the law") (Schwenken 2013, 136). His view is that the legislation means unions cannot do anything to employers. Kato seems to take the presence of workers' rights legislation for granted and downplays the role of unions. His legal consciousness also points to the enduring power of law in creating legality and illegality in sovereign states premised on the rule of law (Silbey 2005, 329). We see the role played by the law here in influencing Kato's belief that since the rights were already legislated by the government, there was no need for him to be a part of a union, as the union cannot do anything to the employer that violates workers' rights.

Nonetheless, there are examples of migrants' engagement with the law through participating in civil society campaigns, and filing legal cases or relying on previous successful litigation to influence political campaigns for more rights. Non-governmental organisations have assisted individual migrants file cases to seek judicial review in employment tribunals and courts. In this way these organisations and the migrants take advantage of the available legal avenue to claim rights (Hilson 2002, 239). Social movement participation, party affiliation, and political ideology are correlated with specific expressions and forms of legal consciousness that one would expect. Migrants form groups with the same social classes which are not given in social reality. By associating with NGOs, some migrants are able to organise and claim more rights. For

example, migrant workers together with NGOs and trade union activists use the available political opportunity structures by lobbying and participating in protests (Hilson 2002, 238). For female migrants working in healthcare, organising with NGOs fits with a movement of change that focuses on women's agency, resistance, and empowerment, and that significantly signals the importance of women's daily and collective struggles towards change (Youngs 2004, 128).

For the UK case, migrants' collective legal consciousness is evident in their joining migrant associations that organise migrants and, in joining trade unions among others and getting assistance from religious and non-religious-affiliated associations. Migrant community organisations, NGOs and other civil society organisations continue to work, collaborate and network more actively with immigrants. This ensures that the information from the NGOs is accessible to migrant healthcare workers as well, and does not remain on paper such as when human rights legislation is not implemented in practice. The next section examines one successful immigrant campaign for freedom from the retrospective application of immigration law and policy.

7.2.1 Strategic litigation: The 'Highly Skilled Migrant Programme' campaign

New social movement literature on *protest and lobbying* considers the interplay between protest and conventional politics with more attention given to the *role of law and the courts* or litigation (legal opportunities) (Hilson 2002, 239). From a socio-legal perspective, recourse to law is a distinct strategy in its own right. There is growing socio-legal analysis of how 'bottom-up' litigation affects protest (ibid.). Civil society actors including NGOs, lawyers and trade unions in the UK have been successful in helping individual migrants to attain redress from abusive employers, as well as to speak out against these abuses. Focusing on migrants' collective actions to identify their legal consciousness on matters of collective dissent involves examining available legal opportunities taken by migrant rights movements against restrictive immigration policy. In certain instances some migrants have turned to international human rights law as a mobilization tool to demand rights, as I elucidate here under strategic litigation that the highly skilled migrants relied upon from 2006 to prevent the government from

retroactively reducing their rights. In this way, the chapter partly draws inspiration from a social movement perspective to examine migrants' legal opportunities of mobilizing and organising in collaboration with civil society actors including cause lawyers, Trade Unions and NGOs (Hilson 2002).

An example of a migrant-led collective action for migrant rights specifically relating to immigration status in the UK is the campaign by the Highly Skilled Migrant Program (HSMP) Forum. This organisation is composed of mainly migrant non-EU highly skilled workers from Asia who lobbied in 2006 for legal review to claim their rights (HSMP Forum 2015). This NGO took its name from the UK's 'Highly Skilled Migrant Programme' (HSMP: the earlier version of the PBS Tier 1 and 2 visa) that was introduced in 2002. Under the scheme, migrants could move to the UK for 12 months, access any job, and could qualify for permanent residence after four years. The policy guidance for the HSMP scheme was expressed as follows: "This programme is a new way of allowing individuals to migrate to the United Kingdom. It aims to provide an individual migration route for highly skilled persons who have the skills and experience required by the United Kingdom to compete in the global economy" (see HSMP Forum Limited v Secretary of State for the Home Department (Administrative Court) 2008, vol. [2008] EWH, para. 1).[31]

Taking advantage of the available legal opportunity, i.e. accessing the UK High Court, the HSMP Forum instituted an application for judicial review on behalf of all migrants categorized as highly skilled in 2008, against the Secretary of State for the Home Department. The HSMP adopted litigation as a key strategy as its migrant leader through a cause lawyer – that is, a lawyer engaged in social movements (Sarat and Scheingold 2006), and its highly skilled network had direct experience of the law (Hilson 2002, 241). From the use of litigation and other legal methods we see that there are lawyers working on migrant cases are part of the civil society in the struggle for migrant rights (Webber 2015). They can help frame migrant rights causes for instance the HSMP's

[31] "Highly Skilled Migrant Programme case succeeds" available at: https://www.freemovement.org.uk/highly-skilled-migrant-programme-case-succeeds/ last accessed 12.08.2017.

application was backed by a letter from the Immigration Law Practitioners Association[32] (ILPA), a body that organises lawyers working on immigration issues. One of the mottos of the ILPA is to promote and improve the advising and representation of immigrants. Cause lawyers do not act as if law is free of politics but are engaged in trying to change law, policy and influence social change and justice Cause lawyers have contributed to the development of anti-discrimination law and labour standards, and advocating for migrant rights and advancing the importance of soft law norms (see Bob Hepple in Dharam 2010; Politakis 2007).

By a letter dated 16 November 2006, the ILPA complained to the Minister in connection with the manner with which the changes to legislation had been introduced without a chance of formal consultation, or provided the migrant with notice concerning the measures that were announced on the 7th November and came into effect on the 8th of November 2006 (HSMP Forum Limited v Secretary of State for the Home Department (Administrative Court) 2008, vol. [2008] EWH, para. 24). This letter was used as evidence by the HSMP to back up its claim against the government's retrospective action. Notably, the migrants under the HSMP included doctors, nurses, and lawyers. This practice of resisting the UK's immigration policy via judicial review is a part of migrants' collective legal consciousness in collaboration with civil society under the highly skilled migrants' visa. Cause lawyers have been known to frame rights claims and develop mobilisation campaigns, while others are engaged in litigation or filing review reports on behalf of movements (see Maiman in Viljoen and Njau 2012; and in Schmidt and Halliday 2004). The existence of committed immigration lawyers who can institute claims for migrant rights continues to upset government plans to squeeze considerations of human rights out of the system.

The organisation together with the migrants it represented played a role in resisting and calling for the rescission of the laws and policies that the UK employed to retrospectively "claw-back" migrants' rights following unfair changes to the HSMP visa in November 2006 (see the case of HSMP Forum Limited v Secretary of State for the

[32] See: Immigration Law Practitioners' Association. https://www.ilpa.org.uk/ last accessed 10.02.17.

Home Department (Administrative Court) 2008). The migrants were aware that they could get legal redress by instituting a case in court. The Labour government at the time had introduced retrospective changes by increasing the duration (from four to five years) that migrants had to reside in the UK before they could apply for permanent residence. The judge held:

> I find that the terms of the scheme, properly interpreted in context and read with the guidance and the rules, contain a clear representation, made by the defendant, that once a migrant had embarked on the scheme he would enjoy the benefits of the scheme according to the terms prevailing at the date he joined (ibid., para 57).

The judge found in favour of the HSMP Forum Ltd stating: "I am satisfied that the defendant (UK Secretary for the Home Department) proposes to act unlawfully and the Court should intervene" (HSMP Forum Limited v Secretary of State for the Home Department (Administrative Court) 2008). Following this decision all migrants, including East Africans under the HSMP visa at that time (e.g. Interviewees Yokana, Kato and Meeme), were entitled to rely on the original terms of the scheme rather than being forced by the government to comply with unlawful rules that would reduce their rights under the revised scheme.

Judicial processes are one of the several locations of rights based struggles and demonstrate the importance of engagement with social organisations that institute rights claims or use rights as the basis for social action (Piper 2007, 22). Such actions including the legislation and litigation that accompany them can have an important effect on participants' legal consciousness with respect to the role of law in activism (Kostiner 2003, 365). It may have generated much hope but also much despair with regard to law's ability to promote social reform. Presently, the HSMP Forum remains an online forum that claims to represent migrants belonging to all immigration categories, cultures and nationalities, including those settled in the UK, and campaigns on various immigration issues (HSMP Forum 2015). It has made and continues to make submissions, hold demonstrations particularly related to mainly the interests of highly skilled migrants

under Tier 1 and 2, and lobby various government bodies to influence change of the immigration policies and legislation that negatively affect migrants.

From examining the nature of the HSMP migrant movement, it was a class based movement as far as its membership organised or campaigned for rights of mainly highly skilled migrants at the time. When it achieved its high point of changing immigration policy and law as we discuss herein, it became unable to remobilize migrant interests on the same level as it was able to do earlier on. By looking at this historical movement we reveal the class dynamics at play in determining why working class members do not necessarily unit and are divided along sectors and immigration status. This fragmentation of the working class is an explanatory factor for why even migrants may choose to act individually or only join unions when they suit their personal interests and why they may not join other demonstrations that do not directly relate to their own interests. Migrants may easily organise under religious and community networks because they belong to these networks. The concept of intersectionality assists in understanding how race, class and gender determine how individuals and migrant groups can decide whether to join migrant movements such as the HSMP or simply organise within their community.

7.2.2 Appeal to international rights norms

International human rights norms remain crucial in campaigns for migrant rights. Migrants, including those that are undocumented or in a precarious legal status, may draw on their transnational legal consciousness, i.e. which refers to knowledge of existing international human rights norms to claim rights. In a transnational context, some of these rights, ideas, and norms such as the prohibition of discrimination are entrenched in United Nations and International Labour Organization Conventions, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO's Convention on Migrant Workers C143 (Wiessbrodt 2007; Awad, Wickramasekara, and Taran 2010; Pecoud 2009; Cholewinski 2010). This conceptualisation of transnational legal consciousness reveals that migrants together with rights activists can draw upon examples from other countries, from

international conventions and from the related soft law resolutions, to argue for protection, respect and fulfilment of migrant rights on the part of states. Through these development we see that International Law has contributed to the development of human rights discourse applicable to migrants (Wexler 2007b).

A globalised and interconnected world means counter movements against the dominance of states are growing in the form of civil society that operate transnationally and locally to influence law and policy reform (Scholte 2001). Migrant rights movements may draw upon United Nations and ILO conventions, irrespective of these focusing primarily on a single variable of 'migrant status' rather than on multiple variables relevant to women and men who migrate for work – including race or ethnicity, occupation, and gender (Piper and Satterthwaite 2007). From the example of the HSMP as previously mentioned, there is potential for social movements including local NGOs and trade unions to play an important role of connecting rights struggles of ordinary migrants to global frames of regulation, and they can take advantage of the structure of local opportunities and their local resources (Piper 2007, 10). The NGOs use their connections within the state to influence agenda setting and push for the implementation of anti-discrimination policies and legislation so as to embed rights-based demands, and frame local struggles for migrant rights in the global language of rights.

It is important to consider ways in which human rights legislation can be used to support migrants who face exploitation and discrimination but are unable to use the legislation because of actual or perceived barriers (Kofman et al. 2009, 65). The international human rights law and the European Convention on Human Rights, from which some of the UK domestic law such as the 1998 Human Rights Act, have their origins are an example of these. Some of these international regulations (which the UK has not ratified) have the effect of soft law (see Bob Hepple in Dharam 2010; Viljoen 2012). Although some of the rights contained in the UN treaties are not directly legally enforceable in UK courts, they do represent binding obligations in international law.

The UK adopts a dualist approach to international law – that is, it has to firstly ratify the international treaties agreeing to be bound by their content, and secondly, enact an Act of Parliament incorporating the international laws into its domestic system, thereby operationalising International Law within the UK. By incorporation, the UK is required to have signed and ratified the treaty at the international arena without reservations, , and then go ahead and make an Act of Parliament, merging that international law into its own national law. The UK is then expected to ensure that its domestic laws and policies comply with the content of the treaties or else by civil society held accountable if the government goes against the terms of the treaties. Other laws are from the European Union, as the UK is still a member of the organisation. The UK opted-in and incorporated the European Convention for the Protection of Human Rights (ECHR) into its domestic law, which is very important in terms of the individual's right of redress (Morris 2003, 71, 95–96). The UK Human Rights Act[33] guarantees the rights of everyone in the UK regardless of whether they are a British or not, or whether they are a corporation – such as media outlets, which can take advantage of the Act to publish derogatory and inflammatory information on migrants arguing that it is their right to inform the public.

The European Convention on Human Rights (ECHR) and European Union law provide an increasingly important framework for the protection migrant workers' rights. One available transnationalised legal opportunity is that the UK has incorporated some of the international conventions that it ratified into its domestic law, which is very important in terms of individuals' right of redress (Morris 2003, 95–96). Some of the interviewees (e.g. Gladis, Dr. Menya and Sulaimani) mentioned the existence of such legislation (including the UK Human Rights Act), which can be interpreted as part of their transnational legal consciousness. So even if the state clings to its sovereignty to restrict migrant's rights, movement, and inclusion, its exercise of this power is restrained by both its domestic and transnational obligations. The duty to interpret the state's obligations under international covenants falls to the courts, which might go against the

[33] See the Human Rights Act 1998 available at: https://www.legislation.gov.uk/ukpga/1998/42/contents Last accessed 29.12.2017.

interests of the government, as we have recently witnessed in the UK following its referendum to leave the EU.

The European Union legislation relating to borders, asylum, and immigration developed fast as seen from the impressive body of case law by the European Court of Human Rights relating in particular to Articles 3, 5, 8 and 13 of the ECHR (see European Union Agency for Fundamental Rights and Council of Europe 2014). The European Court of Human Rights (ECtHR) makes pronunciations on the interpretation of European Union law provisions in the migration field.

Regarding human rights, the authority of states such as the UK is limited by certain unalienable rights accorded to foreign nationals in customary international law (Martin 2007; Martin 2005). Although the UK maintains its own immigration policies, it is expected to observe its treaty obligations that it did not opt out of at the time of signing the Convention, with respect to migrant workers. Article 14 of the ECHR has a non-discrimination provision, which stipulates that the enjoyment of the rights and freedoms set forth in the convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. In theory, this legislation provides the framework or the basis for the UK's Human Rights Act. The ECHR was drafted in the 1950s, at a time when all the relevant East African states had not yet got independence from colonial British rule. It is mainly from this ECHR provisions that non EEA migrants as third country nationals resident in the UK can have recourse to European legislation following the UK's incorporation of this legislation into its domestic human rights regime (Erwing 2010).

As demonstrated by migrant movements framing migrant human rights violations in the global language of rights, migrants together with human rights advocates or activists can refer and employ international human rights law to empower themselves where there are regulations in place that already offer them protections within the receiving state's territories. Successful local movements informally (Menkel-Meadow 2010, 104) make transnational law from below by referring to global norms (Rajagopal 2003; Sarat and

Scheingold 2006; Schwenken 2013; Piper 2015). Notably, activists for migrant rights including migrants may rely on the already existing international human rights norms that prohibit all forms of discrimination in their resistance campaigns in the UK. Below I examine the processes of legal and political transnationalism that have been domesticated into the UK human rights system.

Theoretically, International Law provisions on migrant workers contained in the UN's International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) protects all migrant workers irrespective of immigration status and categorisation. One convention with potential (if ratified and implemented in practice) to improve migrants' rights status in the UK is the ICRMW. The UK never ratified and is reluctant to ratify the ICRMW, which if ratified would have significant implications for British policy on labour migration and migrant workers. The UK is generally unwilling to undertake international commitments concerning immigration policy (Ryan 2009, 286). In other words, even if UK immigration policy was broadly consistent with the Convention, the government would probably still wish to retain flexibility with regards to the treatment of immigrants (part of its civic stratification of migrants and their rights) (ibid.). The government stated that the ICRMW's scope is wider than the UK's existing immigration laws, that the convention has no EU member state signatories – and yet most of the signatories are from countries of origin of migrant workers. The UK considers that it has already struck the right balance between the need for immigration control and the protection of the interests and rights of migrant workers (see DFID, (2003-2004, paragraph 38) Ryan 2009, 286). Ryan argues that the UK's reluctance to ratify the convention is because it did not want to give up its freedom of action in the field of immigration control, or sign up to a convention in the absence of other destination states (ibid. 287). Civil society including trade unions and NGOs have played a great role in mobilising the UK to ratify the convention in support of migrant rights since 1995 to around 2005 when the momentum appeared to cease. Notably, in 2005 the UK experienced terror attacks in London, and this could have played a role in influencing the decline of the migrant rights movement at that time.

The Convention remains a powerful tool for mobilising as it has contributed to some changes to the UK regulations on migration, for instance migrants having some form of identification (Ryan 2009). Other actors that play a part in collectively lobbying or questioning the government's ratification of the convention include MPs (from the Labour Party and some from the Liberal Democrat coalition) (Ryan 2009, 289–90). So in spite of the lack of ratification, the ICRMW remains an authoritative statement or benchmark of the minimum international standards with respect to migrant rights that political actors can rely to make a case for improvements in migrants treatment (Ryan 2009; and see Piper 2015). Through the conventions, civil society can evaluate and challenge current migration policies, name and shame states on issues of migrants' rights.

The state may cling to its sovereignty, i.e. by restricting migrant rights, but the exercise of this power, especially for migrants already in the UK, can be restrained by its domestic courts. The UK domestic courts have the duty to interpret the UK's obligations to respect human rights guaranteed under the ECHR. Judges at the national level can decide against the interests of the government. The judiciary in a number of developed countries have made decisions invoking international covenants, notably as to the rights of immigrants, refugees, and asylum seekers that have gone against votes in the legislature or public opinion (Sassen 1998). Judges in the UK already have wide discretionary powers to amend legislation from the executive and legislature in their interpretation of common law and statutory provisions. They have been seen to influence political decisions as seen in the HSMP case. Accessing courts are one of the several sites of rights based struggles has been termed as the "judicialisation of politics", whereby law makers operate within the context of the courts' powers to review legislative content (Schmidt and Halliday 2004, 7). This vein of research has particular significance for the study of rights within a national context given their heightened constitutional significance (ibid.). In this way, judges make political decisions (Erwing 2010, 2112) that may benefit migrants, contrary to the government's objectives as shown earlier in the case of highly skilled migrants. Recourse to legal means does not

necessarily signal the influence of the courts but also points to the judicialisation of society.

Migrant rights movements are engaged in lobbying governments to ratify international human rights conventions that provide for the protection of migrant rights. When these conventions are ratified and implemented they can be useful legal norms and political tools of empowerment for migrants and their families, under the transnationalisation of migrant rights. It is no surprise that leaders of political struggles such as migrant rights demands, continue to invoke human rights. By examining experiences of migrants from developing countries and their access to rights in developed countries, the study contributes to debates in both international human rights law and socio-legal studies on the application of human rights in practice when states remain the main actors accountable for implementing rights norms. It shows human rights law in context as involving recognised regional law norms for example EU legislation protecting Third Country Nationals and the positive implications for migrants when implemented into the national context. This requires political will on the part of the government in question.

Within the UK, all individuals including migrants can draw on this legislation to claim rights. The conventions as they are now are only mobilising tools for migrant rights movements as they remain embedded in economic discourses of power. This requires the political will of developed states to ratify these conventions. This way, the rights as contained in such conventions are given 'life' and do not only remain on paper. It also reveals the main problem of human rights laws (such as those contained in international conventions on migrant rights) if they are not implemented in practice, as seen with the example from a developed state context (Schmidt and Halliday 2004). So to compel states to respect, protect or ratify conventions on migrant rights, actions such as global protests, and lobbying by migrant rights movements continue to occur, as we have recently seen with campaigns by migrant rights movements in the UK. Activists within civil society continue to campaign for migrant rights, drawing on international human

rights instruments to agitate for recognition of migrant rights and better global labour standards.

The ECtHR judges arguably offer a higher standard of protection than their counterparts in the UK Supreme Court (Erwing 2010, 2129). In most cases the judges may not challenge government policy unlike their counterparts in Strasbourg (ibid.). Some examples include domestic courts being content with the swinging restrictions on the right to strike, the stop and search powers of the police (Erwing 2010, 2136). Yet domestic courts remain an available avenue for instituting migrant rights claims, drawing on domesticated international human rights law. Migrants' knowledge of and access to these avenues of redress remains a form of transnational legal consciousness that they can act upon to claim rights under restrictive neoliberal contexts.

7.2.3 Discussion: An East African legal consciousness of collective dissent?

Migrants' proactive experiences of negotiating rights and solving conflicts are firmly based in legal language and law, and other structuring factors that reveal migrants' proactive legal consciousness. Some elements of migrants' resistance to law as legal consciousness have been identified similar to Sarat's findings from the interviews with welfare recipients or their dealings with bureaucrats (Sarat 1990). Other migrants are increasingly aware of their legal rights and how to demand the same, and their legal consciousness is evident from the cases filed by migrant workers (the HSMP campaign). As shown above, the circulating narratives of transnational legal consciousness depend on the legal culture of the migrants (acquired in both the country of origin, the UK and elsewhere) in question and organisations that they engage with. Transnational legal consciousness reveals a convergence of legal and political means to demand migrant rights and assert a dissenting position to the UK's restrictions of migrant rights.

The creative process of the law takes as its source the norms and cultures that produce the law. By taking an instrumental view of law, I was able to see how migrants also shaped the law through interpretation – how it affected migrants' behaviours that it was intended to address, with its actual effects being measured against its intended impact

(Schmidt and Halliday 2004, 8). Reflecting on my interpretations of the narrations from the interviews meant that I did not ignore the way that law affects the consciousness of people – their sense of fairness, grievance, identity, and the social actions that emerge from their consciousness. So an interest in consciousness is pertinent for understanding migrants' experiences under human rights law, given, for example, the UK government's stated goal of promoting a human rights culture (ibid.). As Silbey observes:

> Law in practice itself reveals contradictions where nearly identical rules result in widely divergent practices: In one case disputes might be resolved through recourse to formal rules and in another by appeal to internal norms of dispute settlement (Silbey 2005, 260).

The practice of resisting restrictive immigration policy via judicial review may be termed as part of a counter form of dissenting collective legal consciousness of the migrants in collaboration with civil society under the highly skilled migrants' visa. These actors were interested in achieving social change through the law, as the available avenue. As Idit Kostiner suggests:

> …the relationship between law and social change is a social construct that is constantly produced by the conversations and actions of social activists, of academics, and of ordinary people. Because people's understanding is complex and contradictory, the understanding of law as a means for social change is sustained. At the same time, the complex nature of people's consciousness provides spaces for transcending this notion of law as a means for change (Kostiner 2003, 365).

Different circulating narrations include some migrants revealing avoidance and acceptance of immigration law (see chapter six herein) while others resisting it and try to attain change of the status quo of restrictions on migrants rights or other structures such as racialisation. State law, including immigration law retains its dominance over

migrants in their daily lives but they do not only passively consent to it and they may also resist against constraining legislation and social structures. The data from mainly male migrants who were activists in trade unions (such as Petero, Yokana and Sulaimani) and from female migrants that challenged rights violations in courts individually or collectively reveal a dissenting legal consciousness (Halliday and Morgan 2013; Schwenken 2013). Meanwhile migrant rights movements contributed to more awareness of the law as emancipatory and that restrictive laws and policies could be changed through collective actions and resistance as seen from the HSMP campaign. Participants in the movement became more aware and active users of legal concepts and ideas, just as they became equally aware of the legal and institutional limitations and constraints on their efforts. Political mobilization and legal consciousness, that is, participation in the construction of legality, went hand in hand (Silbey 2005, 356). So where migrants participate in collective campaigns against legislation and policy, they acquire an understanding of legal concepts to use in furthering the migrant rights campaign. The fact that people use legal phrases (and refer to the law or the Constitution) does not necessarily mean that they subscribe to the law (but perhaps use it strategically or for other reasons).

However since migrants are already constrained under the UK laws and policies that require them to be employed in order to remain legally in the UK and to avoid precarious legal status, they may not easily demonstrate or participate in campaigns. Tentatively some explanations for the small sample of East African migrants' legal consciousness of collective dissent include experiences from their countries of origin that suppress political opposition or mobilizing by unions for better working conditions for doctors and other healthcare sector members (for instance in Kenya and Uganda) and culturally influenced gender roles or perceptions on demonstrating as it is in the case of women for instance from Uganda. In Kenya, the leaders of a demonstration and strike by doctors were imprisoned and charged when they refused to call off a strike by members of the profession in 2017. It is therefore important to emphasize the importance of local context for our understanding of legal consciousness.

7.3 **Conclusion**

A socio-legal analysis of migrants' experiences of how they utilized law revealed situations of migrants struggling against different facets of law including exclusionary differentiation practices under immigration law. This chapter operationalised transnational legal consciousness, whereby migrants rely on legal mechanisms to claim rights in collaboration with civil society groups. To address these aspects of legal consciousness, the chapter was divided into two parts, wherein I examined the legal consciousness of East Africans as a rights-claiming strategy. I focused on the various ways in which individual migrants dealt with rights conflicts in the first part, while the second part focused on collective actions of migrants, rights activists, and other members of civil society. That part was related to the previous part because in some instances migrants as part of communities have been able to organise specific social rights and entitlements that they would ordinarily be unable to access as individuals but can access collectively. Most interviewees belonged to migrant ethnic-community-and religious-based organisations that locally organised certain social rights that they could not access due to restrictions by the state under the immigration regime. This organising is not only a question of rights but involves community organising for social change and justice.

The narratives revealed migrants' transnational legal consciousness as part of their awareness of domesticated transnational human rights law norms. The interviewees perceived litigation as expensive though necessary avenues of seeking rights or justice. In as much as the UK has human rights and labour laws that migrant workers (especially those in regular status) can use to claim their rights 'on paper', the data revealed that some of the migrant workers remained were unable to utilise these avenues. This can be partly explained by the complexity involved in making rights claims, in addition to migrants having other urgent matters, including maintaining employment relations and income sources in order to renew their residence permits. At the same time, the UK's PBS program that requires migrants to always be employed and have a steady source of income constrained migrants from engaging with unions or protests. The interviewees

revealed that they could not participate in such protest actions, due to time constraints, as they had to remain employed to retain their legal migrant status. Achieving immigration policy reform for highly skilled migrants by lobbying, protesting, and litigation (judicial review), reveals the benefits of both political and legal strategies to claim rights.

The varieties of legal consciousness of participating with, engaging, avoiding and resisting the law revealed both in this and the preceding chapter, interact with each other to continuously to reveal the state of rule of law in the UK as operating to the detriment of some migrants and to the benefit of others. The counter responses against restrictive immigration conditions are present at the same time, showing the enduring power of law in creating both legality and precarious legal status that migrants had to navigate regardless of whether they were highly skilled or low-skilled. By examining narrations of migrants with different immigration statuses' every day experiences in interacting with landlords, immigration bureaucrats, including migrants with precarious residence status and those with permanent residence status, I found that there were migrants that resisted or engaged the law as individuals and collectively as part of civil society, NGOs and trade unions. Migrants' different practices and responses to law depended on their own personality, drawing on their subjective identities as activists or as migrant workers, the transnational legal culture and the specific contextual experience with law and residence status. East African politics also influenced some migrants' decisions of avoiding active protests while in the UK at the time in question. More research is needed on the collective legal consciousness of heterogeneous groups of migrants engaging with civil society, which requires detailed focus group interviews and discussions with the selected migrant groups in order to attain more collective responses for comparative purposes. Analysing elements of collective dissent and transnational legal consciousness focusing on migrants' proactive strategies and resistance of restrictive laws and policies, is an emerging rich research area within international migration, labour and socio-legal studies.

8. Conclusion

This concluding chapter establishes what this study contributes to both migration studies and socio-legal studies especially on the debates on migrants' perceptions of being governed by law, navigating discrimination and civic stratification, before moving on to its possible impact. In particular, I examine the connection between racialisation, rights conflicts and the legal consciousness of migrant workers.

8.1 A critical race perspective on migration governance

This book contributes to the debates of the role of law in migration governance, and on the recurring question of migrant rights. The socio-legal approach goes beyond approaching migration processes and challenges as mainly governance problems (such as pointing to policy incoherence) or as unintended effects of immigration regulations. Rather it strengthens the debates of migrants' own self-governance under law. In chapter five, taking an historical perspective, I expounded on the civic stratification of migrants and their rights in the UK and analysed the role of law in creating racialised migrants with less rights. By including a critical race theoretical perspective into labour migration (policy-) studies and international migration law, I was able to reveal the shortcoming of more contemporary managed labour migration literature where discrimination and racism are marginalised. So, the book reveals the different interests that state law serves within the UK, especially in maintaining and managing the binary of differential access to rights between UK nationals, EEA citizens, permanent residents on one hand and racialized migrant workers under labour migration programmes on the other hand, in addition to criminalising specific aspects of migrants' lives, as we have seen with 'stop and searches' as discussed in chapter six. This speaks to critical migration studies that draw on Foucault's governmentality concept to probe migration management in neoliberal states as part of a political project that reinforces and manages differences among different types of migrants and their responses.

Migrants are disciplined through the immigration law but at the same time have different coping strategies. By taking a socio-legal approach to migrant rights and managed

migration, the study has not only looked at the legal dimensions but has also attempted to analyse in detail the historical, social, cultural, economic and political structures that led to the development of laws and policies that shape migrants' migration experiences, and which migrants in turn construct in assenting or dissenting against particular aspects of such laws and policies. In chapter six, I examined migrants' lived experiences that are shaped by the law and policies from states such as the UK. Migrants' access to specific rights, such as family reunification for low skilled migrants are constrained by political structures where politicians specifically single out low-skilled migrants, as subjects of less rights to appease their electorate. At the same time, practices of differentiation or civic stratification of migrants and their rights by the state imply that highly skilled migrants access more entitlements and can easily work their way to permanent residence unlike low-skilled migrants. This covered my main research question whereby through examining these connected ambivalent areas, I revealed both the disciplining and enabling facets of law.

Still we see that the role of law for migrants to access rights (though instrumental from a purely legal perspective) is not given, as it involves processes driven by struggles, the context of rights claim and the migration regime. The limitation of the approach as I adopted it includes mainly concentrating on the legal dimensions of the political struggles over issues of migrant rights but these also allowed us to see that there are categories other than the legal which are also not so clear cut when it comes to interests and ideas on non-citizens. Migrants are affected by discrimination based on their skin colour, religion, female gender, and these cultural prejudices shape the law which in turn effects migrants who migrate.

Meanwhile, discrimination within the society of the receiving country, contributes to migrants' experiences of enjoyment of less rights from an international human rights perspective. There are laws regulating all these areas of migrants' daily lives which migrants are seen to be navigating. So the socio-legal theoretical lens analysing the effects of these laws on migrants' lives as provided herein is a useful addition to academic debates on migration governance, rights, and migrant rights movements.

Historically state law's function was to construct racialisation or 'ethnicising' of East Africans who were former British subjects, while at the same time different governments tried to stop racism that migrants experience once in the UK. The historical approach greatly assisted in understanding the development of the UK's managed migration approach and how the UK maintains a rule of law where some individuals face rights restrictions, are treated as not deserving of specific rights due to their countries of origin and skill status, and the different responses that migrants have to this civic stratification. The historical analysis of migration to the UK and the development of the points-based system in chapter five reveal the legacies of the UK's governance of migration from its former colonies and protectorates, including the East African countries of Kenya, Uganda, and Tanzania, which evolved in a racialised context. Employing immigration law and policy, the UK defined and constructed former legal subjects as migrants, creating a stratified system of international migration management, migrant selection, and admission. The result of all these regulations is that migrants from East Africa could no longer simply travel to the UK, but had to navigate and apply for entry clearance depending on their skill levels before they can legally live and work there. For migrants (and not only East African nationals), different laws and policies (especially immigration law and policies) have been a tool of domination that could either be resisted or accepted, and thereby are one of the reasons for the individual migrant's subordination. Migrants' exercising their right to migrate remains a form of resistance to discriminatory immigration policy that is revealed on examining narratives of lived experiences of migrant workers seeking to access the European labour market. Through examining the function of law we see that law is not as neutral as made out to be by purely positivist approaches.

A key contribution of this study is building on the literature on migrants' own self-governance as a result of states' migration management policies and laws. The selected sample of migrants with different experiences and visa categorisations revealed different levels of precarity, some with semi-legal status at the time of interview and migrants that found themselves with statuses overlapping the varying categories under

immigration categorisation. This hybridity of migrants' precarious legal status and semi-legality is directly connected to the enactment of various immigration laws and is related to times such as major election periods in the UK, and following the 2008 economic crisis. Interviewing migrants contributes to research on labour migration governance, discussions on governmentality as observed through migrants' varied responses and conduct related to law, moments when they turned to the law and their relationships to immigration policy.

The overlap of various legal regimes including welfare, care, human rights, immigration, and labour laws influences migrants' rights experiences in the UK. For instance, labour laws generally protect migrants' labour rights, while human rights laws as contained in domestic legislation (e.g. the Human rights Act and the Equality Act) guarantee their rights and protect them from discrimination and racism. Yet immigration law and policies differentiate among migrants depending on their country of origin – as seen with the examination of the historical development of the PBS and colonial migration to the UK in chapter five. In a postcolonial context as envisaged by Fassin (2011) as reviewed in chapter two, immigration laws continue the colonial legacy of separating, constructing and policing former British subjects' descendants.

8.1.1 Contribution to the legal consciousness and rule of law debates

Through examining migrant workers' legal consciousness (in chapters six and seven), I have contributed to the debates on legality or rule of law in a developed country context as experienced by migrants from developing countries. By elucidating on how migrants acquiescence to a legal system that oppresses them by submitting their rights violations to the court system for redress, and while other migrants hide from the courts or any forms of law when they are undocumented, I have shown the two sides of the same coin of the rule of law that co-exist within the UK. This addressed my second guiding question. Migrants' counter-responses to their precarisation, where they still turned to legal avenues to address rights issues, rights violations, and their precarious legal status, is seen to constitute law retaining its institutional power or legality, which was a primary idea behind the development of the analytical concept of legal consciousness. This is

what ensures that states such as the UK have an efficient and operational rule of law in practice. The different schemas of legal consciousness exist from the narrations of migrants from all skills categorisations, and some migrants have experienced moments where they have hidden from law, engaged the law, and resisted the law. It is context specific, depends on the individual or group to which the law applies, and how such actors decide to act or behave before the law.

I found it difficult to neatly separate the different forms or schema of legal consciousness as narrated by individuals from the function of law which was revealed in their different experiences. In theory, it would be easy to keep the schemas separate, but in practice in analysing the narrations of migrants' migration experiences as related to legal consciousness, I saw that some of the responses to racialisation were a form of rights and legal consciousness (e.g. whether speaking out against racism in the workplace, which is against the human right to freedom from discrimination on various grounds). Further, I examined the resistance to restrictive law by East African migrants in collaboration with parts of civil society in chapter seven. Starting with law was partly influenced by my past legal training, whereby I see regulations and law as everywhere (Sarat 1990) in most of the narratives from the interviewees on the migration experience to the UK from the visa application to the regulation of the stay and finally working in the country. Various state regulations and policies were being enforced by immigration agents, landlords, and employers. I could not analyse the interviews as an outsider of the law or approach legal consciousness as not involving state laws. For my particular study, state regulations were some of the main laws that migrants manoeuvred or negotiated in their lives on a daily basis as they seek to remain living and working legally in the UK. I have engaged with migrants' circulating narratives of individual actions and perceptions of law (transnational legal consciousness). I examined the schema - with, before and against the law - developed by Ewick and Silbey (1998), and later advanced by Silbey (2005) as possible of further modification to examine legal hegemony in the UK specifically. From analysing migrants' own historic narratives of lived experiences under labour migration programmes in the UK, law for the migrants who turned to legal means to seek redress was at the same time an avenue for empowerment.

The discussion of migrants' legal consciousness also revealed that migrants are somehow involved in the construction of the law in the UK. It is not only law that is constructing as far as migrant subjectivities' are concerned. Migrants freely legitimate and normalise states' practices of differentiation when they acquiesce to them, for instance on meeting requirements of family reunification. At the same time, migrants are seen to counter immigration policy through dissent, and have in the past collectively resisted retrospective changes instituted by the state. The latter actions are seen as a threat to state sovereignty where controlling migration is still conceived as the last bastion of the state (Dauvergne 2008).

I have attempted to contribute to interdisciplinary academic discussions examining the relevance of the concept of legal consciousness. This was envisaged by Silbey (2005) as work that socio-legal scholars have to undertake in evaluating the rule of law. A contribution was starting from law as envisaged by de Genova (2004) to question the role of law in migration regimes (see chapter five), or what I coded and interpreted as fitting within law from an East African migrant's perspective, as opposed to only focusing on state laws (although they greatly influenced my framework of analysis). Through state laws and immigration laws migrants are criminalised, stratified in their access to rights and work entitlements which may depend partly on an intersection of their immigration categorisation and social class status. States' immigration laws were in this way perceived as the main form of legal domination of migrant workers – contributing to the creation of precarious migrant status and illegality.

Furthermore, addressing my remaining guiding questions required going beyond only examining a schematic legal consciousness as focussing on individuals' awareness of laws but showed the additional structural factors that affect migrants' rights experiences. Some of these included UK, East African and EU politics, media discourses, and racialisation. These factors also influence various circulating notions of migrants' experiences with law. Together with migrants' various accounts of transnational legal consciousness, this contributes to the acceptance of the rule of law where migrants have

restricted or less rights in the UK and elsewhere in Europe. In as much as socio-legal scholars try to decentre state law by identifying instances of legal consciousness of collective dissent or developing useful cultural schemas showing peoples' attitudes to law (Halliday and Morgan 2013), for East African migrants, this version of law is still a major structuring factor in their transnational lives, that they cannot totally alienate themselves from.

8.1.2 Migrant subjects' position in international law and rights movements

The study attempted to go beyond state centred perceptions of international migration law and focusing on individual migrants in a transnational context. Viewing migrants as capable legal subjects and how they negotiate their lives under national and domesticated international laws (e.g. human rights laws in the UK), is a vital contribution to the debates on international migration law where states are still the main actors. International human rights norms provides remedies to migrants in an international system wrought with conflicts related to migration. In practice, law is seen to both institutionalise migrants' precarious status while at the same time can be useful in resisting oppressive structures that migrants find themselves operating within or constrained by restrictive immigration policies and gendered relations. Additionally, analysing mainly the UK's immigration laws and policies from the perspective of East African migrant workers provides relevant insights on how migrant rights experiences can be framed in campaigns and struggles for rights, and why it is necessary to campaign against policies curbing migrants' abilities to claim rights and retrospective legislation. Addressing the struggles to claim rights and the associated challenges faced by migrants in relying on the available legal, political, and related situational opportunities is a timely contribution to the debate on struggles for migrant rights in Europe and around the world.

Particularly chapter seven reveals various coping and resistance strategies through usage of law for rights redress. This addressed the second part of my main research question on law as not being a mere tool of subordination by the ruling political classes. Migrants strategically resort to courts to appeal against decisions by immigration officers, and

joining local and transnational campaigns for migrant rights to attain redress and thereby assert their rights. Going beyond the legal strategies, the chapter includes both political and sociological perspectives on migrants' rights claiming as proactive transnational legal consciousness and the role of civil society-based movements in the promotion of migrants' rights. The research sheds valuable light on migrants' strategic activism using legal and political means to claim rights. As Michael Freeman (2011) and other scholars assert human rights including migrant rights, cannot be divorced from politics. It is thereby a timely contribution to the debate on migration and legal rights at a time when more developed states are curtailing migration. Developed countries such as the UK where the existing conventions guaranteeing migrant rights have not been ratified, demonstrate that international conventions are only tools for individual migrants and migrant rights movements. Migrants have brought claims before national courts citing some of the international conventions. In this way, international ideas and norms are transferred from the international level to the national level. Also, due to the plural existence of various legal regimes side by side such as human rights and labour laws, migrants can always refer to other laws and use them generally where they can provide them some form of protection. Political sociology revealed the other structures such as access to the labour market, media discourses, and the political environment especially election periods that explained the constraints on migrants' rights.

The research examined the application of the ILO decent work agenda as seen with the case of migrant healthcare workers in practice. I did this by examining and shedding light on results of developed governments such as the UK's, which implement and apply laws and policies that contribute to or reinforce the precarious working conditions of migrant workers. These governments introduced labour migration programmes among other policies in managing migration, partly as a result from pressure from employers and their own acknowledgement of labour shortages, for instance in healthcare. From the discussion on labour rights and standards of migrants under labour migration programmes, I realised the limitations of the ILO decent work agenda, even in developed states when the agenda is not implemented in practice. This made me realise that to attain decent work for all practically requires broadly-based social justice movements,

including migrant rights movements that demanded and struggled for changes not only to labour conditions of migrants but also to migrants' mobility and living conditions. In a neoliberal context, some of the responses and strategies taken by migrants to assert and claim rights included individually and collectively collaborating with other groups for instance as a part of migrant rights movements. Migrants' inability to participate in transnational social movements due to work permit restrictions also constrained migrants' choice of avenue to claim rights. Migrant rights movements which are composed of migrants, UK nationals, among other private actors, remain key actors that mobilise for transnational or global migrant rights (Piper 2015), and which other migrants that are unable to participate in such campaigns benefit from.

East African states are seen to mainly participate in cooperation related to transmission of remittances, and assisting European states in the collection of biometric data of their migrant nationals as they leave or on return to their borders. Such states need to do more to assist their nationals abroad, especially when they find themselves in a legally precarious status, or are faced with constraining bureaucratic practices at embassies or at airports. Economic migration is one survival strategy of many East African nationals, including healthcare workers who send remittances and contribute to the development of their countries of origin. With the selected sector we see that it is necessary to go beyond the categories implied by states that control migration processes. As the UK remains a main destination for EA nationals, there is a need to further examine the connections and importance of locations not only in developed states, through tracing transnational legal consciousness of migrants upon return to their countries of origin.

8.1.3 Future research and concluding remarks

A detailed migration regime analysis going beyond state regulation, including other transnational actors will greatly enhance the scholarship on migration governance. It requires more expansive stays in the receiving and sending countries to cover the transnational dimension in detail from return migrants and family members' perspective in the countries of origin. Interviewing actors from all these spheres would greatly enrich further discussions on legal consciousness and migration regime scholarship. Migrants'

collective legal consciousness of dissent in collaboration with other nationalities and local actors that are similarly affected by restrictive immigration laws and policies is another area that requires further research. There have been several demonstrations across the UK and in Europe involving various social forces from all nationalities, gender, and classes, which are an avenue of research on migrant movements. In addition to the culture, the political, social and economic aspects constraining migrants' ability to access and enjoy their rights require further investigation from the perspective of heterogeneous migrant groups within multicultural Britain. Studying these factors together with the steps taken by migrants to claim rights through litigation from below and collective struggles against discrimination and restrictive migration policies in detail will greatly enrich studies on migration governance and social movements. Examining this collective dissent would only be possible through interviewing both migrants and local actors specifically engaged in these acts (Halliday and Morgan 2013).

Further, in-depth studies, for instance comparative studies of governance of migration on the African continent and to trace transnational legal consciousness and lived experiences of African migrants in African states or in the Gulf with experiences of migrants in European states, would greatly advance scholarship on migration management as a political project of externalisation of western borders. What is needed is more empirical research on the links between the transnational and nation state levels of authority, and the outcome this has on mobilisation for rights by migrants. For the healthcare sector, interviewing more student doctors and nurses will also expand studies on the state of labour standards and rights, which are some of the reasons that influence them to migrate, in addition to socio-economic and political conditions in the countries of origin.

Looking back at my research questions, my study adds to interdisciplinary debates on migration governance in connection to law employing the concept of legal consciousness of a minority group of East African migrant workers engaged in the healthcare industry in Britain. Two main findings include firstly, that law in the form of state's immigration rules and regulations can be an instrument of managing differences

in creating migrants and legal subjects, or function to legitimise and give meaning to states' discriminatory immigration policies that ascribe less rights to migrants. Secondly, awareness of law is empowering, as highlighted in chapter seven depending on migrants' assertiveness in the particular context, transnational legal culture, and their ability to draw on their subjectivities for instance as community members or unionists to engage law, organise and counter its constraining demands. I have combined law as regulating migrants' lives with migrants' own perceptions of being governed by law and policy, and constructing legality in their everyday lives. Examining migrants' individual and collective struggles and resistance practices, we see that there is potential to change the prevailing and existing power relations as revealed through the constraining state law and the actions of migrants resorting to the same legal institutions to claim rights.

Other factors that structure migrants' lived experiences on migration include racialisation, the gender order from their countries of origin, social class status, and xenophobic tendencies within the receiving countries. Such structures also affect how migrants respond to conflicts and whether they turn to law to seek redress. Understanding and changing these structures requires an interdisciplinary perspective on international human rights and law. Political sociology shows us that dominance of law in understanding rights is supplemented with studies on power relations. Subtle collective acts of resistance are seen in migrants' engagement with civil society in migrant communities, trade unions and religious affiliated-organisations. These groups together with migrants, struggle for migrant rights emphasising the humanity rather than the otherness of migrants which can strengthen anti-discrimination practice in migrant receiving countries. Migrant workers may not actively protest due to the government restrictions on protest and struggle from their countries of origin and which they still encounter in the form of restrictive immigration law and policy upon migration. My study did not find a total alienation stance from the law where migrants totally 'turned their backs' to law but instead organised their lives within the constraints of and under the restrictions of state law. A final recommendation is for all concerned actors especially those charged with migration governance to respect, promote and protect migrant rights.

9. Bibliography

Abel, Richard L. 1995. “Nothing Left but Rights: Law in the Struggle against Apartheid.” In *Identities, Politics, and Rights*, edited by Austin Sarat and R Kearns, Thomas. Michigan: University of Michigan Press.

Abella, Manolo. 2006. “Polices and Best Practices for Management of Temporay Migration.” In *International Symposium on International Migration and Development*. Vol. 3. Turin: United Nations Secretariat. http://www.un.org/esa/population/migration/turin/Symposium_Turin_files/P03_SYMP_Abella.pdf.

Achiume, E Tendayi, and Loren B Landau. 2015. “The African Union Migration and Regional Integration Framework.” *ACCORD Policy & Practice Brief*.

Alberti, Gabriella. 2017. “The Government of Migration through Workfare in the UK. Towards a Shrinking Space of Mobility and Social Rights?” *Movements. Journal for Critical Migration and Border Regime Studies* 3 (1): 1–23.

Aleinikoff, T. Alexander. 2007. “International Legal Norms on Migration: Substance without Architecture.” In *International Migration Law: Developing Paradigms and Key Challenges*, edited by Ryszard Cholewinski, Richard Perruchoud, and Euan MacDonald, 467–80. The Hague: T.M.C. Asser Press.

Alpes, Maybritt Jill. 2015. “Airport Casualties: Non-Admission and Return Risks at Times of Internalized/Externalized Border Controls.” *Social Sciences* 4 (3): 742–57. https://doi.org/10.3390/socsci4030742.

Alpes, Maybritt Jill, and Alexis Spire. 2014. “Dealing with Law in Migration Control: The Powers of Street-Level Bureaucrats at French Consulates.” *Social & Legal Studies* 23: 261–74. https://doi.org/10.1177/0964663913510927.

Anderson, Bridget. 2013. *Us and Them? The Dangerous Politics of Immigration Control*. Oxford: Oxford University Press.

Anderson, Bridget, and Michael Keith, eds. 2014. *Migration: The COMPAS Anthology*. *Migration: The COMPAS Anthology*. Oxford: Centre on Migration, Policy and Society (Compas).

Anthias, Floya, and Maja Cederberg. 2006. “State of the Art: Theoretical Perspectives and Debates in the UK.” *Integration of Female Immigrants in Labour Market and*

Society. Policy Assessment and Policy Recommendations. Oxford: Oxford Brookes University. http://www.femipol.uni-frankfurt.de/docs/working_papers/state_of_the_art/UK.pdf.

Ashtiany, Sue. 2011. "The Equality Act 2010: Main Concepts." *International Journal of Discrimination and the Law* 11: 29–42. https://doi.org/10.1177/135822911101100204.

Asima, Prosper Price Delali. 2010. "Continuities and Discontinuities in Gender Ideologies and Relations: Ghananian Migrants in London." University of Sussex. http://sro.sussex.ac.uk/6268/1/Asima,_Prosper_Price_Delali.pdf.

Awad, Ibrahim, Piyasiri Wickramasekara, and Patrick Taran. 2010. *International Labour Migration: A Rights-Based Approach*. Geneva: International Labour Office.

Bakker, Isabella, and Stephen Gill, eds. 2003. *Power, Production and Social Reproduction: Human In/Security in the Global Political Economy*. New York: Palgrave Macmillan. https://doi.org/10.1057/9780230522404.

Balibar, Etienne. 1988. "Is There a 'Neo-Racism'?" *Nation, Race, Class*, 17–28.

Ballard, Roger. 1987. "The Political Economy of Migration: Pakistan, Britain, and the Middle East." In *Migrants, Workers and the Social Order*, edited by Jeremy Eades. London and New York: Tavistock Publications.

Barber, Catherine, Richard Black, and Paula Tenaglia. 2005. *Making Migration 'Development Friendly': Temporary Worker Schemes in the UK*. Brighton: Development Research Centre on Migration, Globalisation and Poverty.

Bauder, Harald. 2008. "Neoliberalism and the Economic Utility of Immigration: Media Perspectives of Germany's Immigration Law." *Antipode* 40 (1): 55–78. https://doi.org/10.1111/j.1467-8330.2008.00571.x.

Bayrakli, Enes, and Farid Hafez, eds. 2017. *European Islamophobia Report 2016*. Ankara: Foundational For Political, Economic and Social Research (SETA).

Bernhard, Judith K., Luin Goldring, Julie Young, Carolina Berinstein, and Beth Wilson. 2007. "Living with Precarious Legal Status in Canada: Implications for the Well-Being of Children and Families." *Refuge* 24 (2): 101–14.

Bezabeh, Samson A. 2016. "Africa'S Unholy Migrants: Mobility and Migrant Morality

in the Age of Borders." *African Affairs* 5 (September): 1–17.

Bigo, Didier. 2010a. "Delivering Liberty and Security? The Reframing of Freedom When Associated with Security." *Europe's 21st Century Challenge. Delivering Liberty.* 10 (10): 388–420.

———. 2010b. "Freedom and Speed in Enlarged Borderzones." In *The Contested Politics of Mobility: Borderzones and Irregularity*, edited by Vicki Squire. New York: Routledge. https://doi.org/10.4324/9780203839829.

Binaisa, Naluwembe. 2011. "African Migrants Negotiate 'home' and 'Belonging': Re-Framing Transnationalism through a Diasporic Landscape." 41. *International Migration Institute Working Papers*. Oxford.

Black, Richard, Lyndsay Mclean Hilker, and Caire Pooley. 2004. "Migration and Pro-Poor Policies in East Africa." C7. Development Research Centre on Migration, Globalisation and Poverty. http://www.migrationdrc.org/publications/working_papers/WP-C7.pdf.

Blinder, Scott. 2015. "Briefing: Non-EU Labour Migration to the UK." *Migration Observatory*. Oxford: COMPAS.

Borkert, Maren, and Rinus Penninx. 2011. "Policymaking in the Field of Migration and Integration in Europe: An Introduction." In *Migration Policymaking in Europe: The Dynamics of Actors and Contexts in Past and Present*. Amsterdam: Amsterdam University Press.

Boswell, Christina. 2005. "Migration in Europe." *Global Commission on International Migration*. Geneva. www.gcim.org.

———. 2007. "Theorizing Migration Policy: Is There a Third Way?" *International Migration Review* 41 (1): 75–100. https://doi.org/10.1111/j.1747-7379.2007.00057.x.

———. 2008. "UK Labour Migration Policy: Permanent Revolution?" *CeSPI Country Papers*. Rome. www.cespi.it.

Boyd, Monica. 2006. "Gender Aspects of International Migration To Canada and the United States." In *International Symposium on International Migration and Development*. Turin: United Nations Secretariat.

Bradby, Hannah. 2013. "A Review of Research and Policy Documents on the

International Migration of Physicians and Nurses." 07. *MMG Working Papers*.

Brady, Hugo. 2008. "EU Migration Policy: An A-Z." *Centre for European Reform*. London. http://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2011/briefing_813-3772.pdf.

Briones, Leah. 2008. "Beyond Trafficking, Agency and Rights: A Capabilities Perspective on Filipina Experiences of Domestic Work in Paris and Hongkong." *Europe* 5: 49–72.

———. 2009. *Empowering Migrant Women: Why Agency and Rights Are Not Enough*. Surrey: Ashgate.

Broeders, Dennis, and Huub Dijstelbloem. 2015. "The Datafication of Mobility and Migration Management: The Mediating State and Its Consequences." In *Digitizing Identities: Doing Identity in a Networked World*, edited by Irma Van der Ploeg and Jason Pridmore. London: Routledge.

Brubaker, Rogers. 2005. "The 'Diaspora' Diaspora." *Ethnic and Racial Studies* 28 (1): 1–19. https://doi.org/10.1080/0141987042000289997.

Buchan, James, and Delanyo Dovlo. 2004. *International Recruitment of Health Workers to the UK: A Report for DFID*. London: DFID Health Systems Resource Centre.

Buchan, James, and I. Secombe. 2006. "Worlds Apart? The UK and International Nurses." Edinburgh: Queen Margaret University College.

Buckel, Sonja, and Andreas Fischer-Lescano. 2009. "Gramsci Reconsidered: Hegemony in Global Law." *Leiden Journal of International Law* 22 (03): 437. https://doi.org/10.1017/S0922156509990033.

Calavita, Kitty. 1998. "Immigration, Law, and Marginalization in a Global Economy: Notes from Spain." *Law and Society Review* 32 (3): 529–66.

———. 2006. "Gender, Migration, and Law: Crossing Borders and Bridging Disciplines." *International Migration Review* 40 (1): 104–32.

———. 2007. "Law , Immigration and Exclusion in Italy and Spain." *Papers: Revista de Sociologia* 85: 95–108.

Carling, Jørgen. 2005. "Gender Dimensions of International Migration." *Global Migration Perspectives*, no. 35: 1–26.

Castles, Stephen. 2004. “Why Migration Policies Fail.” *Ethnic and Racial Studies* 27 (2): 205–27. https://doi.org/10.1080/0141987042000177306.

———. 2006a. “Back to the Future? Can Europe Meet Its Labour Needs through Temporary Migration?” In *Congress Fortress Europe 16.-17. February 2006*. International Migration Institute (IMI).

———. 2006b. “Guestworkers in Europe: A Resurrection?” *International Migration Review* 40 (4): 741–66. https://doi.org/10.1111/j.1747-7379.2006.00042.x.

Castles, Stephen, and Godula Kosack. 1973. “The Function of Labour Immigration in Western European Capitalism.” In *Immigrant Workers and Class Structure in Europe*. London: Oxford University Press.

Chappell, Laura, and Alex Glennie. 2010. “Show Me the Money (and Opportunity): Why Skilled People Leave Home — and Why They Sometimes Return.” *Migration Information Source*, 1–7. www.migrationinformation.org.

Chauvin, Sébastien, and Blanca Garcés-Mascareñas. 2014. “Becoming Less Illegal: Deservingness Frames and Undocumented Migrant Incorporation.” *Sociology Compass* 8 (4): 422–32. https://doi.org/10.1111/soc4.12145.

Chetail, Vincent. 2009. “Paradigm and Paradox of the Migration-Development Nexus: The New Border for North-South Dialogue.” *German Yearbook of International Law* 52: 183–215.

———. 2017. “The Architecture of International Migration Law: A Deconstructivist Design of Complexity and Contradiction.” *American Journal of International Law* 111: 18–23. https://doi.org/10.1017/aju.2017.11.

Cholewinski, Ryszard. 2004. “The Legal Status of Migrants Admitted for Employment: A Comparative Study of Law and Practice in Selected European States.” Strasbourg: Council of Europe Publishing.

———. 2010. “Human Rights of Migrants: The Dawn of a New Era?” *Georgetown Immigration Law Journal* 24 (585): 585–615.

CLASS, and Migrants Rights Network. 2015. “Changing the Debate on Migration.” London: Centre for Labour and Social Studies.

Commission for Racial Equality. 1985. *Immigration Control Procedures: Report of a Formal Investigation*. London: Commission for Racial Equality.

Connolly, H., S. Marino, and M. M. Lucio. 2014. “Trade Union Renewal and the Challenges of Representation: Strategies towards Migrant and Ethnic Minority Workers in the Netherlands, Spain and the United Kingdom.” *European Journal of Industrial Relations* 20 (1): 5–20. https://doi.org/10.1177/0959680113516848.

Cotterrell, Roger. 2007. “Sociology of Law.” Edited by David Scott Clark. *Encyclopedia of Law and Society: American and Global Perspectives*. Sage Publications.

Cowan, Dave. 2004. “Legal Consciousness: Some Observations.” *Modern Law Review* 67 (6): 928–58. https://doi.org/10.1111/j.1468-2230.2004.00518.x.

Cox, Pat, Thomas Geisen, and Roger Green. 2008. *Qualitative Research and Social Change: European Contexts*. *Palgrave Macmillan*. New York: Palgrave Macmillan.

Crépeau, François. 2014. “The Human Rights of Migrants.” In *Migration: The COMPAS Anthology*, edited by Bridget Anderson and Michael Keith. Vol. 11. Oxford: Oxford University Press.

Dauvergne, Catherine. 2008. *Making People Illegal: What Globalization Means for Migration and Law*. New York: Cambridge University Press.

Delgado-Wise, Raul, Humberto Marquez-Covarrubias, and Ruben Puentes. 2013. “Reframing the Debate on Migration, Development and Human Rights.” *Population, Space and Place* 19 (May): 430–42. https://doi.org/10.1002/psp.1783.

Department of Health. 2004. *Code of Practice for the International Recruitment of Healthcare Professionals*. London: Department of Health.

Devine, Fiona. 2002. “Qualitative Methods.” In *Theory and Methods in Political Science*. New York: Palgrave Macmillan.

Dharam, Ghai, ed. 2010. *Decent Work: Objectives and Strategies*. Geneva: International Institute for Labour Studies. https://doi.org/10.1007/978-3-531-92572-1.

Dijstelbloem, Huub, and Dennis Broeders. 2015. “Border Surveillance, Mobility Management and the Shaping of Non-Publics in Europe.” *European Journal of Social Theory* 18 (1): 21–38.

Donato, Katharine M., Donna Gabaccia, Jennifer Holdaway, Martin Manalansan IV, and Patricia R. Pessar. 2006. “A Glass Half Full? Gender in Migration Studies.”

International Migration Review 40 (1): 3–26. https://doi.org/10.1111/j.1747-7379.2006.00001.x.

Dooley, David. 1990. *Social Research Methods*. 2nd ed. New Jersey: Prentice Hall.

Dupret, Baudouin. 2007. "Legal Pluralism, Plurality of Laws, and Legal Practices." *European Journal of Legal Studies* 1 (1): 35–60.

Eades, Jeremy. 1987. "Anthropologists and Migrants: Changing Models and Realities." In *Migrants, Workers and the Social Order*, edited by Jeremy Eades. London and New York: Tavistock Publications.

Elgot, Jessica. 2016. "Families to Challenge Minimum Income Visa Rules in Supreme Court." *The Guardian*, February 22, 2016.

Ervasti, Kaijus. 2008. "Sociology of Law as a Multidisciplinary Field of Research." *Scandinavian Studies in Law* 53: 137–50.

Erwing, K.D. 2010. "The Resilience of the Political Constitution." *Germany Law Journal* 14 (12): 2111–36.

Eule, Tobias G. 2018. "The (Surprising?) Nonchalance of Migration Control Agents." *Journal of Ethnic and Migration Studies* 44 (16): 2780–95.

European Union Agency for Fundamental Rights, and Council of Europe. 2014. *Handbook On European Law Relating to Asylum, Borders and Immigration*. Luxembourg: Publication Office of the European Union. https://doi.org/https://doi.org/10.2811/58828.

Ewick, Patricia, and Susan S. Silbey. 1998. *The Common Place of Law: Stories from Everyday Life*. Chicago: Chicago University Press.

Ezzaequi, Leila, and Yasemin Soysal. 2011. "Research Paper on Migration." *Alliance of Civilizations*. https://www.unaoc.org/repository/thematic_migration.pdf.

Fabien, Cante. 2018. "Government Pledges to Uphold Migrants ' Right to Strike." Migrants' Rights Network. 2018. migrantsrights.org.uk/blog/2018/07/17/government-pledges-to-uphold-migrants-right-to-strike/.

Fanon, Frantz. 1986. *Black Skin, White Masks*. 2008 Editi. London: Pluto Press. https://doi.org/10.4324/9781315775357.

Farris, Sara R. 2015. "Migrants' Regular Army of Labour: Gender Dimensions of the

Impact of the Global Economic Crisis on Migrant Labor in Western Europe." *The Sociological Review* 63 (1): 121–43. https://doi.org/10.1111/1467-954X.12185.

Fassin, Didier. 2011. "Policing Borders, Producing Boundaries. The Governmentality of Immigration in Dark Times." *Annual Review of Anthropology* 40 (August): 213–26. https://doi.org/10.1146/annurev-anthro-081309-145847.

Feldman-Savelsberg, Pamela. 2016. *Mothers on the Move: Reproducing Belonging between Africa and Europe*. London: University of Chicago Press.

Ferguson, Susan, and David McNally. 2015. "Precarious Migrants: Gender, Race and the Social Reproduction of a Global Working Class." In *Socialist Register 2015: Transforming Classes*, edited by Leo Panitch and Greg Albo, 1–23. London: Merlin Press.

Findlay, Allan M. 2006. "Brain Strain and Other Social Challenges Arising from the UK's Policy on Attracting Global Talent." In *Competing for Global Talent*, edited by Christiane Kuptsch and Eng Fong Pang. Geneva: International Institute for Labour Studies (IILS).

Fine, Sarah, and Leah Ypi, eds. 2016. *Migration in Political Theory: The Ethics of Movement and Membership*. Oxford: Oxford University Press.

Flick, Uwe, Ernst von Kardoff, and Ines Steinke, eds. 2004. *A Companion to Qualitative Research*. London: Sage Publications.

Flynn, Don. 2006. "Migrant Voices, Migrant Rights: Can Migrant Community Organisations Change the Immigration Debate in Britain Today?" London: Barrow Cadbury Trust.

Ford, Robert, Will Jennings, and Will Somerville. 2015. "Public Opinion, Responsiveness and Constraint: Britain's Three Immigration Policy Regimes." *Journal of Ethnic and Migration Studies* 9451 (April): 1–21. https://doi.org/10.1080/1369183X.2015.1021585.

Foucault, Michel. 1978. "Governmentality." In *The Birth of Biopolitics: Lectures at the College de France (1978-9)*, edited by Pasquale Pasquino, 87–104. Aut Aut 167-8.

Freeman, Michael. 2011. *Human Rights: An Interdisciplinary Approach*. 2nd ed. Cambridge: Polity.

Garner, Steve. 2009. "Racialisation." In *Racisms: An Introduction*, 19–32. London:

Sage Publications.

Geiger, Martin, and Antoine Pécoud, eds. 2012. *The New Politics of International Mobility. Migration Management and Its Discontents*. Osnabrück: Institut für Migrationsforschung und Interkulturelle Studien (IMIS).

Genova, Nicholas De. 2004. "The Legal Production of Mexican/Migrant '"Illegality."'" *Latino Studies* 2: 160–85.

Ghosh, Bimal. 1997. *Gains from Global Linkages*. New York: Macmillan.

———. 2013. *The Global Economic Crisis and the Future of Migration: Issues and Prospects. What Will Migration Look like in 2045?* Hampshire: Palgrave Macmillan.

Gillan, Regina (on the Application of) v Commissioner of Police for the Metropolis and Another. 2006, UKHL 12.

Glick Schiller, Nina, and Noel B Salazar. 2013. "Regimes of Mobility across the Globe." *Journal of Ethnic and Migration Studies* 39: 183–200. https://doi.org/10.1080/1369183X.2013.723253.

Global Forum on Migration and Development. 2017. "Background and Objectives." https://gfmd.org/process/background.

Goldring, Luin, Carolina Berinstein, and Judith K. Bernhard. 2007. "Institutionalizing Precarious Immigration Status in Canada." Working Paper no.158. *The Center for Comparative Immigration Studies*. San Diego.

Goldring, Luin, and Patricia Landolt. 2012. "The Impact of Precarious Legal Status on Immigrants' Economic Outcomes." *IRPP Study* 35 (October): 1–41.

Grant, Stephanie. 2005. "International Migration and Human Rights." *Global Commission on International Migration (GCIM)*. Geneva. www.gcim.org.

Grieco, Elizabeth, and Monica Boyd. 1998. "Women and Migration: Incorporating Gender into International Migration Theory." Center for the Study of Population WPS 98-139. Florida. http://www.fsu.edu/~popctr/papers/floridastate/98-139.pdf.

Griffiths, John. 1986. "What Is Legal Pluralism?" *Journal of Legal Pluralism* 24: 1–55.

Grosfoguel, Ramon, Laura Oso, and Anastasia Christou. 2015. "'Racism', Intersectionality and Migration Studies: Framing Some Theoretical Reflections." *Identities: Global Studies in Culture and Power* 22 (6): 635–52.

https://doi.org/10.1080/1070289X.2014.950974.

Grove-White, Ruth. 2010. “Can Migration Work for Britain ? Not like This.” Open Democracy. London. March 17, 2010. https://www.opendemocracy.net/5050/ruth-grove-white/can-migration-work-for-britain-not-like-this.

Guild, Elspeth, and Didier Bigo. 2010. “The Transformation of European Border Controls.” In *Extraterritorial Immigration Control: Legal Challenges*, edited by Bernard Ryan and Valsamis Mitsilegas, 257. Leiden: Brill. https://doi.org/10.1163/ej.9789004172333.i-441.59.

Gunston, Henry. 2004. “The Planning and Construction of the Uganda Railway.” *Transactions of the Newcomen Society* 74: 45–71.

Haan, Arjan de. 2000. “Migrants, Livelihoods, and Rights : The Relevance of Migration in Development Policies.” *Social Development Working Paper No. 4*.

———. 2006. “Migration in the Development Studies Literature: Has It Come Out of Its Marginality?” 19. UNU-WIDER, United Nations University.

Hall, Stuart. 1980. “Race, Articulation and Societies Structured in Dominance.” In *Sociological Theories: Race and Colonialism*, 305–45. Paris: UNESCO.

Halliday, Simon, and Bronwen Morgan. 2013. “I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination.” *Current Legal Problems* 66 (1): 1–32. https://doi.org/10.1093/clp/cut002.

Hampshire, James. 2005. *Citizenship and Belonging: Immigration and the Politics of Demographic Governance in Postwar Britain*. New York: Palgrave Macmillan.

———. 2009. “Immigration Policy in the United Kingdom.” Netzwerk Migration in Europa e.V. 2009.

Hampshire, James, and Timothy Bale. 2015. “New Administration, New Immigration Regime: Do Parties Matter After All? A UK Case Study.” *West European Politics* 38 (1): 145–66. https://doi.org/10.1080/01402382.2014.925735.

Hansen, Randall. 2007. “Country Profile: United Kingdom.” In *Focus Migration*. Hamburg: Hamburg Institute of International Economics.

Harsman, Björn, and John M Quigley. 1995. “The Spatial Segregation of Ethnic and Demographic Groups: Comparative Evidence from Stockholm and San Francisco.” *Journal of Urban Economics* 37: 1–16.

Hart, H.L.A. 1961. *The Concept of Law*. Oxford: Clarendon Press.

Hasnas, John. 1995. "Back to the Future: From Critical Legal Studies Forward to Legal Realism, or How Not to Miss the Point of the Indeterminacy Argument." *Duke Law Journal* 45: 85–132.

Hausner, Sondra L. 2011. "Nepali Nurses in Great Britain: The Paradox of Professional Belonging." Centre on Migration, Policy and Society. Oxford.

Hay, Colin, Michael Lister, and David Marsh, eds. 2006. *The State: Theories and Issues*. New York: Palgrave Macmillan.

Heckmann, Friedrich, Elmar Hönekopp, and Edda Currle. 2009. "Guest Worker Programs and Circular Migration: What Works?" *Immigration Paper Series 09*. Washington. http://www.gmfus.org/publications/index.cfm.

Hickman, Mary, Helen Crowley, and Nick Mai. 2008. *Immigration and Social Cohesion in the UK: The Rhythms and Realities of Everyday Life*. London: Joseph Rowntree Foundation. http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.732.9003&rep=rep1&type=pdf.

Hilson, Chris. 2002. "New Social Movements: The Role of Legal Opportunity." *Journal of European Public Policy* 9 (2): 238–55.

Home Office. 2002. *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*. London: HMSO.

———. 2006. *A Points-Based System: Making Migration Work for Britain*. Cm 6741. London: Home Office.

———. 2009. *Tier 4 of the Points Based System – Policy Guidance*. London: HMSO.

———. 2013. *UK Border Agency*. London: Home Office.

———. 2015a. *Home Office Immigration & Nationality Charges 2015/16*. London: HMSO.

———. 2015b. *Press Release: Right to Rent Checks Introduced for Landlords in England*. London: Home Office.

———. 2016. *Immigration Rules*. London: Home Office.

HSMP Forum. 2015. "HSMP Forum Welcomes All Skilled Migrants." HSMP. 2015. http://www.hsmpforumltd.com/index.html.

HSMP Forum Limited v Secretary of State for the Home Department (Administrative Court). 2008, [2008] EWH 664 (Admin).

Hutchinson, Allan, and Patrick Monahan. 1984. “Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought.” *Stanford Law Review* 36: 199–245.

Ingram, Helen, Anne Schneider, and Peter DeLeon. 2007. “Social Construction and Policy Design.” In *Theories of the Policy Process*, edited by Paul A Sabatier, 2nd ed., 93–128. Cambridge: West View Press.

International Commission of Jurists. 2014. *Migration and International Human Rights Law - A Practitioners’ Guide No.6*. Updated Ed. Geneva: International Commission of Jurists.

International Organization for Migration. 2015. *World Migration Report 2015: Migrants and Cities: New Partnerships to Manage Mobility*. Geneva: International Organization for Migration.

Jensen, Sune Qvotrup. 2009. “Preliminary Notes on Othering and Agency-Marginalized Young Ethnic Minority Men Negotiating Identity in the Terrain of Otherness.” *Sociologisk Arbejdspapir*.

Jiang, Zhe, and Marek Korczynski. 2016. “When the ‘unorganizable’ Organize: The Collective Mobilization of Migrant Domestic Workers in London.” *Human Relations* 69 (3): 813–38. https://doi.org/10.1177/0018726715600229.

Jones, Adele. 2008. “A Silent but Mighty River: The Costs of Women’s Economic Migration.” *Comparative Perspectives Symposium: Gendered Migrations* 33 (4): 761–69.

Joppke, Christian. 2010. *Immigration and Citizenship*. Cambridge: Polity Press.

Kaelin, Lukas. 2011. “Care Drain: The Political Making of Health Worker Migration.” *Journal of Public Health Policy* 32 (4): 489–98.

Kalayaan. 2015. “Britain’s Forgotten Slaves; Migrant Domestic Workers in the UK Three Years after the Introduction of the Tied Overseas Domestic Worker Visa.” http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-3-year-briefing.pdf.

Kantola, Johanna, and Kevät Nousiainen. 2009. “Institutionalizing Intersectionality in

Europe." *International Feminist Journal of Politics* 11 (4): 459–77. https://doi.org/10.1080/14616740903237426.

Kennedy, David. 2007. "The TWAIL Conference: Keynote Address." *International Community Law Review* 9: 333–44.

———. 2013. "Law and the Political Economy of the World." *Leiden Journal of International Law* 26 (February): 7–48. https://doi.org/10.1017/S0922156512000635.

Kennedy, Duncan. 1982. "Legal Education as Training for Hierarchy." *The Politics of Law*, 40–61.

Kline, Roger. 2016. "Racism in the NHS: Don't Let the Unspeakable Become Acceptable." Open Democracy. July 18, 2016. opendemocracy.net/ournhs/roger-kline/racism-in-nhs-don-t-let-unspeakable-become-acceptable.

Kofman, Eleonore. 2004. "Gendered Global Migrations: Diversity and Stratification." *International Feminist Journal of Politics* 6 (4): 643–65.

———. 2005. "Citizenship, Migration and the Reassertion of National Identity." *Citizenship Studies* 9 (5): 453–67. https://doi.org/10.1080/13621020500301221.

Kofman, Eleonore, Sue Lukes, Alessio D'Angelo, and Nicola Montagna. 2009. *The Equality Implications of Being a Migrant in Britain*. Manchester: Equality and Human Rights Commission.

Kofman, Eleonore, Annie Phizacklea, Parvati Raghuram, and Rosemary Sales. 2000. *Gender and International Migration in Europe: Employment, Welfare and Politics*. London and New York: Routledge.

Koser, Khalid. 2009. "Study of Employment and Residence Permits for Migrant Workers in Major Countries of Destination." International Migration Paper No. 95. Geneva: International Labour Office.

Kostiner, Idit. 2003. "Evaluating Legality: Toward a Cultural Approach to the Study of Law and Social Change." *Law & Society Review* 37 (2): 323–68. https://doi.org/10.1111/1540-5893.3702006.

Kubal, Agnieszka. 2012. *Socio-Legal Integration: Polish Post-2004 EU Enlargement Migrants in the United Kingdom*. Surrey: Ashgate.

———. 2013. "Conceptualizing Semi-Legality in Migration Research." *Law and*

Society Review 47 (3): 555–87. https://doi.org/10.1111/lasr.12031.

Kuptsch, Christiane. 2012. "The Economic Crisis and Labour Migration Policy in European Countries." *Comparative Population Studies* 37 (1–2): 15–32. https://doi.org/10.4232/10.CPoS-2011-17en.

Kuptsch, Christiane, and Eng Fong Pang, eds. 2006. *Competing for Global Talent*. Geneva: International Institute for Labour Studies (IILS).

Kurkchiyan, Marina. 2012. "Perceptions of Law and Social Order: A Cross-National Comparison of Collective Legal Consciousness." *Wisconsin International Law Journal* 26 (2): 366–92.

Lambillon, Adrien-Paul. 2014. "Immigration Restrictions Since the 2007 Crisis." *CESifo DICE Report*. Vol. 2.

Larsen, John Aggergaard, Helen T Allan, Karen Bryan, and Pam Smith. 2005. "Overseas Nurses' Motivations for Working in the UK: Globalization and Life Politics." *Work, Employment and Society* 19 (2): 349–68. https://doi.org/10.1177/0950017005053177.

Layton-Henry, Zig. 2004. "From Immigration Control to Migration Management." In *Controlling Immigration: A Global Perspective*, edited by Wayne A. Cornelius, Takeyuki; Tsuda, Philip L. Martin, and James F. Hollifield, 2nd ed. Stanford University Press.

Leith, Phillip, and Peter Ingram. 1988. *The Juriprudence of Othordoxy: Queen's University Essays on H.L.A. Hart*. Edited by Phillip Leith and Peter Ingram. 1st ed. London: Routledge.

Lemke, Thomas. 2002. "Foucault , Governmentality, and Critique." *Rethinking Marxism* 14 (3): 49–64. https://doi.org/10.1080/089356902101242288.

Lenz, Ilse, and Helen Schwenken. 2002. "Feminist and Migrant Networking in a Globalising World: Migration, Gender and Globalisation." *Crossing Borders and Shifting Boundaries* II.

Lewis, Gail. 1996. "Welfare Settlements and Racialising Practices." *Soundings*, no. 4: 109–19.

Lutz, Helma. 2008. "Introduction: Migrant Domestic Workers in Europe." In *Migration and Domestic Work: A European Perspective on a Global Theme*, edited by Helma

Lutz. Aldershot: Ashgate.

Mamdani, Mahmood. 2013. *Define and Rule: Native as Political Identity*. Kampala: Makerere Institute of Social Research.

Mantouvalou, Virginia. 2015. "'Am I Free Now?' Overseas Domestic Workers in Slavery." *Journal of Law and Society* 42 (3): 329–57.

Martin, Susan. 2005. *The Legal and Normative Framework of International Migration*. Global Commission on International Migration.

———. 2007. "Promoting the Rights of International Migrants." *Presentations and Contributions from the Special Session on the Implementation for the InterAmerican Program about Promotion and Protection of Human Rights from Migrants, Included Migrant Workers and Their Families [AG/RES. 2224 (XXXXVI-06)]*. Washington.

McClure, Kirstie. M. 1995. "Taking Liberty in Foucault's Triangle: Sovereignity, Discipline, Governmentality, and the Subject of Rights." In *Identities, Politics, and Rights*, edited by Austin Sarat and Thomas. R Kearns. Michigan: University of Michigan Press.

McDowell, Linda. 2009. "Old and New European Economic Migrants: Whiteness and Managed Migration Policies." *Journal of Ethnic and Migration Studies* 35 (1): 19–36. https://doi.org/10.1080/13691830802488988.

———. 2016. *Migrant Women's Voices: Talking about Life and Work in the UK since 1945*. London: Bloomsbury.

McGregor, JoAnn. 2007. "'Joining the BBC (British Bottom Cleaners)': Zimbabwean Migrants and the UK Care Industry." *Journal of Ethnic and Migration Studies* 33 (5): 801–24. https://doi.org/10.1080/13691830701359249.

McIlwaine, Cathy. 2010. "Migrant Machismos: Exploring Gender Ideologies and Practices among Latin American Migrants in London from a Multi-Scalar Perspective." *Gender, Place & Culture* 17 (3): 281–300. https://doi.org/10.1080/.

Medda-Windischer, Roberta. 2011. "New Minorities, Old Instruments? A Common but Differentiated System of Minority Protection." *International Community Law Review* 13 (4): 361–91. https://doi.org/10.1163/187197311X599441.

Menkel-Meadow, Carrie. 2010. "Why and How to Study 'Transnational Law.'" *UC*

Irvine Law Review 1 (1): 97–129.

Migrants Rights Network. 2008. "The Path to Citizenship: Comments on the Home Office Green Paper." London: Migrants Rights Network. http://www.migrantsrights.org.uk/files/publications/path_to_citizenship.pdf.

———. 2015. "Briefing on the Proposed Immigration Bill 2015-16." London: Migrants Rights Network.

Migration Advisory Committee. 2009a. *Analysis of the Points Based System: Tier 1*. London: Migration Advisory Committee.

———. 2009b. *Analysis of the Points Based System: Tier 2 and Dependants*. London: Migration Advisory Committee.

———. 2010. *Limits on Migration: Limits on Tier 1 and Tier 2 for 2011/2012 and Supporting Policies*. London: Migration Advisory Committee.

———. 2015a. *Review of Tier 2: Analysis of Salary Thresholds*. London: Migration Advisory Committee.

———. 2015b. *Tier 2 Shortage Occupation List: Government-Approved Version – Valid from 6 April 2015*. London: Migration Advisory Committee.

Migration Policy Institute. 2016. "Immigration Policy & Law." 2016. http://www.migrationpolicy.org/topics/immigration-policy-law.

Minow, Martha. 1991. "Partial Justice: Law and Minorities." In *The Fate of Law*, edited by Austin Sarat and Thomas R Kearns, 15–77. Ann Arbor: University of Michigan Press.

Morris, Lydia. 2003. "Managing Migration: Civic Stratification and Migrants' Rights." *International Migration Review* 37 (1): 74–100. https://doi.org/0198-91 83/03/3701.0141.

Muir, Hugh, and Yemisi Adegoke. 2011. "Were the Riots about Race?" *The Guardian*, December 8, 2011. http://www.theguardian.com/uk/2011/dec/08/were-the-riots-about-race.

Munck, Ronaldo. 2013. "The Precariat: A View from the South." *Third World Quarterly* 34 (5): 747–62. https://doi.org/0198-91 83/03/3701.0141.

Munro, Vanessa E. 2003. "On Power and Domination: Feminism and the Final Foucault." *European Journal of Political Theory* 2 (1): 79–99.

https://doi.org/10.1177/1474885103002001280.

Murray, Alasdair. 2011. “Britain’s Points Based Migration System.” Centreforum. London. http://www.centreforum.org/assets/pubs/points-based-system.pdf.

National Health Service. 2015. “The History of the NHS in England.” NHS Choices. 2015. http://www.nhs.uk/NHSEngland/thenhs/nhshistory/Pages/NHShistory1948.aspx.

Ngugi, wa Thiong’o. 1986. *Decolonizing the Mind: The Politics of Language in African Literature*. Nairobi: Heinemann Kenya.

Nielsen, Anne-Grethe. 2007. “Cooperation Mechanisms.” In *International Migration Law: Developing Paradigms and Key Challenges*, edited by Ryszard Cholewinski, Richard Perruchoud, and Euan MacDonald, 405–26. The Hague: T.M.C. Asser Press.

OECD. 2015. *International Migration Outlook 2015*. Paris: OECD Publishing. https://doi.org/10.1787/migr_outlook-2015-en.

Pagett, Catherine, and Ashnie Padarath. 2007. *A Review of Codes and Protocols for the Migration of Health Workers*. Harare: The Regional Network for Equity in Health in East and Southern Africa (EQUINET).

Palidda, Salvatore, ed. 2011. *Racial Criminalization of Migrants in the 21st Century*. Genoa: Ashgate.

Paul, Regine. 2015. *The Political Economy of Border-Drawing. Arranging Legality in European Labor Migration Policies*. Oxford: Berghahn Books.

Pecoud, Antoine. 2009. “The UN Convention on Migrant Workers Rights and International Migration Management.” *Global Society* 23 (3): 333–50.

Peers, Steve. 2007. “Enhancing Cooperation on Border Controls in the European Union.” In *International Migration Law: Developing Paradigms and Key Challenges*, edited by Ryszard Cholewinski, 447–65. The Hague: T.M.C. Asser Press.

Phillips, Trevor. 2011. “The Three I’s: Immigration, Integration and Islam.” In *Exploring the Cultural Challenges to Social Democracy: Anti-Migration Populism, Identity and Community in an Age of Insecurity*, edited by M McTernan, 46–52. London: Policy Network.

Piper, Nicola. 2006a. “Economic Migration and the Transnationalisation of the Rights of Foreign Workers – A Concept Note.” *Asia Research Institute*.

———. 2006b. “Gendering the Politics of Migration.” *International Migration Review* 40 (1): 133–64. https://doi.org/10.1111/j.1747-7379.2006.00006.x.

———. 2007. “The ‘Migration-Development Nexus’ Revisited from a Rights Perspective.” In *International Migration in Development Ethics: Towards a Transnational Approach to Human Development, Rights, Security and Wellbeing*. The Hague: Institute of Social Studies.

———. 2015. “Democratising Migration from the Bottom Up: The Rise of the Global Migrant Rights Movement.” *Globalizations* 12 (5): 788–802. https://doi.org/10.1080/14747731.2015.1024454.

Piper, Nicola, Stuart Rosewarne, and Matt Withers. 2016. “Addressing Multiple Forms of Migrant Precarity: Beyond ‘Management’ of Migration to an Integrated Rights-Based Approach.” 11. Redefining a Rights-Based Approach in the Context of Temporary Labour Migration in Asia. Geneva.

Piper, Nicola, and Margaret Satterthwaite. 2007. “Migrant Women.” In *International Migration Law: Developing Paradigms and Key Challenges*, edited by Ryszard Cholewinski, Richard Perruchoud, and MacDonald Euan, 237–54. The Hague: T.M.C. Asser Press.

Politakis, George P., ed. 2007. *Protecting Labour Rights as Human Rights: Present and Future of International Supervision*. *Proceedings of the International Colloquium on the 80th Anniversary of the ILO Committee of Experts on the Application of Conventions and Recommendations, Geneva, 24-25 November 2006*. Geneva: ILO.

Preibisch, Kerry. 2010. “Pick-Your-Own Labor: Migrant Workers and Flexibility in Canadian Agriculture.” *International Migration Review* 44 (2): 404–41.

Preibisch, Kerry, Warren Dodd, and Yvonne Su. 2014. “Irreconcilable Differences? Pursuing the Human Development Approach within the Global Governance of Migration.” *The Transformation of Work: Challenges and Strategies Research Series*. Washington. http://www.solidaritycenter.org/wp-content/uploads/2014/11/Migration.-Development-and-Rights-Paper-University-of-Guelph.SC_.20014.pdf.

Rajagopal, Balakrishnan. 2003. *International Law from Below: Development, Social Movements and Third World Resistance*. Cambridge: Cambridge University Press.

Rass, Christoph, and Frank Wolff. 2018. "What Is in a Migration Regime?" In *Migrationsregime: Perspektiven Auf Ein Evasives Konzept Der Migrationsforschung*, 1–48. Berlin: Springer.

Rivett, Geoffrey. 2015. "National Health Service History." King's Fund Nhshistory.Net. 2015. http://www.nhshistory.net/shorthistory.htm.

Rodriguez, Robyn M. 2010. *Migrants for Export: How the Philippine State Brokers Labor to the World*. Minneapolis: University of Minnesota Press.

Rodriguez, Robyn M, and Helen Schwenken. 2013. "Becoming a Migrant at Home: Subjectivation Processes in Migrant-Sending Countries Prior to Departure." *Population, Space and Place* 19 (April): 375–88. https://doi.org/10.1002/psp.1779.

Rose, Nikolas, and Mariana Valverde. 1998. "Governed By Law?" *Social & Legal Studies* 7 (4): 541–51. https://doi.org/10.1177/096466399800700405.

Ruhs, Martin. 2005. "Designing Viable and Ethical Labour Immigration Policies." In *World Migration 2005*, 203–21.

———. 2006a. "Greasing the Wheels of the Flexible Labour Market: East European Labour Immigration in the UK." *Centre on Migration Policy and Society*, no. 38: 34.

———. 2006b. "The Potential of Temporary Migration Programmes in Future International Migration Policy." *International Labour Review* 145 (1–2): 7–36. https://doi.org/10.1111/j.1564-913X.2006.tb00008.x.

———. 2013. *The Price of Rights: Regulating International Labor Migration*. Princeton: Princeton University Press. http://www.priceofrights.com/.

Ruhs, Martin, and Bridget Anderson. 2010. "Semi-Compliance and Illegality in Migrant Labour Markets: An Analysis of Migrants, Employers and the State in the UK." *Population, Space and Place* 16 (3): 195–211.

Ruhs, Martin, and Philip Martin. 2008. "Numbers vs. Rights: Trade-Offs and Guest Worker Programs." *International Migration Review* 42 (1): 249–65.

Ryan, Bernard. 2009. "Policy on the ICRMW in the United Kingdom." In *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights*,

edited by Paul De Guchteneire, Antoine Pecoud, and Ryszard Cholewinski, 278–94. Cambridge: Cambridge University Press.

Salt, John. 2013. *International Migration and the United Kingdom: Report of the United Kingdom SOPEMI Correspondent to the OECD, 2013*. London: UCL Migration Research Unit.

Sarat, Austin. 1990. “".. The Law Is All Over ": Power, Resistance and the Legal Consciousness of the Welfare Poor.” *Yale Journal of Law & the Humanities* 2 (2): 343–79.

Sarat, Austin, and Thomas Kearns, eds. 1991. *The Fate of Law*. Manchester: The University of Michigan Press.

Sarat, Austin, and Stuart A. Scheingold, eds. 2006. *Cause Lawyers and Social Movements*. Stanford: Stanford University Press.

Sassen, Saskia. 1998. *Globalisation and Its Discontents. Essays on the New Mobility of People and Money*. New York: The New Press.

———. 2006. “Migration Policy: From Control to Governance.” Open Democracy. 2006. https://www.opendemocracy.net/people-migrationeurope/militarising_borders_3735.jsp.

Satterthwaite, Margaret. 2004. “Intersecting Protections, Migrating Women: Using Human Rights Law to Empower Women Migrant Workers.” *Center for Human Rights and Global Justice Working Paper Marginalization, Discrimination and Equality Series No.6*.

Schmidt, Patrick, and Simon Halliday, eds. 2004. *Human Rights Brought Home: Socio-Legal Perspectives on Human Rights in the National Context*. Oregon: Hart Publishing.

———. 2009. “Beyond Methods – Law and Society in Action.” In *Conducting Law and Society Research: Reflections on Methods and Practices*, 1–10. New York: Cambridge University Press.

Scholte, Jan Aart. 2001. “Civil Society and Democracy in Global Governance.” Warwick: Centre for the Study of Globalisation and Regionalisation (CSGR). https://doi.org/10.2307/27800346.

Schwenken, Helen. 2013. “‘The EU Should Talk to Germany’ Transnational Legal

Consciousness as a Rights Claiming Tool among Undocumented Migrants." *International Migration* 51 (6): 132–45. https://doi.org/10.1111/imig.12118.

Scott, Sam. 2015. "Venues and Filters in Managed Migration Policy: The Case of the United Kingdom." *International Migration Review* 51 (2): 1–41. https://doi.org/10.1111/imre.12189.

Setrana, Mary Boatemaa, and Steve Tonah. 2016. "Do Transnational Links Matter after Return? Labour Market Participation among Ghanaian Return Migrants." *Journal of Development Studies* 52 (4): 549–60. https://doi.org/10.1080/00220388.2015.1126255.

Shelley, Toby. 2007. *Exploited: Migrant Labour in the New Global Economy*. London: Zed Books.

Sian, Katy. 2017. "Being Black in a White World: Understanding Racism in British Universities." *Papeles Del CEIC: International Journal on Collective Identity Research* 2017/2 (2): 1–26. https://doi.org/10.1387/pceic.17625.

Silbey, Susan. 2001. "Legal Culture and Legal Consciousness." *International Encyclopedia of Social and Behavioral Sciences*. New York: Elsevier, Pergamon Press.

———. 2005. "'After Legal Consciousness.'" *Annual Review of Law and Social Sciences* 1: 323–68.

———. 2008. "Legal Consciousness." In *The New Oxford Companion to Law*, edited by Peter Cane and Joanne Conaghan, 1st ed. Oxford: Oxford University Press.

Silbey, Susan, and Austin Sarat. 1987. "Critical Traditions in Law and Society Research." *Law & Society Review* 21 (1): 165–74.

Smith, Evan. 2008. "1968—Too Little and Too Late? The Communist Party and Race Relations in the Late 1960s." *Critique: Journal of Socialist Theory* 36 (3): 363–84. https://doi.org/10.1080/03017600802434425.

Solomos, John. 2014. "Stuart Hall: Articulations of Race, Class and Identity." *Ethnic and Racial Studies* 37 (September): 1667–75. https://doi.org/10.1080/01419870.2014.931997.

Somerville, Will. 2007a. *Immigration under New Labour*. Bristol: Policy Press.

———. 2007b. *The Immigration Legacy of Tony Blair*. Washington: Migration Policy

Institute. http://www.migrationpolicy.org/article/immigration-legacy-tony-blair.

Somerville, Will, Dhananjayan Sriskandarajah, and Maria Latorre. 2009. "United Kingdom: A Reluctant Country of Immigration." Migration Policy Institute. 2009. http://www.migrationpolicy.org/article/united-kingdom-reluctant-country-immigration.

Somerville, Will, and Madeleine Sumption. 2009. *Immigration in the United Kingdom: The Recession and Beyond*. Equality and Human Rights Commission.

Sousa Santos, Boaventura de. 1997. *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition. Contemporary Sociology*. Vol. 26. New York: Routledge.

———. 2002. *Towards a New Legal Common Sense: Law, Globalization and Emancipation, 2nd Edn*. London: Butterworths.

Soysal, Yasemin. 1994. *The Limits of Citizenship: Migrants and Postnational Membership of Europe*. Chicago: Chicago University Press.

Spencer, Ian R.G. 1997. *British Immigration Policy since 1939: The Making of Multi-Racial Britain*. New York: Routledge.

Spencer, Sarah. 2010. "Migrants, Citizens and the Equality Agenda." *Making the Link: Why Equality and Social Inclusion Matter for Migrants and Ethnic Minorities, Equality Authority Seminar, Dublin, 27 September 2010*.

———. 2014. "Equality for All." In *Migration: A COMPAS Anthology*, edited by Bridget Anderson and Michael Keith. Oxford: COMPAS.

Standing, Guy. 2009. *Work after Globalization: Building Occupational Citizenship*. Cheltenham: Edward Elgar.

Stewart, James, Darlene Clark, and Paul F Clark. 2007. "Migration and Recruitment of Healthcare Professionals: Causes, Consequences and Policy Responses." *Focus Migration Policy Brief*. www.migration-research.org.

Stilwell, Barbara, Khassoum Diallo, Pascal Zurn, Marko Vujicic, Orvill Adams, and Mario Dal Poz. 2004. "Migration of Health-Care Workers from Developing Countries: Strategic Approaches to Its Management." *Bulletin of the World Health Organization* 82 (8): 595–600. https://doi.org/S0042-96862004000800009.

Sumption, Madeleine. 2014. "The Points System Is Dead, Long Live the Points

System." *Migration Policy Institute*, 2014.

Takyiwaa, Manuh, ed. 2005. *At Home in the World? International Migration and Development in Contemporary Ghana and West Africa*. Accra: Sub-Saharan Publishers.

Tamanaha, Brian Z. 1995. "An Analytical Map of Social Scientific Approaches to the Concept of Law." *Oxford Journal of Legal Studies* 15 (4): 501–35.

Tamanaha, Brian Z. 1997. *Realistic Socio-Legal Theory: Pragmatism and A Social Theory Of Law*. Oxford: Oxford University.

———. 2007. "Understanding Legal Pluralism: Past to Present, Local to Global." *Sydney Law Review* 30 (375): 375–411. https://doi.org/10.2139/ssrn.1010105.

Tamas, Kristof, and Joakim Palme. 2006. *Globalizing Migration Regimes: New Challenges to Transnational Coorperation*. 2nd ed. Burlington: Ashgate.

Taylor, Sofi, and Sheila Mcgeoch. 2010. "Connnecting Nurses to Health Employment: Overseas Nurses Network (ONN)." Cities of Migration. 2010. https://ec.europa.eu/migrant-integration/intpract/overseas-nurses-network-onn?pdf=1.

Teye, Joseph Kofi, Mary Boatemaa Setrana, and Abigail Agyeiwaa Acheamong. 2014. "Migration of Health Professionals from Ghana: Trends, Drivers and Emerging Issues." In *African Political, Economic, and Security Issues: Ghana, Economic and Political Issues*, edited by Coleen Roscoe, 253–74. New York: Nova Science Publishers.

Tölölyan, Khachig. 2011. "Diaspora Studies: Past, Present and Promise." *International Migration Institute (IMI)*. https://www.imi.ox.ac.uk/pdfs/wp/wp-55-12.pdf.

Trachtman, Joel P. 2008. "The Role of International Law in Economic Migration." 24/08. *Society of International Economic Law*. Geneva. http://www.ssrn.com/link/SIEL-Inaugural- Conference.html.

Trubek, David M. 1986. "Where the Legal Action Is: Critical Legal Economics: Risks and Rewards." In *Contract and Organisation: Legal Analysis in the Light of Economic and Social Theory*, edited by Terence Daintith and Gunther Teubner, 68–108. Berlin: Walter de Gruyter.

Turkel, Gerald. 1990. "Michel Foucault: Law, Power, and Knowledge." *Journal of Law*

and Society 17 (2): 170–93. http://www.jstor.org/stable/1410084.

UK Border Agency. 2011. *The Work of the UK Border Agency (April-July 2011)*. London: HMSO.

UK Government. 2009. *Borders, Citizenship and Immigration Act 2009*. United Kingdom. http://www.legislation.gov.uk/ukpga/2009/11/contents.

———. 2010. *Equality Act 2010*. United Kingdom. http://www.legislation.gov.uk/ukpga/2010/15/contents.

———. 2014. "Guidance on Promoting British Values in Schools Published." https://www.gov.uk/government/news/guidance-on-promoting-british-values-in-schools-published.

———. 2015. "Contract Types and Employer Responsibilities." *Www.Gov.Uk*. https://www.gov.uk/contract-types-and-employer-responsibilities/print.

UK Visas and Immigration. 2015. *Codes of Practice for Skilled Workers: Standard Occupational Classification (SOC) Codes and Minimum Appropriate Salary Rates*. London: HMSO.

UNISON. 2016. "Let Us Work for a Better Future: Drop the Trade Union Bill." UNISON Campaigns. 2016. https://www.unison.org.uk/our-campaigns/trade-union-bill-2015/.

Valiani, Salimah. 2012. *Rethinking Unequal Exchange: The Global Integration of Nursing Labour Markets*. Toronto: University of Toronto.

VeneKlasen, L, V Miller, C Clark, and M Reilly. 2004. "Rights-Based Approaches and Beyond: Challenges of Linking Rights and Participation." *IDS Working Paper 235*. Brighton.

Viljoen, Frans, ed. 2012. *Beyond the Law: Multi-Disciplinary Perspectives on Human Rights*. Pretoria: Pretoria University Law Press.

Vlieger, Antoinette. 2011. "Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal Study on Conflicts." University of Amsterdam.

VSO. 2010. *Brain Gain: Making Health Worker Migration Work for Rich and Poor Countries. VSO Briefing: The Perspective from Africa.* London: VSO. www.vso.org.uk.

Wagner, Jordan. 2012. "A Changing Immigration System: Immigration Policies Under

Tony Blair and Gordon Brown." *Washington University International Review* 1: 22–41. https://pages.wustl.edu/wuir/changing-immigration-system-immigration-policies-under-tony-blair-and-gordon-brown.

Wai, Robert. 2008. "The Interlegality of Transnational Private Law." *Law and Contemporary Problems* 71: 107–27.

Walters, William. 2015. "Reflections on Migration and Governmentality." *Journal Für Kritische Migrations- Und Grenzregimeforschung* 1 (1): 1–25. http://movements-journal.org/issues/01.grenzregime/04.walters--migration.governmentality.pdf.

Webber, Frances. 2015. "Immigration: Battening down the Hatches." Institute of Race Relations. http://www.irr.org.uk/news/immigration-battening-down-the-hatches/.

Weinstein, Eric. 2002. "Migration for the Benefit of All: Towards a New Paradigm for Economic Immigration." *International Labour Review* 141 (3): 225.

Wexler, Lesley. 2007a. "The Non-Legal Role of International Human Rights Law in Addressing Immigration." *University of Chicago Legal Forum* 23 (3): 359–403.

———. 2007b. "The Role of International Law in Addressing Immigration: The Contributions of Human Rights Approaches." In *Junior International Law Scholars Conference, Yale School of Law*. http://www.law.yale.edu/documents/pdf/Faculty/wexler_YJIL1.pdf.

White, Nigel. 2005. *The Law of International Organisations*. 2nd ed. Manchester: Manchester University Press.

Wickramasekara, Piyasiri. 2015. *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*. Geneva: Interntional Labour Organisation.

Wiessbrodt, David. 2007. "The Protection of Non-Citizens in International Human Rights Law." In *International Migration Law: Developing Paradigms and Key Challenges*, edited by Ryszard Cholewinski, Richard Perruchoud, and Euan MacDonald, 221–36. The Hague: T.M.C. Asser Press.

Williams, Jessie. 2009. "Low Skill Temporary Migration in New Zealand: Labour Market and Human Rights Law as a Framework for Managing Future Migration." *Institute of Policy Studies*.

Wittenburg, Vanina. 2008. "The New Bonded Labour? The Impact of Proposed

Changes to the UK Immigration Sysem on Migrant Domestic Workers." *Oxfam and Kaalayaan*. London.

Wojczewski, Silvia, Stephen Pentz, Claire Blacklock, Kathryn Hoffmann, Wim Peersman, Oathokwa Nkomazana, and Ruth Kutalek. 2015. "African Female Physicians and Nurses in the Global Care Chain: Qualitative Explorations from Five Destination Countries." *PLOS ONE* 10 (6): 1–20. https://doi.org/10.1371/journal.pone.0129464.

Wright, David, Michael Friedewald, Serge Gutwirth, Marc Langheinrich, Emilio Mordini, Rocco Bellanova, Paul De Hert, Kush Wadhwa, and Didier Bigo. 2010. "Sorting out Smart Surveillance." *Computer Law and Security Review* 26 (4): 343–54. https://doi.org/10.1016/j.clsr.2010.05.007.

Yin, Robert K. 2009. *Case Study Research: Design and Methods*. 4th ed. Applied Social Research Methods Series. Los Angeles, California: Sage Publications.

Youngs, Gillian. 2004. "Gender, Equality and Globalisation." In *Globalisation and Equality*, edited by Horton Keith and Haig Patapan. London and New York: Routledge.

Yuval-Davis, Nira; Marfleet, Philip, ed. 2012. *Secularism, Racism and the Politics of Belonging*. London: Runnymede.

Yuval-Davis, Nira. 2011. "Power, Intersectionality and the Politics of Belonging." *FREIA Working Paper Series No. 75*. Aalborg.

Ziai, Aram. 2012. "Postcolonial Perspectives on Development." 103. *Center for Development Research*. Bonn.

Zou, Mimi. 2015. "The 'New' Guestworker? Rethinking the Ethics of Temporary Labour Migration Programme." *St Cross Seminar*. London: Oxford University. http://podcasts.ox.ac.uk/st-cross-seminar-new-guestworker-rethinking-ethics-temporary-labour-migration-programme.

This book examines the governance of international migration as experienced by healthcare professionals under labour migration programmes and policies such as the points-based system. The study takes a socio-legal approach to examine the migration of East African healthcare workers to the United Kingdom. It relies on interviews, legal and historical analysis and a literature study. Such analysis contributes to understanding why the policies, although appearing neutral in their design or implementation by requiring migrants to fulfil certain conditions, mean that migrant workers' rights such as freedom from discrimination or a right to decent work for all, are not prioritised by receiving states bent on maximising the benefits of labour migration. The chapters address migrant rights in context, experiences with racialisation upon migration and struggles to claim rights.

ISBN 978-3-7376-0656-1