

# Law and Rights in the Lives of Undocumented Migrant Women in the UK

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## I. Abstract

The British state has introduced increasingly restrictive immigration legislation in recent years, as part of an effort to create a hostile environment for undocumented migrants. For instance, the 2014 and 2016 Immigration Acts further criminalise working without papers, renting property, and driving as an undocumented migrant, in addition to restricting access to health care. Restrictive legislation has not, however, managed to deal with irregular migration, but increases breaches of immigration law. Instead of lowering net immigration, these new restrictions simply limit access to rights, and create vulnerability among undocumented migrants, which is experienced differently by men and women.

Women without official immigration status mostly work and live in the domestic sphere, which can offer protection from the state. However, undocumented migrant women often experience domestic violence and work in exploitative settings, which are difficult to challenge, due to the fear of deportation and lack of access to support networks located in the public sphere. The question arises how undocumented migrant women perceive and learn about their rights while being confined to the private sphere.

As little is known about the lives of undocumented migrant women in the UK, this thesis explores the role that rights and the law play in their lives. I draw on interview data, participant observation in migrants' rights organisations, and sample applications to regularise immigration status based on human rights law, in order to investigate how undocumented migrant women perceive and relate to the law, how it structures their everyday lives, and the mechanisms they develop for survival. I analyse how the few existing rights that undocumented migrant women can claim are stratified and thus difficult to access. To claim rights, the women need free legal representation, which they find in community migrant support organisations that play a crucial role in actualising rights.

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## **List of Abbreviations**

DDC Destitute Domestic Violence Concession

ECHR European Convention for Human Rights

EEA European Economic Area

EU European Union

European Court for Human Rights ECtHR

FFT First Tier Tribunal

HMRC Her Majesty's Revenue and Customs

IE Immigration Enforcement

JCWI Joint Council for the Welfare of Immigrants

LTR Leave to Remain

NASS National Asylum Support Service

NELMA North East London Migrant Action

NHS National Health Service

NI Number National Insurance Number

NRM National Referral Mechanism for Victims of Trafficking

NRPF No recourse to public funds

NUS National Union of Students

OWS Overseas Domestic Worker Scheme

SBS Southall Black Sisters

SSHD Secretary of State for the Home Department

TCN Third Country National

UKBA UK Border Agency

## 1 INTRODUCTION

In 2012, Theresa May, then Secretary of State for the Home Department (SSHD), announced in an interview with the Telegraph that undocumented migrants in the UK would face a newly created hostile environment (Kirkup and Winnet, 2012). This statement marks the beginning of increasingly tightened and draconian immigration legislation, which was introduced with new Immigration Acts in 2014 and 2016. Those acts restrict undocumented migrants from accessing basic services such as health care, opening bank accounts, holding driver's licenses or even renting private property, and give the state the power to seize earnings of irregular migrants, making it a criminal offense to work without the right documentation (Dexter, 2016; Rooney, 2014; Crawford et al, 2016). Despite the aim of the state to curb undocumented migration, restrictive legislation has not managed to deal with the phenomenon of irregular migration (de Haas, 2008; Bloch and McKay, 2016). Rather, it leads to increased breaches of migration law (Jordan and Düvell, 2002), since people continue to move across borders, even when this means breaking legal regulations, as numerous factors influence decisions to migrate. Undocumented migrants tend to stay permanently or for longer periods of time in the host country, especially if they are young people or have children (Sigona and Hughes, 2012). By restricting access to rights, the state increases vulnerability for undocumented migrants (Anderson, 2008), and produces precarity, which is experienced differently by men and women (Piper, 2006). The differential consequences become evident in the recent cases of undocumented migrant women in the UK who were arrested and face deportation after reporting sexual violence to the police (Bloomer, 2017).

It is estimated that 4-7 Million undocumented migrants reside in the European Union (Clandestino Project, 2009). The estimates for the UK range between 430,000 and 860,000 (Gordon et al, 2009). Among those are a large number of female migrants, who often perform gender-specific work within the domestic sphere. Migration can mean a release from tightened

constraints for female migrants, and can give a possibility to change their gendered identity, thus being empowering. However, a large proportion of undocumented migrant women in European or North American countries work in the domestic sector hidden away from the public. As a result, their ability to challenge abusive employers and rights violations is therefore limited, and support networks are often non-existent (Scrinzi, 2003). Simultaneously, the hidden nature of such employment can constitute a factor of security as it offers protection from being detained by the authorities, as the home gives safety from police raids (McKay et al, 2011). Women without immigration status therefore find themselves in a dilemma, as their position can mean protection but also a threat to further exploitation. The question thus arises of how undocumented migrant women experience the law and rights on daily basis, while living in a country that seeks to exclude them from protection, and what possibilities they have to regularise their immigration status under human rights codified into British law.

Even though undocumented migrants are residing unlawfully in the territory of a nation-state, they theoretically should have access to absolute rights regardless of their immigration status. Their protection by human rights frameworks is in practice very limited, due to state policies aimed at combating irregular migration. Furthermore, rights for non-citizens can be limited and qualified in different ways. As there is no global system which enforces human rights and international law, and UN protocols are not binding for states to implement, the theoretical aspirations of human rights are not reflected in their delivery in practice. Despite the existence of the ECHR on the European level, human rights norms have done little to assist undocumented migrants (Dauvergne, 2008). Undocumented migrants are *de facto* without rights, which is why there is a gap between the “law in books” and the “law in action” (Hertough, 2004:465). Nation-states link many rights – so called qualified rights – to certain prerequisites, such as income or secure resident status, which claimants need to fulfil (Morris,

2002). The right of nations to shut their borders for migrants therefore tends to overshadow the rights of those individuals (Dauvergne, 2008). Even when rights do exist, the access to them is dependent on certain resources, such as language ability, being able to navigate the legal system, the possibility to pay for a lawyer or knowing about organisations that offer free legal representation, which undocumented migrants often do not possess. As claiming rights can lead to deportation – if the claim is rejected – undocumented migrants may choose to waive their few existing rights in order to be able to stay (Schwenken, 2013). Since the identity of being ‘illegal’ is shaped by the law, it appears to be difficult to turn towards the law to alleviate it (Dauvergne, 2008).

### **1.1 Irregular Migration**

The phenomenon of irregular migration raises several questions about the sovereignty of the nation-state, the reach of human rights provisions, as well as the well-being of undocumented migrants suffering from exclusion and vulnerability (Düvell, 2006; Koser, 2005). There are several terms used to describe the phenomenon: illegal, irregular, illegalised, undocumented, unauthorised or clandestine (Düvell, 2006), combined with the nouns migrants, aliens or sans-papiers (Triandafyllidou, 2010). In a broad sense, the phenomenon refers to “an act of migration that is ‘not legal’, or an act of migration that is carried out against legal provisions of entry and residence” (Vogel and Jandl, 2008:6). Human rights campaigners and grassroots activists have long argued against using the term ‘illegal’, claiming it is discriminatory and essentialising to describe a person in these terms (Gambino, 2015). In general, it is only migrants whose presence is unlawful – not citizens who commit crimes – who are described as ‘illegal’, which then leads to the construction of a legal category that is not neutral. None of the terms used to describe the phenomenon are accurate, since it is multifaceted and complex (Schrover et al, 2008; Koser, 2005).

Undocumented migrants are stigmatised as undesired and unwanted non-citizens who transgress the law (Dauvergne, 2008). Being ‘illegal’ is a social relation inseparable from

citizenship; it is a juridical status that entails a certain relationship to the state produced by immigration law (DeGenova, 2002). Migrant illegality is therefore socio-politically produced and the notion of someone being ‘illegal’ is discursively upheld (DeGenova, 2013). Most migrants do not desire to engage in illegal activities, but “they have to take the legal regimes the way they find it” (McKay et al, 2011: 4).

In academic literature, being an irregular migrant is not considered as a status, but as a salient and fluid process (McKay et al, 2011; Schwenken, 2013; Bloch et al, 2014). The complex reality of legal status can be placed on a continuum between il-legality and informality (Schwenken, 2013). A migrant may have a valid entry permit, but not the right to work and thus transgresses the law when taking up work in the informal sector.

There are several routes towards becoming an irregular migrant, which are complex and often the result of restrictive policies and border controls the migrant has no influence over (Flynn and Düvell, 2007). A migrant may enter on a tourist visa and overstay. Rejected asylum seekers who did not leave the host country either because they cannot return home or do not want to, are also considered irregular, though there are varied arrangements for their toleration. Others may enter clandestinely (McKay et al, 2011), and thus escape the attention of the state completely. As external border controls of European countries, especially in the UK, become stricter, it is assumed that most undocumented migrants enter legally (Koser, 2005). Migrants that arrive under certain legal categories, such as asylum seekers, tourists and students do not have the permission to work or stay for long periods of time (Düvell, 2006). Furthermore, the tightened rules of residence for non-EU migrants leads to an increase in irregular migration as “more mobility plus more restrictions equals more breaches of migration law” (Jordan and Düvell, 2002).

The law compels undocumented migrants to lead shadowed lives. They need to mobilise social networks and develop survival strategies to go about their everyday lives (Bloch et al,

2014; Schwenken, 2013). This includes being highly flexible and adaptive to new living situations, accepting low wages, and being able to sustain oneself without any benefits or state support (Jordan and Düvell, 2006). Undocumented migrants usually work in specific sectors of the labour market, such as construction, agriculture, domestic and care work and the hospitality sector. Civil society organisations, churches, migrant community groups, and humanitarian organisations play an important role for undocumented migrants' lives, as they form informal support networks, organise health care and community support groups, and ensure access to education and lobby for social rights (Laubenthal, 2012). The status of being undocumented dominates migrants' personal lives by shaping their intimate relationships and freedom to move around without fear. It also influences their lives in the public sphere, when trying to find housing, employment, and access to health care since identification cards, references, and bank accounts may be needed (Bloch et al, 2014).

Due to intensified border control and efforts to curb unwanted migration, the border is reproduced away from the physical border line demarcating the territorial boundary of a nation-state, through surveillance and policing (Squire, 2011). In the context of the hostile environment policy in the UK, this means turning citizens into border guards, as landlords, employers, and those working in the health system are required to check identification documents. Undocumented migrants tend to avoid public places, as they are disciplined and habituated by the technologies of control and surveillance (McDowells and Wonders, 2009). The threat of deportation is highly racialised and increases vulnerability, as "deportation may have very different implications for an Australian working holiday-maker visa holder than for a Congolese asylum seeker" (Ruhs and Anderson, 2010:4). Indeed, it physically influences undocumented migrants' mobility by controlling their body through the fear of arrest, as well as psychologically through controlling the ideas of what is possible in one's life (McDowells

and Wonders, 2009:68). This may include not seeking help when they are victims of crime, domestic violence, and other threats to their security.

Irregular migrants need to learn to be ‘illegal’, which is described as a process that starts on arrival in the host country (Bloch et al, 2014). This means becoming socialised to a lack of status and learning the consequences and the realities of that lack. The status of being ‘illegal’ governs migrants’ dispositions as well as their personal behaviour. Cecilia Menjívar (2011:378) uses the term ‘legal hyperawareness’ to describe the role of the law in the everyday life of undocumented migrants, which is:

a condition of continuously being cognizant of the law (and consequently of the presence of the state) in one’s life, even when carrying out quotidian activities seemingly removed from where the law most directly exerts its effect.

Law therefore permeates the lives of undocumented migrants. They are pushed outside the protection of the law whilst being a target of strict rules and regulations (Menjívar, 2011), which is also reflected in Agamben’s figure of “Homo Sacer” (1998). In that sense the state relies on the exclusion of irregular migrants as *bare life* in order to uphold its sovereignty and law (Prem Kumar and Grundy-Warr, 2004). Susan Coutin (2003:34) describes the realm inhabited by irregular migrants as “spaces of legal non-existence”. This non-existence is incomplete, as migrants continue to live, eat and work. The disjuncture between legal and physical presence makes it difficult for migrants to live in such a space, as the illegality materialises around them wherever they go, especially in a context characterised by restrictive immigration legislation. Their daily practices must be clandestine in order not to be detected by the authorities. Due to their status, irregular migrants often work in substandard conditions for low wages. Their access to healthcare and housing is difficult, police control or contact with immigration enforcement must be avoided, and they have no right for family unification. Even though undocumented migrants theoretically have some rights, such as labour rights, claiming those rights may come at the cost of being deported or detained (Schwenken, 2013), as this would entail revealing their identity to the authorities (Schwenken and Heimeshoff,



2013). Furthermore, their civil rights and equal standing before the law is impeded by the limited availability of legal aid and advice.

One aspect, which many accounts on the rights of non-citizens have in common, is that the situation of undocumented migrants is analysed through legal and policy frameworks. The migrant is seen as exploiting opportunity structures to migrate given by immigration law and state policies (Kubal, 2011). When examining the way migrants relate to the law, such frameworks will often view migrants as passive recipients of the legislation in the host country (Schwenken, 2013). Even though the immigration law determines the status of migrants and sets a normative framework, migrants still actively engage with it, making choices about their own lives, as “legal restrictions produce tangible structural forces that interact with agentic responses as migrants negotiate the boundary between legality and illegality” (Hellgren, 2012:3). The question thus arises how undocumented migrants who are excluded by the law perceive and engage with the legal system in the host country, and how rights claiming processes function when the claimant is outside of protection through rights. Existing research focusing on the lives of undocumented migrants in the UK have shed light on the experiences of young undocumented migrants (Bloch et al, 2014), undocumented workers (Ruhs and Anderson, 2010; Bloch and McKay, 2016), and children who are undocumented (Sigona and Hughes, 2012). The lives of undocumented migrant women and their experiences of migrant irregularity have been given little attention, apart from doctoral research about Latin American domestic and sex workers in London (Gutierrez-Garza, 2013) and the intersection of irregular migration status and domestic violence (Creswick, 2017). Yet, knowledge about the lives of undocumented migrant women remains limited, especially in the British context.

## **1.2 Gendered Experience of Migration**

The feminisation of migration is identified as one general tendency within migration patterns (Castles and Miller, 2009). Women increasingly migrate and have become significant income earners for their families (Weissbrodt, 2008). The exact number of female migrants is

unknown. It is however estimated that they constitute half of the population of migrants worldwide, sometimes outnumbering men especially for working in certain sectors such as domestic and care work (Scrinizi, 2003; Clandestino Project, 2009). The role of women in migration theory has long been disregarded. Influential theories claimed to be gender neutral, whilst implicitly assuming female dependence on male migrants (Kofman et al, 2000). Those classical theories often emphasise structural accounts by focusing on legal and economic frameworks to explain why migration took place and downplay non-economic reasons for migration. However, more recently a growing body of scholarship examining gender and migration has emerged, as reflected for example in the Special Issue “Gender and Migration” of the *International Migration Review* published in 2006 and numerous books and articles published (see for example Boyd and Grieco, 2003; Kofmann, 2002; Palmary et al, 2010; Calavita, 2006; Piper, 2008; McDowell, 2013).

Gender is a core organising principle of migratory processes, affecting reasons for migrating, entry to adaptation, access to rights and entitlements, and integration in the host country (Boyd and Grieco, 2003; Kofmann, 2002), especially since men and women enter in different proportions under specific legal categories (Piper, 2006). Decisions to migrate are often influenced by gender specific constraints, such as domestic violence, the impossibility to divorce or oppressive gender roles, as well as to fulfil caring responsibilities in the host country. Migration may give women the opportunity to adopt a new gendered identity (Kofman et al, 2000). However, migrating from one country to another often means moving from one system of patriarchy to another, which can also increase the burden of women and is not necessarily liberating. Living in a different culture can evoke tensions between the migrants’ culture and the host societies culture from a gendered perspective (Benhabib and Resnik, 2009), as migrants “attempt to fulfil expectations of identity and behaviour that may differ sharply in the several places they live” (Donato et al, 2006:6).

Concerning labour migration towards western European countries, men have been more visible in formal sectors of the labour market, whereas women often obtain work in the informal sector, working part time and in low skilled jobs (Morris, 2002). Apart from highly qualified migrants, it has become increasingly difficult to enter and work in the EU legally in the last 25 years (Kofman et al, 2000), which has caused new forms of inequalities and stratification. Since the labour market is highly segregated by sex, female migrants “will find that employment choices are confined to a narrow band of servicing and caring work traditionally associated with women’s role in the private sphere” (Kofman et al, 2000:25). Furthermore, female migrants often enter through family unification and their status as dependants may entail be tied to their spouse, which gives the husband opportunities for control and abuse (Patel, 1997), pointing towards the “complex interplay between racist laws and patriarchal control which acts to place women in the most vulnerable position in the operation of immigration law” (Patel, 1997:261).

When working in the domestic sector female migrants are located within a more isolated and private environment, in which they often work long hours and perform heavy work (McKay et al, 2011:133). The association of migrant women with the domestic sphere also stems from a binary construction of citizenship, which divides the public from the private sphere. As citizenship is a status of the public sphere, it does little to influence relations of the private sphere – other than through the absence of protection. Such understanding casts the private sphere as neutral, which has been widely criticised by feminist scholars (Lister, 1997; Glenn, 1985). The conditions of work are distinctive, as the migrants often live in their employers’ household and the personal relationship between them plays an important role (Jordan and Düvell, 2002).

Women’s experiences are directly influenced by immigration policies, which often confine female migrants to the private sphere in a subtle way (Kofman et al, 2000).

Immigration legislation also has racially discriminatory effects, as it seeks to exclude or restrict entry of certain groups of people (Patel, 1997; Kofman et al, 2000). The state plays a role in gendering the labour market, as domestic and immigration policies trigger certain labour diasporas and inflows of migrants (Calavita, 2006; Ruhs and Anderson, 2010).

Within research focusing on gender and migration, as well as in public debates around irregular migration, the issue of human trafficking and modern slavery of migrant women takes a prominent position (Gould, 2010; Schrover et al, 2008). The figure of the victim of trafficking has been ranking high on policy agendas in the UK since the early 2000s, yet being recognised as one does not automatically translate into receiving secure residence status (Anderson, 2008). The discourse around trafficking separates migrants into either innocent victims or criminals, and focuses on extreme forms of violence (Chapkis, 2003). It is furthermore characterised by racialised stereotypes. Trafficked women are depicted as victims who need saving from a barbaric foreign trafficker that is involved in organised crime, thus stripping her of agency and control over her life. With such rhetoric human rights concerns are often instrumentalised to increase immigration control and surveillance (Anderson, 2008).

When analysing the impact of gender on migratory processes, it is important to take into account the social construction and reconstruction of gender, which varies among societies (Boyd and Grieco, 2003). Gender is not a binary category which is ascribed, but rather fluid, relational, and contextual, and should not be equalised with women (Palmary et al, 2010). Such an understanding should also be applied to a gendered analysis of migration, in order to make visible how gender structures power in human relationships (Donato et al, 2006). Comparing the experiences of men and women is a useful first step to shed light on differences in the migratory process. It is important however not to essentialise the experience of migrant women, as their experiences vary. Focusing on women throughout the analysis can help giving them a voice, showing their role within migratory movements, and contribute to a wider

understanding of migrants' experience (Boyd and Grieco, 2003). A gendered analysis of women's migratory experiences illuminates the gendered construction of citizenship and belonging (Palmary et al, 2010). Such an analytic perspective is useful to emphasise the agentic power of migrant women. This is vital to countervail the assumption that women inhabit a passive role in migratory patterns, which is reflected in classic theories of migration as well as in literature focusing on human trafficking (Schrover et al, 2008).

The experiences of migrant women are affected by their positionality and changes thereby, as reflected in the concept of intersectionality (Crenshaw, 1991), which stipulates that experiences of human beings are shaped by the interaction of overlapping identities and social locations (Hanvinsky, 2014). The criminologist Kitty Calavita (2006:120) describes the position of migrant women as being influenced by their race, class and gender, or what she refers to as "triple marginality". Since colonial times, women of colour from non-European cultures have been ascribed racialised and sexualised identities. This includes a process of othering, where enslaved or oppressed women are hyper sexualised and deemed exotic (Kofman et al, 2000). These cultural representations of women continue to have a material effect on the lives of migrant women in Western countries.

### **1.3 Gendered Routes into Irregularity**

Female migrants experience the status of being undocumented in a different way, as "illegality is constructed differently for men and women across both time and space" (Schrover et al, 2008: 29-30). This is also linked to the different ways men and women migrate. Undocumented female migrants face gender specific exploitation in their everyday lives and workplaces, such as sexual harassment, violence and discrimination, as "the current structure of the labour market is what primarily creates the conditions of particular disadvantage and exploitation of female migrants, especially for female migrants with irregular status" (McKay et al, 2011:129). Confinement in the domestic sphere can disadvantage female undocumented

migrants when it comes to seeking external help, such as legal services or community groups, and also restrict their mobility and access to the public sphere.

The integration of female undocumented migrant women into local social networks can be limited by their employment in the domestic sphere (Hagan, 1998). Their legally inscribed status keeps them within the private sphere, performing the traditional role of a woman as a care giver, cleaner or sex worker and leaves little possibility for any (upward) social mobility and thus creates vulnerability. Through this association with the private sphere, female migrants without status may become trapped in their homes and workplaces, “in conditions under which they have no legally enforceable rights” (Morris, 2002:126). Simultaneously, domestic work constitutes a niche for female undocumented migrants, where they can find employment without having to fear police raids (Schwenken and Heimeshoff, 2013).

Due to restrictive immigration legislation women often have no possibility to migrate legally as spouses. The high-income requirement of £18,600 for family reunification in the UK means that migrant families with a low income either stay separated or spouses migrate without the legal permission to do so (Jayaweera and Oliver, 2013). Those regulations then create power imbalances and hierarchies within families and households, pointing towards the connection between the state, its law and how it regulates intimate spheres of migrants’ lives (Patel, 1997). When experiencing domestic violence, a migrant woman without status has no access to domestic violence shelters in the UK. Leaving an abusive relationship therefore becomes more challenging and puts those women at risk, and shows how immigrant women face structural barriers when trying to access safety from violence (Erez et al, 2009). There is no functioning process to support migrant women with insecure or no immigration status when experiencing domestic violence, as the Destitute Domestic Violence Concession (DDC) only supports women with legal status. Therefore, for migrant women, the “abuse they experience within the patriarchal structure is reinforced by state policies” (Anitha, 2010:471). This is

closely related to the fact that state policies regard migration as a gender-neutral phenomenon (PICUM, 2013).

In terms of protection from persecution, it is more difficult for female migrants to obtain refugee status as the concept of political persecution is narrowly defined. The 1951 Geneva Convention does not include gender related forms of persecution (Schrover et al, 2008). The typical asylum seeker has been seen as an individual man who is persecuted for political activities or beliefs (Calavita, 2006). Progress has been made with the recognition of some women as a social group in the 1980s, but female asylum seekers are often still treated as dependants of a principal male applicant. When there are gender specific reasons for persecution, such as domestic or sexual violence, these are not readily recognised as persecuted individuals by immigration authorities in receiving countries (Boyd and Grieco, 2003). Rejected asylum claims then become a route into undocumented status.

McKay et al (2011) criticise that studies investigating the feminisation of migration mostly concentrate on legal forms of migration and fail to take into account the experiences of undocumented women. Not having status changes the experiences of migrant women fundamentally and is thus a crucial area of inquiry.

#### **1.4 Experiencing the Law**

Even though illegality is a category produced by the state (De Genova, 2002), a comprehensive analysis of the experiences of those living without status needs to take the interaction and engagement of irregular migrants with the legal framework into account, including their attitudes and perceptions (Ruhs and Anderson, 2010). Such analysis encompasses decisions, choices, survival strategies of undocumented migrants, as well as their perceptions, images and ideas of the law, and what socio legal scholars refer to as “legal consciousness” (Ewick and Silbey, 1998). The concept is a useful tool for analysing the experiences of law from the bottom up, as it adds a third category to the distinction between the codification of law (law in the books) and the way law is implemented (law in action), namely the “law in the mind”

(Schuck, 2008). Within socio-legal studies the concept of legal consciousness is used to decentre the law from formal legal spaces such as the court or the police station, and study its position in everyday life. This is based on a constitutive understanding of law and society (Ewick and Silbey, 1998). Rather than taking codified law as a starting point, legal consciousness studies explore people's beliefs, their knowledge of the law, and their cognitive and behavioural responses towards the law (Kubal, 2011). It can be used to understand the commonalities in thinking of groups, who share similar experiences. Legal consciousness is closely connected to an individual's identity and her self-understanding as a rights-bearing individual.

Existing studies of legal consciousness and the role rights play in everyday life predominantly focus on people who are within the realm of citizenship and thus enjoy protection through rights (Ewick and Silbey, 1998; Merry, 2003; Fritzvold, 2009). Research investigating the relationship of undocumented migrants with the law are either geographically located in the United States, or lack a focus on gender (Menjívar 2011; Abrego, 2008; García, 2014). As undocumented female migrants are often confined to the domestic sphere their access to rights is different, and it may be more challenging to develop an understanding of their rights as well as the law in the host society (Schwenken and Heimeshoff, 2013), which is the focus of this research.

There are several gaps in the literature, to which this study aims to make a contribution. Firstly, it focuses on the everyday life of undocumented migrant women in the UK and how the absence of legal status shapes their identity and legal consciousness. I aim to add a gendered lens to the study of undocumented migration. As irregular migration continues to exist, it is crucial to understand the experiences of this heterogeneous group (Bloch et al, 2014). This is especially pertinent as the association of undocumented migrant women with the domestic sphere translates into a different relationship to the law and rights. Secondly, the



research expands knowledge about irregular migration in the UK, whilst most of the research on this topic focuses on the US. Thirdly, I offer a study of law in everyday life focusing on the way irregular migrant women engage with the legal framework as active agents who enact their belonging by making rights claims. I am investigating what human rights provisions exist in British law for undocumented migrant women to regularise their status and what processes prevent or deter rights claiming, thus offering an analysis which sheds light on the gap between the law in the books and the law in action. In that way, status is not conceptualised as fixed, but can change over time.

This research sets out to explore those gaps by examining the experiences of undocumented migrant women living in the UK and how they survive in a restrictive legal environment. The narratives and experiences of undocumented migrant women will be the starting point for this. I will then analyse how they claim human rights and what role community organisations play in their lives. The thesis is based on fieldwork conducted in London, UK between 2015-2016. The UK was chosen as a case study, as it is a country with a long history of migration that has recently introduced restrictive immigration legislation. The aim of the research is to conceptualise how undocumented migrant women who are pushed outside of protection through rights are able to live whilst being located in a punitive and restrictive legal environment. I conducted a qualitative study which consists of several sources of data: 1) 14 semi-structured interviews with migrant women, who either were undocumented at the time of the interview or had been for at least six months in the past; 2) participant observations from two different community organisations offering services for migrant communities in London; 3) human rights applications submitted to the Home Office and 4) three interviews with legal advisors and caseworkers.

## **1.5 Chapter Plan**

In Chapter 2, I lay out the research questions and the methodological underpinnings of the research. I present the methods used for conducting the research on which this thesis is based.

The research is based on a feminist methodology, which is characterised by focusing on gender and gendered injustices, seeks to elevate voices of women and marginalised groups and is guided by a focus on reflexivity. As little is known about the topic, I conducted a qualitative explorative study to understand the issue at hand. I discuss ethical considerations of undertaking research with vulnerable and hidden populations. This chapter also includes a discussion of the role of emotions during the research process and the position and privilege of the researcher in the field.

Chapter 3 builds a theoretical framework for the research. It outlines a sociological approach to rights and shows how human rights and citizenship rights are intrinsically connected. I explain how rights - whilst being seen as ideals - need to be codified into law in order to be accessible and claimable, which makes nation-states central in the delivery of rights. Despite the existence of theoretically universal human rights and their codification into national law through certain instruments, nation-states can administer and govern who is legally allowed to enter and reside in their territory, therefore limiting the power of human rights in practise. Due to the way human rights are codified in law, a hierarchy of absolute, qualified and limited rights arise. In order to analyse how rights are actualised, I introduce the concept of civic stratification to develop a dynamic analysis of human rights. Feminists have long been critical of the notion of rights being solely beneficial for claimants, especially for groups who have been excluded by citizenship. I elaborate feminist critiques of citizenship and rights, that point out the division between public and private sphere. This division is reinforced by citizenship and creates an understanding of the private sphere as being a neutral and safe space, whilst it is a key site of oppression and subordination. In the last part of this chapter I discuss theories to understand the lived experiences of law and rights, focusing on the concept of legal consciousness, which includes images, perceptions, attitudes and

meanings individuals have of the law. The section also examines how law shapes an individual's performative identities.

In Chapter 4, I set the context in which this research is located. It reviews research that aims to estimate the size of the population of undocumented migrants living in the UK. I sketch out a brief history of migration legislation since WWII, showing how the focus of legislation changed from Commonwealth migration from former colonies, to asylum seekers in 1990s and then towards irregular migration. I focus on recent legislation changes under the hostile environment policy of the British state, with due regard to those aspects of legislation that are likely to have an impact on undocumented migrant women living in the UK, as well as the criminalisation of undocumented migration. The chapter shows how legislation has become increasingly complex, which makes it difficult to determine who is legally entitled to reside in the UK. In the last part of the chapter, I explain how human rights provisions have become embedded in British domestic legislation and what ways there are for undocumented migrant women to regularise their status.

Chapter 5, 6 and 7 are the empirical chapters based on the fieldwork conducted in the UK. The chapters follow a trajectory which begins with an analysis of the role of law in everyday life and then moves closer to a law-first perspective, which examines how rights claims function and what role civil society plays in this process. Chapter 5, "Legal consciousness and performativity of the law in the lives of undocumented migrant women", focuses on the experiences and perceptions of undocumented migrant women, showing how the law shapes their identity and how they manage to survive under restrictive immigration legislation. I present several case studies of undocumented migrant women living in the UK to illustrate their stance towards the law. Through these, I show how the law creates vulnerability in the lives of women without status. I examine how the women's legal consciousness fits into the existing framework of the concept and propose an extension to

accommodate the relationship of undocumented migrant women with the law. In the last section, I focus on how the surroundings of the women, as well as encounters with state institutions, performatively inscribe the identity of being undocumented as not having rights into the women's identities.

Chapter 6 moves closer towards the law in the books, as it deals with formal rights claims of undocumented migrant women and thus focuses on direct encounters they have with the state and its institutions. I am looking at claiming rights related to housing, health care and private and family life. The main part of the chapter focuses on how undocumented migrant women can regularise their status with human rights provisions codified into British law. It contains five in-depths case studies of undocumented migrant women claiming human rights, namely their right to private and family life. I use the concept of civic stratification to understand the dynamics of rights claiming and show the gap between the law in the books and the law in action. The chapter ends with a discussion on how the law structures the lives of women without status and reinforces traditional gender roles.

Chapter 7, the final empirical chapter, is concerned with the role community organisations and campaign groups play in the lives of undocumented migrant women. It explores various roles those organisations play, including being a mediator between the state and undocumented migrants by providing legal representation for rights claims, supporting undocumented migrant women on a daily basis, doing campaigning and advocacy work on a broader political level, and being involved in control and governance of migrant populations. In this chapter, I use the concept of rights work to examine the role community building plays for claiming rights and accessing knowledge about rights.

The final chapter provides a summary of the most important arguments and conceptual points the study raised, as well as its limitations. I show how this research has contributed to the existing literature and sketch out what further research could follow.

## **2. METHODOLOGICAL FRAMEWORK**

### **2.1 Introduction**

In this Chapter I will discuss the underlying methodology, epistemology and what methods derived from those. I conducted a qualitative study in London, UK, which includes interviews with undocumented migrant women, legal advisors and case workers who work in migrant rights organisations, participant observations within those organisations and content analysis of human rights applications for the regularisation of legal status.

I first outline the research questions and then give a brief overview of the tenets of feminist research, as well as why this study is based on feminist methodology. I then explain the methods which were used to conduct the research and explain how I conducted the research. This includes elaborating methodological choices I made, what framework those were informed by, and the challenges that occurred during the fieldwork and writing up period. Given the sensitive nature of doing research with undocumented migrant women, I discuss ethical issues, the role of power differences between the researcher and researched, and what steps were taken to ensure the safety of the participants as well as the role of emotions in sociological research.

### **2.2 Research Questions**

Based on the literature research and the gaps identified in the existing literature, I am posing the following research questions:

- i. How do undocumented migrant women in the UK experience the law?
- ii. What role do rights play in the everyday life of undocumented migrant women in the UK?
- iii. In terms of legal consciousness, what stance do they take towards the law? Is it experienced as threatening or enabling?
- iv. How does their gendered identity intersect with or is influenced by their ascribed legal status?

- v. How can undocumented migrant women use human rights to regularise their status in the UK and how does this process function?
- vi. What role do civil society organisations play in claiming rights and in the everyday lives of undocumented migrant women?

In the following section I will outline the methodology that the research is based on and which methods I used to answer those research questions.

### **2.3 Methodological Framework**

My research is informed and guided by feminist methodology, which is an umbrella term for different ontological and epistemological approaches. There is no one way to conduct feminist research (Ramazanoğlu and Holland, 2002; Leavy, 2007), as there is not one feminism, but rather various feminisms (Hesse-Biber et al, 2004). Choosing a feminist methodology means a certain perspective on the research, which is considered a process. Such perspective is shaped by feminist theory, politics and ethics and is grounded in women's experiences (Harding, 1987). My use of feminist methodology was motivated by the research centring around gendered injustices, as well as my own identification as a feminist.

Despite the differences within definitions of feminism and its methodology, there are some unifying themes. Feminist methodology aims at elevating voices of women or other groups which are marginalised. Questions of the nature of power and where it lies are crucial for feminist research (Harding and Norberg, 2005). Feminist researchers have been critical of universal truths and often reject positivist science which claims to be value free and neutral, yet dominated by androcentric world views (Hesse-Biber et al, 2004). The researcher is considered as a central part of the research, who is embedded within it and therefore influences the findings.

Feminist research acknowledges that there are differences within the category of 'woman', which intersects with other identities such as race, class, sexuality. This understanding is reflected in the concept of intersectionality (Crenshaw, 1989). Thinking

about the lives of women intersectionally means acknowledging that not every woman experiences being a woman in the same way. It entails a critical examination of the dichotomy between the researcher and the researched, as well as other power dynamics occurring in the research process. The researcher is often faced with ethical dilemmas when doing research with people who are structurally marginalised, especially when there is a stark hierarchy and differences between researcher and researched. The aim of feminist research is to minimise harm of the research and avoid exploitation of the research participants (DeVault, 1996). A common practise to achieve this is through acknowledging, documenting and reflecting on the researcher's privilege, power and position in relation to the research and its participants, which is referred to as reflexivity (Doucet and Mauthner, 2007). Reflexivity is understood as the ongoing engagement of the researcher with her own social positioning vis-à-vis the field of inquiry and critically examining the impact the role of the researcher has in the construction of knowledge (Doucet and Mauthner, 2007). In the stage of writing up, reflexivity means taking into account issues of representation (Gray, 2008). This practise is closely connected to emotions in the research project, which are often overlooked and separated from the research process, even though "emotional reactions are part of human life and are, therefore, never absent from the research situation" (Gray, 2008: 936).

As feminist research is concerned with elevating the voices and experiences of marginalised and othered groups, in the case of this research this translates into adopting a standpoint epistemology. This is a concept which is based on the understanding that the world is represented and experienced from a certain social location and connected to the idea that knowledge is grounded in people's experiences (Ramazanoğlu and Holland, 2002). Standpoint theory emerged in the 1970s and 80s as part of second wave feminist activism and research, that aimed to challenge conventional ways of knowing, power relations in knowledge production and incorporate experiences of marginalised and oppressed groups. It assumes that

social identities, material circumstances and the patterns that shape them translate into a different way of knowing of those who are oppressed compared to more privileged groups (Wylie, 2012). Therefore, there is not one standpoint, but multiple standpoints which exist at the same time (Hekman, 1997).

This concept is a controversial one within feminist standpoint theory, as early theorists ascribed an epistemic privilege to women as being better knowers due to the experience of oppression (Wylie, 2012; Hartsock, 1983). This has been widely criticised, as it relies on an essentialist understanding of identity, which is not able to account for differences within the category of 'woman' (Harding, 2004). Susan Hekman (1997) argues that there is an inherent dilemma within standpoint epistemology, arising from the idea of the social situatedness of knowledge and that marginalised identities possess epistemic advantages. On the one hand there is no position from which to judge whether a certain standpoint is epistemically superior or truer, but on the contrary marginalised standpoints are given an epistemic advantage. This paradox may lead to a position in which systemic analysis becomes impossible, as every person is seen as unique and it thus falls into an absolute relativism (Hekman, 1997). Taking into account the context of knowledge production and different perspectives can help to achieve a more balanced understanding of a given problem and arrive closer to an objective 'truth' (Kukla, 2006). As I discuss below I aim to achieve this by drawing on various sources of data that shed light on the research problem from different perspectives.

The debates within standpoint theory show that no method and methodology is without its flaws and contradictions. The criticisms I discussed above present a reminder to take into account the heterogeneity within a group that shares some identities, but not all. The concept of intersectionality helps to conceive different identities and how those shape life opportunities. It furthermore helps to see beyond the idea of identities and allows for other factors to play a role in understanding people's lives and the choices they make.



Despite controversy and debate, standpoint theory and method continues to be utilised for research. Sarah Harding (2004) argues that it is this debate that makes it more robust and why it continues to develop. Standpoint epistemology rejects conventional understandings of objectivity (Hesse-Biber et al, 2004). The feminist scholar Donna Haraway argues that “feminist objectivity means quite simply situated knowledges” (1988: 581). Feminist objectivity recognises that knowledge is partial and limited by the position of the researcher, who needs to be accountable for the research and the consequences this has on the communities where the research is located (Haraway, 1998). In order to evaluate whether research is feminist, Kum-Kum Bhavnani (2004) developed a set of questions and indicators based on Haraway’s definition of feminist objectivity. She argues that the representation of subordinated groups in feminist research needs to be balanced and account for people’s agency rather than conceptualising their lives as deviant from the norm and as being powerless. Another indicator she proposes is an open discussion of the micropolitics of the research, which includes how the researcher negotiated relationships of power and subordination during the fieldwork, write up stage and dissemination (Bhavnani, 2004: 69). The third question Bhavnani poses relates to the way difference is dealt with in the research project.

In the following section I give an overview of the methods that were chosen for this research and will discuss the methodological points raised above more in depth in relation to my research process. I include the three indicators Bhavnani (2004) developed in my discussion further down to evaluate my research.

## **2.4 Methods**

The research focuses on undocumented migrant women living in London and community organisations offering services and support for them. During my fieldwork, I volunteered in two community organisations in different boroughs of London for ten months. I conducted qualitative research which consists of interviews with undocumented migrant women, legal advisors and caseworkers, as well as participant observations in community organisations and

content analysis of human rights applications of undocumented migrant women. By using standpoint methodology, I put the voices and experiences of undocumented migrant women in the centre of my inquiry and opened a space to tell their stories. As little is known about this field of study it is useful to choose a qualitative approach with in-depth interviews, considering the stories told by the participants can give an issue-specific, rich and complex account of their perspective (Jacobsen and Landau, 2003).

I conducted the fieldwork in London between September 2015 and August 2016. It is estimated that the majority of undocumented migrants in the UK live in urban contexts (Gordon et al, 2009). Prior studies stipulate that two thirds of population of undocumented migrants present in the UK live in London (Gordon et al, 2009). London is a global city, a centre of transnational businesses, and an international transport hub that attracts migrant workers (Düvell, 2006). Concentrating the research on a major city also meant that access to this hidden population was easier compared to focusing on rural areas. Furthermore, this decision was also influenced by instrumental concerns, as the research was carried out as part of my doctoral studies with limited resources and time.

#### **2.4.1 Accessing the Field**

When doing research in the area of migration, researchers often face specific methodological challenges, which include difficulties of negotiating access to participants and motivating them to participate (Dahinden and Efionany-Mader, 2009). This was also one of the major challenges I faced when conducting my research. Undocumented migrants are a hidden population, which is not easily accessible. When researching hidden populations, there is no sampling frame, as the characteristics of the populations is unknown (Heckathorn, 1997). Moreover, those who belong to hidden populations are often stigmatised and have strong privacy concerns, which makes it difficult to access them. Similar to other research projects studying irregular migration (McKay et al, 2009; Anderson, Rogaly and Ruhs, 2012), I

collaborated with community organisations supporting undocumented migrants during my fieldwork period.

The first step to prepare the fieldwork was to conduct a broad research to get an overview of the community organisations offering services for undocumented migrants in London. I compiled a list of fifteen organisations based on online research, which I then contacted via email. In this email, I explained my research project, what my aims were, asking to interview a caseworker or legal advisor, as well as whether they were able to put me in touch with undocumented migrant women I could interview. I got a response from two organisations, who were willing to meet with me in person. I was introduced to another legal advisor through a personal contact.

In this phase, I was first prompted to think about the aims of my research project and whether it is beneficial for undocumented migrant women to participate, as well as my own social position and power. I received an email as a response to an interview request. Jenny, a caseworker in one community organisation I contacted, wrote:

Our question would be: to what end is your research, and how will it benefit our clients? Your proposal seems to be based purely on information-gathering about the situation of undocumented women migrants. How will this information be used? By whom? To influence policy? How? More practically, will you be able to pay clients' travel expenses and provide an incentive for them to attend interviews? Most of our clients are destitute and find it difficult to travel and feed themselves and their children (Jenny, Email, 2015)

I replied that my research aims to understand the situation of these women and their lived experiences better, which can then be used to change things about it. I wrote that I aim to understand the legal framework and routes for regularisations for undocumented migrant women. I also explained that I will pay the participants for their time, an issue which I had discussed prior to preparing my fieldwork with a Professor at my department (see below for a discussion on paying the interview participants). Writing the response made me realise that it is my position of privilege and the material inequalities, which allows me to conduct research about the lives of women who are less privileged than me. I was questioning whether it is right

for me to intrude into their lives and ask intimate questions regarding their experiences living in the UK and what benefit they would have from participating. I had no definite answers to the more general questions that were posed in the email, such as what my research aims to do in a practical sense for undocumented migrant women. Daphne Patai (1994) argues that feminist research often involves asymmetrical relationships, through which the researcher enhances her own position and career, without improving the situation of the participants. Research across race, culture and class involve complex ethical dilemmas, yet this should not mean that the research does not happen at all (Patai, 1994). The questions in the email served as a useful starting point for me to reflect upon my research and fieldwork prior to starting. I had read and reflected about ethical issues concerning the research project, however my thought process changed when I received this email, as it made me consider ethics in a more practical way as something that manifests itself in relations between people. Despite the hesitation which underlies its tone, Jenny invited me to an interview to the community organisation she worked at and later put me in touch with interviewees.

I began the fieldwork by interviewing caseworkers and legal advisors who work with migrants and know the situation of female undocumented migrants well. I formally interviewed a legal advisor from a Latin American community organisation, as well as the family caseworker and the gender based violence case workers at a London-wide migrant rights organisation, that works with vulnerable communities and offers a diverse range of services. They have a walk-in advice service for immigration, housing and welfare and organise community projects and education. They support destitute women with shelter and offer support for trafficked women. Their detailed knowledge and the experiences they shared during the interview helped me to further understand the situation of undocumented migrant women and the issues they face. The legal advisors provided a thorough insight of the legal framework and what legal avenues exist for undocumented migrant women to regularise their

status. I could thus prepare myself better in terms of interacting with the participants and rethink how I was going to address and deal with sensitive topics during the interviews. This was particularly important due to the power differences existing between me and the women I interviewed.

Prior to the fieldwork I had read and written about the lives of undocumented migrant women but had not met a woman without status in person. As a white German woman who is university educated, it was important for me to prepare myself for the fieldwork the best I could so as not to perpetuate harmful power relations. I had worked with refugees and asylum seekers in Switzerland prior to undertaking this research. However, my knowledge of the British context was rather limited, which is why I chose to first conduct interviews with legal advisors. Those interviews also helped me to refine the interview guideline for the research. It made me aware of some of the issues undocumented migrant women faced, namely that they often experiencing high levels of domestic violence. Before starting to interview and work with undocumented migrant women it was of utmost importance to ensure their safety when participating in my research. As they constitute a vulnerable population it was crucial for me that they would not be harmed through my research, which I could work towards by being aware of their situation, knowing how to ensure confidentiality and anonymity and thus handle sensitive topics accordingly.

#### **2.4.2 Sampling**

My aim was to interview undocumented migrant women from different countries of origin in order to understand the impact of the British legal system on their legal consciousness and the way the law shapes their identity. In this way I could study the experience of the status of being undocumented in the UK. Other studies which focus on undocumented migrants either study a group coming from one specific country of origin (see for example Menjívar, 2006; Bloch, 2010; Coutin, 2003) or include certain nationalities or cultural groups in their research (see for example Menjívar, 2011; Ruhs and Anderson, 2008; Rajman et al, 2003; Bloch et al,

2014). In order to be able to study legal status, I chose not to limit the sample by selecting certain countries of origin. Instead, I gathered participants in an explorative manner using various sampling techniques. Given the hidden nature of the issue, I was not able to preselect the participants in order to create a representative sample. In the following section I outline my sampling strategy.

Through targeted sampling gatekeepers are asked to contact potential interviewees directly on behalf of the researcher (Dahinden and Efionayi-Mader, 2009), which was the dominant method I used to reach participants. The legal advisors and caseworkers I had interviewed put me in touch with potential participants. Gatekeepers can build trust between the researcher and the researched and confirm the identity of the researcher (Chatzifotiou, 2000). The role of gatekeepers can also be problematic, as they can influence the decision of potential participants to take part in the research. They may put pressure on participants who can feel indebted to the gatekeeper. In my experience, the gatekeepers who supported my research were protective of their clients and in a few cases asked me not to conduct interviews with clients who they perceived as too vulnerable. When starting the interviews themselves, I made sure that the woman participated voluntarily, and not due to outside pressure from the legal advisor, which I discuss further down.

Another strategy to access hidden populations is snowball sampling, a method in which the networks of subjects are used to identify new participants. One initial subject names potential new participants to the researcher (Atkinson and Flindt, 2001). This method is especially useful when the network of participants play an important role in their lives, which is the case for undocumented migrants (Staring, 2009). However, snowball sampling may not always be feasible to gain access to hidden populations, as undocumented migrants try to hide their identity to others or do not want to reveal their friends' legal status to a researcher in fear of detection (Staring, 2009). As networks are used to find participants, the sample often

becomes homogeneous in terms of values of respondents, as well as gender, ethnicity, age and levels of education (Dahinden and Efionayi-Mader, 2009). This is why I relied on different sampling techniques, in order to minimise the bias that each of these techniques creates.

#### **2.4.3 Work in Community Organisations**

One community organisation I contacted via email offered me a long-term placement in their organisation, which I began in October 2015. Organisation A is a migrant charity that provides various services to refugees and migrants living in the local community, including a weekly food bank, legal advice and casework on issues ranging from housing, benefit, immigration, education, children and young people (Organisation A, no date). They support refugee and migrant communities with legal advice and representation, do campaigning for migrant communities and give advice on health issues for their clients. It was established in 1992 and has broadened its services and support to a wider group of people. In order to protect the anonymity of the research participants I chose not to name the organisations I collaborated with. In that way it is more difficult for enforcement agencies or the women's ex partners to identify their whereabouts (Duvell et al, 2009). This is of utmost importance, as undocumented migrants are a vulnerable population, which needs extra protection in terms of anonymity and confidentiality (Lahman et al, 2011). This does not mean that they have no agency, as I discuss below.

In early 2016 I was introduced to a support worker who works in at a community migrant rights organisation that provides both legal and social support for migrants and refugees in London. A friend was a regular volunteer within this organisation and recommended to visit the organisation as they have a high number of undocumented migrant women who use their services. I first met the support worker to present her my research. After the meeting, she consulted the board of trustees for consent to carry out interviews in the organisation, as well as participate in the day centres. I was allowed to attend their drop-in day centre to meet

women I could interview. After finishing the interviews, I started to volunteer regularly and do casework for the service users. The organisation runs three one-day centres per week, where migrants and refugees can get legal advice, attend English classes, get free lunch, participate in gardening, receive free counselling and emotional support.

I met the majority of the interview participants through working at Organisation A and Organisation B for a long period of time, in which I was able to establish trusting relationships with them prior to the interview.

I additionally carried out participant observations to understand the role the organisations play in the everyday lives of undocumented migrant women and to understand how rights claiming works in practise. It is a method in which the researcher takes part in the activities of the people studied and makes systematic use of observation. The researcher learns about the object of study through participation and observation. During the placement and the time spent volunteering, I was able to develop a deeper understanding about tacit aspects of the women's daily lives (Dewalt and Dewalt, 2002:1), who I saw and spoke to regularly. When I finished working, I wrote down field notes of what had happened during the day either on the same day or the next morning. The notes included what happened, what I observed, whom I interacted with and in what way, which then became part of my analysis. I was learning to become a legal advisor under supervision of one of the legal advisors at Organisation A, which meant that I was seeing clients who came in for legal advice and had a different relationship, compared to the women I interviewed. I worked in Organisation A once a week from September 2015 until July 2016. I began to work in Organisation B in April 2016 and continued to visit one of their day centres for the purpose of my research once a week until September 2016. I was able to only carry out participant observations on six days in Organisation A, namely when I was beginning my work and was shadowing senior members of the organisations. After that I was working as an advisor myself, which meant that I had



less time to only observe. However, I did continue to take field notes of those days as well. In Organisation B I carried out participant observations on 4 days.

Due to the placement and the work I did in those two organisations beyond conducting interviews I inhabited different roles and positions. I was a researcher but also a volunteer, who was doing casework and helped with different tasks within the organisations. The boundaries of each role were sometimes blurred and challenging to negotiate. When conducting the interviews, I listened to the stories of the women and validated their experiences. When I was giving legal advice in other interactions I had to explain legal regulations. This often entailed telling the client that she was not eligible for regularising her status or that it was not advisable for her to approach social services. In the role of the legal advisor the law plays a prominent role, which often does not match with the lived experiences of the migrant women, which I will explain in the empirical analysis. This caused discomfort inside me and disrupted trusting relationships, as I had to deliver negative news. I was able to offer emotional support in personal conversations or during an interview, but in my role as a case worker there were often limits as to how much support I was able to offer. Due to the different roles I inhabited, I also developed a position of relative power within the organisations, which then meant I could influence certain decisions made regarding clients or bring up different topics during meetings to be discussed. When Felicity, a woman whom I had given legal advice, was about to be made homeless with her two children, it was important for me to support her beyond my role as a volunteer in the organisation (I discuss her case in Chapter 5, 6, and 7). The legal advisor did not have time to commit to her case, as she was not eligible to regularise her status. Yet, she was in a precarious situation and emotionally vulnerable, due to being isolated from her community. I exchanged phone numbers with her and spoke with her a couple of times when she was approaching social services to be housed. I was not meant to do that by definition of my volunteer position but found it important to

offer my support. When she was turned away from being housed by social services, I talked to the legal advisor and made sure that she would receive the legal representation to challenge the decision. Even though Felicity was very outspoken and demanding, and knew her rights, my position within the organisation meant that I was listened to more easily than her. During team meetings, I talked about political campaigns around the rights of undocumented migrants, such as the Against Borders for Children Campaign<sup>1</sup> or motivated the organisations to collaborate with other projects, such as the NELMA (North East London Migrant Association) accompanying scheme.

Due to time spent in the community organisations, I developed a semi-insider position, which helped to understand the experience of the interviewees (Sánchez-Ayala, 2012). A researcher can be a total insider who shares multiple parts of the interviewees' identity such as race, class, and gender, or a partial insider who shares only a few or one identity with the participants such as gender (Chavez, 2008). Because of my race and position within the organisation, I cannot become a complete insider, which has an impact on my research, as it changed the interactions between me and the informants. Those differences shaped the relationships I built with the participants. I took a considerable period of time to get to know the women I interviewed in order to negotiate those differences, which was relatively easy since they visited my organisations regularly. I had lunch with them, took part in activities they engaged in, and played with their children. I acknowledged my privileges in conversations I had with them and did not pretend to be one of them.

#### **2.4.4 The Sample**

I interviewed fourteen women, who were either undocumented at the time of the interview or had been in the past. Additionally, I used legal files of human rights applications of seven

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<sup>1</sup> This campaign aims to boycott the collection of country of birth and nationality data in the school census in the UK. The campaigners see this as a first step to put immigration checks into place at schools and put vulnerable children at risk (Against Borders for Children, no date)

women, out of whom three were also part of the interview sample. The average time of living without status of the sample was 9.7 years. The average age of my interviewees was 38.6 years. At the time of the interview four women had regularised their status, four had lodged an application for leave to remain, one had lodged an asylum application, and one was a rejected asylum seeker. The majority of the women come from countries that were formerly colonised by Britain, apart from the two women who were born in Colombia and Albania. 35% of the participants are from Nigeria. 60% of the interviewed women had children. 50% of the participants worked. Cornelius (1982) argues that in studies about clandestine populations, the sample sizes are usually smaller. Such in-depth micro studies are useful for filling in the gaps of existing knowledge and literature.

Table 1: The Interview Sample

	Name	Country of origin	Length of being undocumented at time of interview	Interview	Inter-view re-corded	Legal File	Age	Work	Child-ren
1	Ajike	Nigeria	15 years	✓	✓	✓	32	Domestic work	2
2	Alejandra	Columbia	20 years	✓		✗	67	Domestic work	✗
3	Ariana	Albania	8 years	✓		✗	38	✗	2
4	Aysa	Myanmar	10 years	✓	✓	✗	35	Domestic work	✗
5	Bridget	Nigeria	6 years	✓		✗	30	Caregiver for disabled child	1
6	Cathy	Nigeria	15 years	✓	✓	✗	33	Domestic work and Hospitality sector	✗
7	Christine	Uganda	6 months	✓	✓	✗	40	✗	✗
8	Esi	Ghana	17 years	✗		✓	38	Carer for elderly person	1
9	Felicity	Nigeria	10 years	✗		✓	32	✗	2
10	Hope	Nigeria	12 years	✓		✗	43	✗	2
11	Joan	Nigeria	9 years	✓	✓	✓	26	✗	1
12	Martha	Eritrea	2 years	✓		✗	28	✗	✗
13	Mercy	Cameroon	7 years	✓		✗	42	✗	2
14	Olivia	Jamaica	9.5 years	✓		✓	56	Sex work	1
15	Precious	Guyana	15 years	✗		✓	41	✗	3
16	Rose	Ghana	9 years	✓		✗	40	✗	3
17	Tamara	Trinidad and Tobago	8 years	✗		✓	43	Domestic work	1
18	Tulaho	Ghana	11 years	✓		✗	31	In house cleaner	2
			ø 10.2 years				ø38.6 years		

### **2.4.5 The Interview**

The interview followed a semi-structured set of open-ended questions on different areas of the women's everyday lives, that allowed the women to tell their story in their own way (Cornelius, 1982). This kind of interview gave me, as the researcher, the opportunity to influence its general direction, but still gives flexibility for the interviewee (Sánchez-Ayala, 2012). The participants were able to reflect on how they developed their knowledge and perception of the law in relation to their identity.

The interviews took place in varying locations and lasted between forty minutes to an hour and a half. I met five of the women only once, at the time of interview. Those meetings happened in a public place, either in a library or in a coffee shop. I already knew nine of the women I interviewed prior to the interview, as they were using the services of the organisations I volunteered with. Those interviews mostly took place in an office or the kitchen within the premises of the community organisation. Half of the women agreed to having the interview recorded. Six women preferred to only have notes taken and one interviewee did not want either.

In the beginning of the interview, the aim of the study was explained, along with why I was doing the research, as well as their ability to end the interview at any time. I introduced myself, if I had not previously met the participant. I explained that any information they shared with me would be treated confidentially, and that I would change their identity in the dissertation. The participants were also told that they can refuse to answer the questions I pose. I also asked for verbal informed consent for their participation, as signing a document can be daunting for a person whose legal status is insecure and does not want to be detected by the authorities. Furthermore, verbal consent is useful to protect the identity of participants and thus increases confidentiality and anonymity, as no written record of their names is kept (Fontes, 2004). My aim was also to create an informal and conversational interview setting, which I felt would be interrupted when signing a sheet of paper. The interviews were all

conducted in English and I mostly did not encounter any language barriers as the majority of the participants grew up and were schooled in countries that have English as an official language such as Nigeria, Ghana, Jamaica or Uganda. Other women have been in the UK for a long period of time and were thus able to communicate easily. One participant had difficulties speaking English, and at points it would have been helpful to have an interpreter present during the interview. It took a considerable amount of time for us to understand each other. The case worker who had organized the interview had already told me about her story, which was helpful when communicating with her.

I paid the participants between £10 – 15 as a compensation for their time. I paid £10 if they did not have to cover travel costs and £15 if they paid for the travel to the interview. The payment for participants was funded by the Graduate Small Grant scheme from the Sociology Department at the University of Essex. Paying the participants was first suggested by a Professor in my department when we were discussing my research during a colloquium. She had herself interviewed undocumented migrant women and explained that it made access to the field much easier. I hesitated because I had not heard of the practice, but decided that it was reasonable when I started to reach out to community organisations. This was especially the case when I received the email from Jenny, which I cited above. My decision to do that was influenced by recognising the hierarchies that exist between the researcher and researched (Thompson, 1996). It was my responsibility to acknowledge that the time of the interviewees is valuable, and this helped to negotiate the relationships with the informants, as suggested by Bhavnani (2004). Head (2009) argues that financial remuneration can play an important role in gaining access to the field and provides an incentive that may encourage participation. When weighing the benefits and disadvantages of participating, the payment can lead to participation. In that case it is important to ensure that the payment is not in conflict with the person's best interests (Hovland, 2016). The payment should not be the only motivation to

take part in the research. Most of the participants accepted the payment, and two women did not want to be paid. I did not specifically ask why the woman had agreed to be interviewed, so I can only speculate as to why those women did not accept the payment. In many cases, the interview appeared to be a space in which the informants could openly share stories about their lives. They were listened to without judgement and consequence, so it seems that there were other reasons than being paid for the women to take part. Participating in an interview can also mean having someone to talk to (Finch, 1984). This is reflected in the case of Olivia, one of the participants, who told me that she wanted to share her story but only did so because she knew she would never see me again. Other interviewees reiterated how people need to hear their stories as they are largely hidden from the majority of society. Others participated because they were introduced to me by a trusted person and therefore extended that trust to me. This meant that they believed I was carrying out a project which has valuable aims and is worth supporting.

The interviewee was first asked to briefly introduce herself, by naming her country of origin, and how long she has lived in Britain. The first part of the interview focused on the interviewees' everyday life. Questions about her everyday routines were posed in that section, including where she lived, if she had children, and whether she worked. This included her arrival in the UK, aspects about finding work, accommodation, what kinds of relationships she has or had to other people, and whether she had contact support or community organisations. One of the underlying themes of the interview was the interviewees' gender identity. I wanted to understand her feelings about being an undocumented migrant woman living in a foreign country and to what extent this identity changed after migrating. I did this by asking questions about what happened since she arrived in the UK and thus gave her the opportunity to choose what is important for her experience and not impose my own words or understanding of her situation and life in the UK. Furthermore, similar to Ewick and Silbey's approach (1998), the

participants were asked what troubled them and how this problem could be solved or whom they turned to for support.

The second part of the interview dealt more explicitly with the law and rights. The interviewee was asked about her status and what she thinks about the law that excludes her. The aim in this part was to find out how aware the interviewee is of the law and the rights they have, for example in relation to health care or employment. I asked about more direct encounters with state institutions and the law, as well as questions about regularisation or human rights applications. In that section, the conversation often turned to the Home Office and how it treats undocumented migrants, as well as experiences with doctors and nurses and social workers working in state social services.

The interview focused on the narrative of the women, which is closely connected to their identity, as “people construct narratives as a process in constructing and reconstructing identity” (Marshall and Rossmann, 2011:23). Individuals assign meaning through narratives by shaping disparate events and experiences into a coherent whole (Chase, 2011). A narrative can be seen as an interpretative device which individuals use to construct identity and to “make sense of the world, of our relationship to that world, and of the relationship between ourselves and other selves” (Lawler, 2002:249). They link individuals and their wider social groups, as narratives circulate socially and connect individuals who share similar experiences or position in societies. Individuals draw from public narratives to describe and explain experiences in their own lives (Lawler, 2002). Through analysing individuals’ experiences as part of their narrative in in-depth interviews, questions concerning the social group can be understood (Marshall and Rossmann, 2011).

As many of the women I interviewed experienced highly traumatic events in their lives in the UK, it frequently occurred that the participant started to cry during the interview or got angry in the face of telling her story. Despite not wanting to harm the women with my research



and taking several steps not to do that, researchers “occasionally cause ... participants discomfort or emotional pain” (Kirsch, 2005:2170) during the interview. I tried to comfort the women when they cried, offered tissues and reiterated that they could interrupt or stop the interview altogether. While the idea of not causing harm is important and needs to be pursued by the researcher, discussions around not wanting to cause harm can also lead to an understanding of vulnerable populations as victims who have no choice or agency, and thus need some sort of protection (Mulla and Hvalka, 2011; Hvalka et al, 2007). The women agreed to pursue the interview and knew what it would entail before it started, which meant that they probably anticipated for it being difficult and emotional. Violence is part of their daily lives in various ways. The idea of not wanting to harm may be well intentioned, but also comes from the privileged position of the researcher, again involving unequal power relationships.

The topic guide presented above served as the basis of the interviews. If the interviewee talked about different issues that did not fit to the topic guide, I changed the order of questions freely to meet the demands of the participant to make her feel as comfortable as possible. In that way I was able to centre the interview around her narrative, which is the basis of standpoint epistemology. However, it was not always straight forward to let the participant direct the interview, as “interviews are likely to be asymmetrical interactions, with one party—the party generally with the most institutional power—asking the questions and the other answering” (Kirsch, 2005:2165). The answers the participants gave were occasionally short and it took some time for me to understand and learn how to conduct those interviews, without speaking too much myself. This could be due to the asymmetrical power relationship between me and the informants, however, during the interview they also had the power to decide what to tell, what not to tell and when to be silent.

Ellen Lammers (2007) argues that power needs to be considered in a complex way and not cast informants as powerless, passive victims. Silences in the research can point towards

participants negotiating difficult and unequal power relationships by deciding what aspects of their lives not to share and by that setting the agenda of the interview (Scharff, 2011). Furthermore, the format of the interview itself restricted conversations to flow freely. On some occasions, the participants started talking more freely when the interview had come to an end and we continued talking. At other points, the women shared bits and pieces of their lives in informal chats we had while I was working at the community organisations.

#### **2.4.6 Human Rights Applications**

Another source of data I used were human rights applications of undocumented migrant women and the subsequent correspondence of legal advisors with the Home Office. I had access to seven legal files, that are the basis of Chapter 6, which discusses the civic stratification of human rights for undocumented migrant women. When I initially began the research, I did not plan to use those documents, as I did not know how to access them. After starting one of my placements, the legal advisor offered me to use the files of a number of women, who they had helped to regularise their status.

#### **2.5 Ethical Issues and Power Relations**

During the data collection, I paid special attention to ethical considerations, as undocumented migrants are particularly vulnerable due to their status. When researching them it is of utmost importance to protect their anonymity (Van Liempt and Bilger, 2012). The research of a sensitive topic may involve risks for the participants (Sieber, 1993:18). It is thus necessary to minimise the potential risk for anyone involved in the research (Düvell et al, 2010). Research ethics, in that sense, exceed ethical guidelines and codes. Rather, they constitute a process in which decisions in relation to the research are informed by ethical considerations and reflections (Düvell et al, 2010). This aspect is also reflected in the way feminist research is carried out. Ethics in a feminist framework are defined by the relationships between researcher and researched as situations in concrete contexts and interactions (Patai, 1994).

The information produced in the research could be used by authorities to detect undocumented migrants. Undocumented migrants are involved in unlawful behaviour; they might suffer from illness or psychological distress due to their living conditions. It is necessary to carefully consider which information can be revealed that does not harm the researched population (Düvell et al, 2010). The participants were fully informed about the aim of my research and the use of the data they shared during the interview. I kept the notes of my fieldwork and recordings of the interviews in a password protected file on my computer, to ensure that only I have access to this information. Moreover, I removed distinguishing details of certain accounts when the stories were unique.

Prior to starting the fieldwork, I obtained ethical approval from the ethics committee at the University of Essex. I detailed how I aim to ensure the safety of the participants in the approval form. This included changing their identities and names in the research output, explaining that their participation in the project is voluntary and keeping interview transcripts and notes in a password protected file on my computer. The participants are considered as vulnerable, due to their insecure legal status and the consequences this has for their daily lives.

However, the question arises whether informed consent is sufficient to protect vulnerable subjects taking part in this research, as “research, especially with vulnerable people, raises wider questions of power relations, equality and subjectivity” (Van Liempt and Bilger, 2009:12). As this process of informed consent relies on a complex perception and understanding of legal rights and the possibility to exercise them, a different approach may be necessary to ensure the protection of vulnerable subjects (Hugman et al, 2011). Hugman et al (2011) propose a two-stage process in participatory research design, where the researcher first negotiates with the group about ethical concerns, and in the second step obtain informed consent by the individuals they interview. I did this by closely collaborating with gatekeepers who helped me to recruit participants. Moreover, establishing trusting relationships with

participants helps to ensure that participating in the research does no harm. The meaning of informed consent goes beyond signing a form “but that participants must have the opportunity to exercise their human agency and to engage as partners in the process” (Hugman et al, 2011: 669). I observed different ways in which the women I worked with exercised agency. Some of the participants that I met during the fieldwork were interested in the study, but did not want to take part in an interview, as they said they do not know the consequences of taking part. Others took time to decide whether or not they wanted to participate. I allowed for some time to get to know each other before engaging in more in-depth conversations and the interview. Certain participants may have considered the interview as a possibility to tell their story and their experience to an outsider, who listens and pays attention to their personal trajectory. In general, qualitative research in sensitive areas demands a more active involvement of the researcher. Due to my work in the community organisations, I was more involved with the participants. This helped me to continuously reflect upon ethical issues and consider them throughout the research.

I used pseudonyms for the participants and chose names from either their cultural or religious background. I anonymised the names of the organisations I worked with, as well as changed the names of case workers and legal advisors in order to protect the anonymity of the women.

## **2.6 Emotions in the Research Process**

The research touched upon emotionally challenging issues and often involved speaking about traumatic events in the lives of the women interviewed. These ranged from sexual violence, domestic violence, human trafficking, to domestic slavery. Most of the women started to cry during the interview, as it was painful for them to share their experiences. In one case I interrupted the interview, as I felt that the pain was too much for the participant to bear in that moment. I always repeated that there was the possibility to take a break from the interview, stop the interview or continue with another question. For most of the interviewed women it

was important to tell their story and they thus continued to speak, despite the pain it caused and the emotions that resurfaced. Even those women whom I had not met before, opened up quickly, which was surprising to me. I asked why they were willing to share intimate details about their lives so openly with a stranger. They replied that they trusted me as I knew someone that they trusted, either a friend or a caseworker from a community organisation. Being able to share their own story was a motivation to participate in my research, as many women do not have the chance to speak about their experience.

Despite having worked on the topic for a year prior to starting the fieldwork and thus having accumulated a lot of theoretical knowledge, I was not prepared for the emotional labour I performed during my fieldwork. The concept of emotional labour describes a practice of maintaining or managing emotions that are appropriate in a certain social situation (Hochschild, 1979). This can include showing affection, affirming another person or simply speaking about emotions.

My experiences illustrate the embodied aspect of qualitative research, which led to me as a researcher being emotionally affected by the research I conducted (Dickson-Swift et al, 2009). Dickson-Swift et al (2009) argue that the emotional labour done by researchers during their daily research activities needs to be acknowledged, in order to reveal the potential effects that the research may have, especially when researching sensitive topics which often involve high levels of violence. Dealing with those difficult emotions and learning to manage them was getting easier after hearing more stories and understanding the law and the support structures available for the women. This is also due to developing techniques over time to learn and refine the emotion labour through practise (Fitzpatrick and Olson, 2015).

When preparing the fieldwork, I reflected upon ways to keep my participants safe and make sure that their livelihood is not endangered by participating in the research. This was due to the sensitive nature of the topic. However, I did not anticipate how the research would

affect me. The emotional impact the research can have on the researcher is often overlooked and not considered sufficiently in academic work, which is often abstract and detached from the authors, as “scientists, including social scientists, are trained to suppress emotions” (Bellas, 1999:104). Despite the emphasis on emotional detachment and neutrality, researchers often become involved in the lives of their research participants (Bellas, 1999).

I was able to give emotional support to the women during the interview or in personal conversations, which is a crucial aspect when researching sensitive topics (Campbell et al, 2009). For me, it was important to give space to emotions, and offer support when necessary. I found the feeling of powerlessness most challenging as I felt that I could not sufficiently support undocumented migrant women who faced gross injustices about which I could do nothing. Now, looking back, those feelings are an expression of my privilege, as I witnessed the violence of the state towards migrant women for the first time, mostly women of colour, as well as the violence they experience in their homes. This made me angry about not being able to do more in that particular moment. I felt drained at points but also always had the option of walking away from those situations.

Emotions are necessary to understand the social world and being empathetic is a crucial skill to undertaking the kind of qualitative research I did, as it involved building trusting relationships with my participants and people working in community organisations. Moreover, the emotions displayed by the participants give analytical insight as they point towards issues that are significant and thus need further investigation (Fitzpatrick and Olson, 2015). Gray (2008:942-3) criticises the practise of separating emotions from the research process and argues that:

This artificial separation of the private and public in accounts of knowledge production maps onto the long history of the emotion/reason dichotomy in philosophy, where emotion is associated with the unreasonable and the feminine, and identified as an obstacle to judgement

The support I offered often extended beyond the formal interviews, as I had contact with numerous women for a prolonged period of time. Sharing knowledge, and offering

interventions such as sign posting to other services or organisations, is a crucial part of support (Parker and Ulrich, 1990). The emotional aspect of the research and support I was giving to women is connected with negotiating the relationships and managing micropolitics during the fieldwork (Bhavnani, 2004). In the given moment, I was able to offer support for the women, yet I am also aware that this only changed the situation of the women in small and limited ways.

## **2.7 Data Analysis**

The analysis of the interviews of undocumented migrant women and professionals, as well as the notes from my observations was conducted within a framework informed by the method of thematic narrative analysis. A narrative analysis helps to understand how and what individuals experience in institutional contexts and the way they give meaning to these experiences (Chase, 2011). By using content analysis, the “primary attention is on “what” is said, rather than “how,” “to whom,” or “for what purposes”” (Riessmann, 2008: 53-4, original emphasis). The analysis focuses on the content of the narrative by using a coding frame derived both from the literature and the data itself in order to fully reflect the interviewees’ stories (King and Horrocks, 2010).

The first step of the analysis was to read through all the interview transcripts and notes to get an idea of the data as a whole. In this step of analysis, it was important to comprehend the narrative of each participant separately, as well as to see connections between the different accounts. I began by summarising the narratives and situations I observed briefly in order to understand the trajectory of the single accounts included in the study. This helped to demonstrate similarities and differences among the participants. As a second step, the data was coded to find patterns across the narratives, in order to keep a balance within and across case analysis (King and Horrocks, 2010). The coding frame was developed in two steps. Firstly, prior codes were used that were generated theoretically with the use of the theoretical

framework, the interview topic guide and research questions (Chase, 2011). Secondly, the data was coded using analytic induction by creating codes directly from the statements of the interviewees. This stage of analysis was led by questions such as: what themes are repeated throughout the data? How are those themes related to each other? Where do interviewees contradict each other? The coding frame was then restructured to move from the stage of interpretive coding towards generating research themes (King and Horrocks, 2010). The codes were grouped together under overarching themes, which were found to structure the narratives and characterise key themes in the data.

I used NVivo, a software program that aids computer based qualitative data analysis. Using computer assisted methods to analyse the data is a useful tool for managing the different sources and to keep a good overview. It does not, however, replace the interpretative and analytical work done by the researcher.

The analysis of the data was not a linear process as I already began transcribing the interviews I had recorded and typed up my notes while I was still doing fieldwork. As I continued my work in the community organisation, and the interviews, I gathered knowledge for my research. Transcribing the interviews was a good way to get to know the data more deeply. One major challenge that occurred when analysing the data was to develop distance from it in order to see patterns and overarching themes. This was at points difficult as I had developed relationships with some of the participants and it was important for me to represent their lives in a holistic way.

When doing feminist research, issues of representation become crucial in the data analysis and the writing up phase. Bhavnani (2004) argues that feminist research needs to present marginalised groups in a balanced way and present a nuanced account that does not reproduce stereotypes. I attempt to do that by focusing on the everyday lives of undocumented migrant women and showing ordinary details about their lives. This helps shed light on their



agentic power. Crucially, this does not mean underestimating the power of the lack of legal status, which they are confronted with on a daily basis.

I continued to volunteer at Organisations B after formally finishing my fieldwork in September 2016. I wanted to use the knowledge I had gathered for the research in a practical way to support women without legal status. This helped me when writing the dissertation in terms of representation as I continued to see some of the women I had interviewed. Despite my involvement during and after the fieldwork, it remains crucial for me to acknowledge that this is a dissertation written in an academic context and is thus shaped by my position, privileges, and background, which I aimed to negotiate throughout the research in order to balance out asymmetrical power relationships, as well as form relationships which are marked by respect. It was of utmost importance to me to centre the narrative and the experience of the women I interviewed. However, their stories are still interpreted and perceived through my point of view, thus constituting a limitation in terms of representation. Furthermore, the output of the research in form of this thesis is not accessible to those who are not university educated, which means that most of the women this research centres, cannot easily read it.

## **2.8 Conclusion**

In this chapter, I discussed the methodological underpinnings of the research and laid out the methods which I used to carry it out. As a central element of feminist research, I presented an evaluation of my own role in relation to the research, and its participants, and how this translated into practical steps I took to negotiate relationships and issues of power differences during the fieldwork and writing up stage. For me, it is important to understand power in complex terms and not reproduce the idea of victimhood when researching vulnerable populations. This is especially pertinent in the idea of not doing harm to research participants, who may be seen as victims without choice or agency.

The discussion shows that feminist engagements with methodological issues are open ended and do not present a solution to ethical dilemmas arising when conducting research, especially when interviewing ‘down’ in terms of privileges. Due to my long-term engagement in the community organisations that helped facilitate my research I was able to become part of those communities and use my knowledge beyond my fieldwork to support undocumented migrant women in a practical sense.

In the next chapter, I am going to develop a theoretical framework to understand the role of rights and law in the lives of undocumented migrant women. I will introduce different aspects of rights and what role they play in terms of belonging for those who are excluded from the political community. The theories I discuss are useful to understand the position of a group of people living in a country without the legal right to do so, yet are still physically present and part of communities.

### 3 RIGHTS AS IDEALS AND RIGHTS IN PRACTICE

When speaking of rights in a broad sense, a multitude of meanings are invoked that describe their different aspects. There are differences between speaking of rights as an ideal, the way rights are codified in law, how they are delivered, accessed or claimed, and how rights are experienced in everyday lives. The aim of the first part of this Chapter is to disentangle different understandings of rights. I discuss the ideal of rights and then analyse how human rights become codified in law. I look at how rights work in practise, how they are experienced in everyday live, what hinders their actualisation and how they are interlinked with different forms of oppression. The concept of civic stratification is elaborated on as one means of depicting differential access to rights. I also discuss feminist critiques of citizenship and rights, and conceptions of the private/public divide that create an imaginary of the home as a neutral space, despite it being a place where women experience violence and oppression. This has an impact on how migrant women without status experience law in their everyday life and access rights. I then introduce the concept of legal consciousness as an analytical lens to study the role of law in the everyday lives of undocumented migrant women, which enables an understanding of the role law plays in their lives to incorporate both formal and informal experiences.

#### 3.1 Ideal of Rights

Traditionally, sociology as a discipline has been sceptical towards any notion of natural foundations for rights and the alleged universalism this entails (Turner, 1993), and has instead favoured citizenship as a focus of inquiry, as

talking about rights is especially difficult because rights exist at multiple registers—that of normative moral aspiration, that of codification and doctrine, and that of the mechanisms and institutions of enforcement (Somers and Roberts, 2008: 388).

These observations rely on a distinction between ‘citizenship’ and ‘human’ rights, civil, political as well as socio-economic rights. Filipe Carreira de Silva (2013) criticises the tradition within sociology that makes a distinction between citizenship rights and human rights

as anachronistic and ideologically charged. As Lydia Morris (2012b) argues, citizenship can be considered as one of the main vehicles through which human rights are delivered, thus denoting one way of accessing rights. However, citizenship is also implicated in an exclusionary approach to migrant rights. While aiming to conceptualise rights in a general sense, at points it will be necessary to make distinctions and address ‘human rights’ as well as ‘citizenship rights’ since they currently structure society, the way rights claims are made, and how rights are accessed and experienced.

Costas Douzinas (2000:11) argues that individuals acquire their subjectivity and humanity through rights. Rights only exist in relation to other rights and thus the claiming and granting of a right includes an acknowledgement of others (Douzinas, 2000). Rights may be considered as a mutual system of protection, enabled through sentiments of compassion and sympathy (Turner, 1993), thus “providing the basis on which social relations are built” (Morris, 2009:3). Rights can also constitute political identities that allow individuals to become part of a community, a community which recognises that rights can be asserted by all members. Rights can then be seen as a form of recognition (Honneth, 1995) and thus are markers of belonging. However, a growing literature points to participation as a potential form of belonging, which may not be confirmed by formal entitlements, as shown in theories about informal citizenship or manifested in ideas of acts of citizenship (Isin, 2008; Isin and Nielsen, 2008).

The denial and granting of rights can constrain and enable human action (Silva, 2013). While rights claims are “moral claims to justice” (Nash, 2015), they need a corresponding duty to uphold the right which is claimed. However, non-existing rights can also be claimed, as rights may be aspirational, existing in a dynamic framework, which can be expanded, for example through social movements or advocacy work of NGOs. Such aspirational claims can constitute new rights and potentially influence institutions and shape social actors (Somers

and Roberts, 2008). However, rights as ideals are never fully actualised, and in that sense rights are both normative and empirical (Somers and Roberts, 2008).

The ideal of rights denotes rights as moral aspirations or principles. Human rights in an ideal way are considered to be the inalienable rights that apply to every individual regardless of their nationality, religion, race or gender. These rights should then be accessible to and apply to everyone just by virtue of being human (Somers and Roberts, 2008). They are the rights for those who are not protected by their country of origin, and thus promise to challenge the exclusionary nature of citizenship. Human rights have the potential to challenge injustice and transform it, they “have the ability to create new worlds, by continuously pushing and expanding the boundaries of society, identity and law” (Douzinas, 2000:343). Understanding human rights in a moral sense denotes their inclusive nature, as they should include those who are marginalised, since they are based on the underlying principle of universal personhood. Human rights can construct new values and meaning, reimagine boundaries and give dignity to people (Douzinas, 2000). They can be understood as a progressive paradigm that binds together societies in the post-modern era (Turner, 1993) or seen as the basis of values in a ‘Godless age’ (Klug, 2000), that can bring recognition to marginalised groups otherwise disregarded.

### **3.2 The Nation-State and Codification of Rights into Law**

As much as rights are an ideal or an aspiration, for them to be meaningful they need to be established in law: “rights institutionalization is of central importance ... As social objects, rights gain added meaning when translated into printing” (Silva, 2013: 13). In that sense, law can be a concrete expression of equal rights and emancipation, but legal systems also discriminate against certain groups, namely non-citizens, ethnic minorities, migrants and women. I will discuss below how the law operates, looking at how law is implemented, how rights are delivered, and how both law and rights are experienced in everyday life, which is

also referred to as the ‘law in action’ (Hertogh, 2004). However, I will first look at how human rights become institutionalised, or how they become part of the ‘law in the books’, also referred to as black letter law.

The nation-state is central to the delivery of law and rights. A tension thus arises between the adherence to universal human rights, which in theory should apply to all humans without regard to national belonging, and the closure of the nation-state against non-citizens. This is the point at which an inherent paradox within human rights becomes visible (Douzinas, 2000).

States are both the guarantors and violator of rights (Nash, 2015). Rights can be used as a defence against state power, but the state simultaneously has the “sovereign power to negate the autonomy of individuals” (Douzinas, 2000:20). The paradox partially arises from citizenship being the primary way of how rights are delivered as well as from the enduring centrality of the nation-state, as “the sovereign nation state still remains the main institution that administers and enforces rights even those conceived to be universally held” (Shafir, 2004: 22). Hannah Arendt discusses the paradox of modern citizenship and human rights in a world characterised by nation-states, that can grant or withhold rights. In her argument, individuals do not enjoy universal rights by virtue of their humanity but due to their membership in a certain political community, namely the nation-state (Arendt, 1976). During the time Arendt was writing, there were few enforceable human rights, whilst in contemporary society “they are increasingly called upon to fill the breach where citizenship fails – either in relation to its internal guarantees, or because its external exclusions cut too deep” (Morris, 2012b:44). I am focusing on how human rights are becoming part of codified law as I am concerned with the position of outsiders and non-citizens and how they experience rights when living without authorisation in a given nation-state. It is important though to bear in mind that human rights were first imagined and crafted in a context in which colonial empires were still functional,

and therefore on a conceptual level include an exception of who belongs to the political community, i.e who gets to be “human” (Conklin, 1998). According to Agamben (1998) such exception is inherent in the operation of sovereign power in the context of the nation-state, as it can only function through the exclusion of certain groups from political life. Through differentiating who belongs and thus deserves protection through the law and rights, the sovereign excludes others as ‘bare life’ without rights (Agamben, 1998; Prem Kumar and Grundy- Warr, 2004). In the next section, I give a brief overview of how human rights have been incorporated into national law in since World War II, which is a key development that creates a possibility for an expansion of human rights for non-citizens (Shafir, 2004).

### **3.2.1 Human Rights and International Law: Legally Binding for Nation-States?**

The incorporation of human rights into international law and the development of migrant rights within it begins with the signing of the Declaration of Human Rights (UDHR) by the United Nations in 1948 (Gündoğu, 2015; Nash, 2015). At the time, the declaration was aimed at raising awareness of human rights and was still rather aspirational. It did however provide the basis of legally binding international covenants, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Gündoğu, 2015). Those covenants are considered the corner stones of the international human rights framework (Donnelly, 2013). However, the U.N. cannot enforce human rights, but can only monitor the rights which are enshrined in covenants (Shafir, 2004). Some of the gaps are filled on regional levels through human rights bodies, but the capacity to enforce human rights differs, according to particular regional frameworks (Shafir, 2004).

In the European context, the European Court for Human Rights (ECHR) is the highest regional enforcement authority to which individuals can appeal. Yet, there is no global system which enforces human rights, which is why a gap exists between the theoretical aspirations of

human rights and their delivery in practise. Nation-states enforce human rights through international conventions or by virtue of incorporation of human rights law into domestic law, such as in the case of the UK where the European Convention for Human Rights (ECHR) became codified in domestic law with the Human Rights Act in 1998 (Klug, 2000). This codification means that judges and public authorities interpreting law, as well as government officials passing new legislation, are bound to the human rights legislation (Nash, 2009). However, “even with the growing interest in and emphasis on human rights in contemporary society, very few rights are absolute and most are in some way limited or conditional” (Morris, 2006:7). Many rights which are part of codified law by virtue of the human rights legislation are linked to certain conditions and require claimants to fulfil a number of qualifications. In that sense, even though the human rights language carries an ethical certainty, “the practice of human rights occupies less stable ground” (Morris, 2009:7). Migrant rights for example are part of human rights conventions, but are limited and have been neglected. None of the large migrant receiving countries such as the U.S., UK and other countries in western Europe, have signed the Convention on the Protection of the Rights of All Migrant Workers and their Families (CPRAMW) (Nash, 2015).

Human rights conventions contain seemingly universal rights, but due to the way they are implemented and codified by nation-states, there is significant room to govern who is allowed to enter and lawfully stay within the territory. This leads to certain inequalities, as non-citizens are inhabiting different categories concerning their rights, leaving them with fewer rights than citizens. There has been an extensive debate concerning human rights of non-citizens and to what extent the development of new modes of belonging have changed the concept of citizenship towards a post-national model (Soysal, 1994; Joppke, 1999; Morris, 2003). Despite the extension of rights to migrants in countries such as the UK, Germany, and the Netherlands, the nation-state continues to control its borders and maintain its right to



sovereignty, while being somewhat constrained by human rights commitments (Joppke, 1999). There is an inherent promise of human rights to breach the exclusive character of citizenship. Citizenship has often been used as the standard against which migrant rights are assessed (Morris, 2013). Yet, the history of human rights is both “a history of creation and implementation as it is a history of retrenchment and denial” (Silva, 2013:14).

Due to the way human rights are codified, a hierarchy of absolute, limited and qualified rights arises (Morris, 2003) and further distinctions arise in interpretation and implementation. A key example of an absolute right is the principle of non-refoulement, enshrined in the Geneva Convention 1951, which gives asylum seekers the right not to be returned to a situation threatening their life and freedom (Edwards, 2005). However, this right is not easily accessible, as nation-states have no obligation towards asylum seekers to facilitate their arrival (Morris, 2003). The right to family and private life gives migrants’ spouses the right to join their family. This right however, is a qualified right, as it states in Article 8.2 of the ECHR (2010):

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

This article permits the qualification of the right to private and family life, i.e. the state who grants the right can attach certain conditions to it that the claimant needs to fulfil. This right has in recent years been linked to increasingly tightened conditions. In the UK, a migrant has to show a secure financial status and housing to support their family to qualify for family reunion, while spouses who are joining their family are also exempted from access to welfare for a certain period of time.

When granting rights, there is often an opportunity for control and surveillance by the state (Morris, 2012b), both for citizenship rights and human rights. This shows the two faces of rights, as “institutions designed to protect human beings are often those which pose a threat,

because they enjoy a monopoly of power” (Turner, 1993:502). Menjívar and Abrego (2012) describe the effect of withholding rights and creating vulnerability through legal regulations as legal violence, which is both structural and symbolic. Legal violence is embedded in the law, that “purports to have the positive objective of protecting rights or controlling behaviour for the general good, [but] simultaneously gives rise to practices that harm a particular social group” (Menjívar and Abrego, 2012:1387).

Shafir (2004) points out the historical connection between citizenship and human rights, arguing that they are inseparable because human rights developed as part of the legacy of citizenship rights. Yet, citizenship in its very nature is exclusive, which relies on a constitutive outside inhabited by undocumented migrants and other individuals without citizenship status. This exclusionary dimension is interwoven with the exclusion and/or subordination of non-citizens residing in a given territory:

The noncitizen is the outsider, the different, the denizen, the third-country national, the illegal immigrant, the refugee, the woman – that is, anyone mistrusted, marginalised or stigmatised by dominant norms (Tambakaki, 2015:924)

In that sense, irregular migrants can be considered as the most excluded group. However, the relationship between citizens and non-citizen is more complex as there is no dichotomy but rather a gradation and a hierarchy of statuses (Morris, 1997; Chauvin and Garcés-Mascreñas, 2012). Furthermore, the “idealised aspects of citizenship – its guarantee of status equality, its function as a form of recognition, its role in motivating the quest for ever fuller realisation of rights, are each replayed with respect to human rights” (Morris, 2009:6). A similar argument can be made for the negative aspects of citizenship such as its exclusionary nature, particularism and deficits, which also occur in the delivery of and access of human rights (Morris, 2009).

As citizenship has become further institutionalised in liberal democracies, its ethos and practice frames social inequalities, and its absence has consequences for the social integration of an individual (Lockwood, 1996). This accounts for people within and without citizenship,

including migrants with and without legal status. Citizenship in its very nature is an institution that is not complete and never fully realised (Lockwood, 1996). In order to analyse the processes concerning codification of rights, it is not sufficient to refer to a universal membership granted by human rights, as different legal statuses and modes of belonging among non-citizens cannot be taken into account. Human rights are not fixed, but need to be considered as dynamic, as the way in which human rights are implemented, delivered, and accessed on the level of the nation-state changes over time. A framework is needed that can “focus on the political and social construction of rights and the underlying principles of control, as well as critically examining the reach of transnational forces” (Morris, 2003:79).

### **3.2.2 Civic Stratification: Understanding Rights as Dynamic and Relational**

The concept of civic stratification offers a framework, that allows for a dynamic analysis of rights and makes movement between different statuses possible. Civic stratification describes a system of inequalities which derives from the relationship the state has with individual inhabiting different categories and the rights which are granted or denied within this relationship (Morris, 2003). It shows how rights are stratified within societies and how different modes of belongings are negotiated with respect to formal inclusion and exclusion, as well as informal gains and deficits. The term stratification was originally used within sociology to describe the layering of social order, through conditions of inequality and class formation (Lockwood, 1996). Civic stratification then refers to “ways in which the structuring of life chances and social identities is the (...) result of the institutionalization of citizenship” (Lockwood, 1996:532).

The idea of civic stratification rests on the assumption that access to rights does not only depend on their formal presence but also on material and/or moral resources an individual holds, depending on their social standing within a given society. Furthermore, if rights are absent, rights can be expanded with moral and/or material resources. The framework is thus

structured across two dimensions. One dimension refers to the formal possession of rights, which can be present or absent. The other dimension describes the informal material or moral resources of individuals, which means her general social standing of an individual, network, and know-how of the system. The system of civic stratification does not only show how migrants' and citizens' rights can be expanded over time, as rights are socially emerging and changing, but also takes into account different statuses which are inhabited. It can therefore be seen that non-citizens can be partially included by virtue of their rights as well as through their moral and/ or material influence.

*Table 2: Civic Stratification (as in Lockwood, 1996)*

		Presence of rights	
		Yes	No
<b>Moral/ Material influence</b>	Yes	Civic Gain	Civic Expansion
	No	Civic Deficit	Civic Exclusion

The structuring along two axes leads to four different categories: civic gain, civic expansion, civic deficit and civic exclusion. Civic gain refers to those who possess full rights. However, individuals within this category do not only enjoy full rights, they also have the capacity to enhance their rights through a privileged status which goes beyond the law in the books. Examples are male citizens or high-skilled migrants, who receive special treatment from the host society that means that in this case, moral and/or material resources increase the value of the codified right. A civic deficit occurs when a formal entitlement to a certain right exists, i.e. when a right is codified into legislation, but the individual lacks resources to enforce or claim it. Lockwood identifies different kind of deficits. The stigmatised deficit arises when an individual is stigmatised while claiming the right to which she is formally entitled. This applies to asylum-seekers, who have in recent years been increasingly accused of exploiting the welfare state and allegedly being bogus (Morris, 2010). This category is also useful to

describe the status of unemployed citizens, who need to fulfil certain duties to obtain welfare benefits such as reporting regularly to the state and accepting any job offer they receive. They lack moral resources to exercise their full citizenship rights and are being stigmatised when claiming rights. Due to the stigma attached to a certain status, individuals who find themselves in it have difficulties to enforce rights and thus often experience a deficit.

The category of civic expansion refers to an inner logic of rights, which are constantly negotiated. It both refers to the claims of certain groups or “the expanding terrain of rights more generally” (Morris, 2006:81). One example of a general claim are human rights, that have been expanded over time. Within a framework of nation-states and migration, where rights are never fully achieved, this category then accounts for movement which is possible in this system. Certain groups in society aspire to a fuller set of rights, which can happen when a group draws upon their moral or material resources to foster change. Civic activists can mobilise certain groups in society in order to gain support for their struggle for the expansion of rights. One recent example is the gay rights movement, in which sexual and reproductive rights of this group have been expanded. Expansion is mostly possible when establishing a network in which individuals with moral and material resources are represented and support the claims.

The category of civic exclusion is inhabited by individuals, who are formally denied the access to social, economic, and political rights, have no access to codified rights, and lack the material and moral resources to change their status. This category shows the imperfection of the system of citizenship and human rights, as readily identifiable groups are denied access to rights (Lockwood, 1996). Excluded groups are often characterised by what Lockwood refers to as “civic disabilities” (1996: 537), such as race, gender or ethnicity. The classic example for this category are undocumented migrants, who are excluded from accessing rights, despite being present in a certain territory.

The concept of civic stratification helps to develop a broader understanding of how human rights are implemented and mediated through nation-states, while allowing for the inclusion of transnational elements. This understanding helps to develop a perspective on how rights claims are made from individuals who are marginalised and formally excluded from the community of rights, such as undocumented migrants. As Lydia Morris (2006:88) notes, it “can be extended beyond its initial focus on the rights of citizenship to consider the position of non-citizens, while remaining cautious with respect to what is claimed for universal, transnational rights”. This dynamic framework shows that human rights are not an abstract discourse, which is forced onto the nation-state from the outside, but are mediated through it. The understanding of rights as a social construction, which are never fully realised and often under contestation, is therefore highlighted (Morris, 2013). This furthermore illustrates the gap between the ‘law in the books’ and the ‘law in action’, as it allows an analysis of rights that goes beyond the question of whether rights are merely present or absent.

As marginalised individuals such as undocumented migrant women lack material and moral resources to claim rights, they need support from a lawyer, legal advisor, or support worker, who often work in community organisations, to be able to use the law for their own goals and make rights claims. These individuals and organisations act as an intermediary between rights claimants and the state as well as its institutions. They connect different spheres of life, and have an understanding of issues faced by undocumented migrant women in their private lives. Actors in civil society, such as community organisations, associations, and social movements are “attuned to how societal problems resonate in the private life spheres, [they] distil and transmit such reactions in amplified form to the public sphere” (Habermas, 1996:367). This connection initiates the opportunity for civil repair (Alexander, 2006), which can take the form of “challenging injustices through the law” (Morris, 2009:367). Interventions for civil repair can be “communicative, legal and organizational” (Alexander,

2001:375). Civil repair happens within the civil sphere, a concept of civil society proposed by Jeffrey Alexander (2006). Alexander contends that the civil sphere is defined by solidarity and feelings for others. It is institutional, but likewise defined by an aspirational element (Alexander, 2016). However, he also sees it as fragmented, a sphere which can likewise be inclusionary and empowering, but also exclusionary. The concept of civil repair is connected to the relation and boundaries between the civil and non-civil spheres of societies (Alexander, 2001). He introduces this new concept of the civil sphere, as he argues that the idea of civil society is not able to fully capture those boundaries between civil and non-civil spheres. Non-civil spheres are the state, religion, economy, and family; those surround the civil sphere<sup>2</sup>. Civil repair happens when actors within the civil sphere intervene into practises of non-civil spheres that threaten the integrity of the civil sphere, such as when rights are violated or not granted even when existent. In the context of this research the legal aspect of civil repair is crucial, as it is the power from the legal system and written law that makes it possible to challenge the state and its institutions when violating the rights of marginalised individuals.

### **3.3 Feminist Critique of Rights and Citizenship**

Feminist scholars have long been critical of the notion of rights and citizenship, asking whether rights are solely beneficial and desirable for those groups who have been traditionally excluded from citizenship and the community of rights, namely women, people of colour, and migrants. Feminist critiques of citizenship elaborate the gender bias of citizenship and the way it acts as exclusionary, as it is based on a notion of an individual that is a white, able-bodied, heterosexual man (Lister, 1997).

Hae Yeon Choo (2013) argues that if rights are not realised it is seen as a problem of access, as reflected in the idea of moral and material resources in Lockwood's framework

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<sup>2</sup> Alexander (2006) proposes this new concept of civil society as the civil sphere, the definition of the concept remains vague at points, especially the relation between civil and non-civil sphere of society. Yet, in order to be able to understand the concept of civil repair it is inevitable to discuss those terms as well

(1996). She points out a tacit assumption of rights being cost free, which would mean they would always be claimed when present. Based on research with migrant women in South Korea, she argues that not claiming rights is “a conscious choice made by the claimants” (Choo, 2013:447). Making a rights claim may entail certain moral costs that infringes on migrant women’s respectability, especially in regard to a discourse of victimisation. Rights claims are complex negotiations, and migrant women in South Korea often chose other paths towards inclusion in South Korean society (Choo, 2013). Furthermore, rights are not always available. Civic stratification does serve as a useful framework when looking at how rights claims are being made by women without status, but in itself is not sufficient to capture the role of law in everyday life, without an extension which incorporates the lived experiences of a regime of rights.

Feminists have long argued that citizenship reinforces the division between the public and the private sphere. The public sphere is traditionally associated with men, law, and politics, whereas the private sphere is the space of women, reproduction, and family life (Lister, 1997). This construction of citizenship rests on a binary division of the public and private that understands the private sphere, home, and family as a neutral space, in which one can find a safe haven. This binary thinking creates a hierarchy, through which the subordination of one side of the binary is legitimated (Lister, 1997). Such understanding neglects that the family is a key site of oppression, in which women experience high levels of domestic violence and where women and/or people of colour are exploited as domestic workers. Kate Nash (2015) formulates a similar criticism regarding human rights documents that construct the domestic sphere as a neutral space for family relations, despite women being more likely to suffer from violence by members of the communities or family members than by state agents in the public sphere (Nash, 2015). Lister (1997) argues that deconstructing binary thinking is a key tool of feminist analysis, which helps to see how both spheres are



deeply entangled with each other and thus highlights the detrimental effects binary thinking has on the everyday lives of marginalised groups. Furthermore, the nature of the public-private divide varies by class and ethnicity, as working-class women engage in various income-earning activities. Within racialised communities, the domestic sphere encompasses more than the nuclear family, as “under conditions of economic insecurity, scarce resources, and cultural assault, the conjugal household was not self-sufficient” (Glenn, 1985:102). This includes building wider network of kin to support each other with childrearing, financial resources, and more, as well as engagement in paid work (Reynolds, 2001).

Feminists maintain that there is no real or clear distinction which can be drawn between public and private realm, because they are always entangled, since “the ‘public’ is enabled to maintain itself precisely by the construction of certain areas as ‘private’” (Menon, 2004:11). By extending their scope towards the lived experiences of citizenship and including the intimate sphere in an understanding of how citizenship, laws and policies structure the private realm, ideas of intimate citizenship build on the second-wave feminist claim that the *personal is political* (Roseneil et al, 2012).

I am going to use the feminist critique of citizenship as part of my analytical framework to conceptualise the situation of undocumented female migrants living and working in the UK. Even though they are outside of citizenship, the notion of citizenship has a tangible impact on their everyday lives, as their status of “legal non-existence” (Coutin, 2003:34) is inextricably linked to citizenship. The way citizenship is structured confines women to the domestic sphere and associates law with the public realm. It thus disregards the effects law has on undocumented migrant women, who mostly live in the domestic sphere. This ties in with a feminist critique of law and abstract rights, which are based on the notion of the white heterosexual able-bodied male (Menon, 2004), and thus excludes women and racialised groups (Lister, 1997).

Through citizenship, actors are enabled to express their agency, the lack of citizenship or status then can deprive an individual of their agentic power. However, marginalised individuals cannot be solely understood as victims of their circumstances, as bell hooks points out:

Women who are exploited and oppressed daily cannot afford to relinquish the belief that they exercise some measure of control, however relative, over their lives. They cannot afford to see themselves as ‘victims’ because their survival depends on continued exercise of whatever personal power they possess (1984:45)

To further understand how individuals become claimants of rights, Isin (2008) proposes the concept “acts of citizenship” to analyse moments in which subjects become citizens, and claimants of justice and rights, despite not being legally entitled to them as a result of their status. Investigating such acts goes beyond status or practise, two categories which have been central in citizenship studies. Analysing acts of citizenship helps to conceptualise moments and acts in which rights claims happen, without necessarily making formal rights claims, such as when a migrant without status pays taxes and works.

Citizenship and human rights share both a legal and political dimension which are deeply intertwined. An analysis of the law in everyday life needs to be developed in order to understand the lived experience of non-citizenship of women without legal status, as well as how law is encountered and perceived, how it excludes and marginalises as well as how people navigate it, as a result of how “exclusion and inclusion operate at both a legal and sociological level” (Lister, 1997:43).

### **3.4 Lived Experience of Rights and Law**

Thus far, I have discussed the ideal and aspirational aspects of rights, and sketched out how rights need to be codified into law to be claimable. I also showed how rights claims are intertwined with moral and material resources, which can hinder or facilitate access, depending on their presence or absence. This illustrates how rights, both citizenship and human rights, are an ideal that is never complete and intersects with other axes of oppression

such as race, gender, class, and ability. However, such a perspective does not take the level of subjectivity into account, whether in how rights are experienced in everyday life, how they are claimed, or in the context of this research, how the absence of rights is experienced and the way such lack shapes identity. Accessing rights is dependent on status, such as British citizenship which is one way of access. If a person is a EU citizen, then access to rights functions through EU law. If someone is undocumented, then access to rights is through human rights law, which is very difficult in practise.

The method in which undocumented migrants claim rights which are already encoded in law can be analysed within the framework of civic stratification. It can be understood, within this framework, how a group of people, which is formally excluded, can claim rights - if they are present - when they lack moral and material resources attached to their legal status. This question becomes more complex when taking the position of women without status into account. They are confined to the domestic sphere and thus have little to no access to the public realm traditionally associated with law. However, codifying rights into law is not always sufficient as delivery and access of rights interacts with other aspects of social life. The lived experience of rights is mediated through someone's position within society, and bodily aspects also play a role in the way rights are accessed or denied. By adding the lens of embodiment, it becomes possible to theorise how bodily aspects of individuals' identity produce different vulnerabilities and thus affect access to so-called universal rights (Morris, 2002). It shifts the attention towards a "broader focus on lived experience and the question of how we inhabit and experience the world through our bodies... [as well as] which bodies, and which embodied choices, law values and validates" (Fox and Murphy, 2013: 256). When looking at bodies, power dynamics become visible, and the representation of subjects as universal and disembodied can be contested, as:

bodies are never simply and literally bodies, they are always inscribed within a system of value differentiation, they are gendered, coloured or racially marked, they have weight, height, age, they may be healthy or unhealthy, they may be able bodied or disabled (Ahmed, 1995:56).

For undocumented migrant women in the UK, the experience of rights and law is mediated through a number of bodily aspects, which go beyond their legal status, such as their race, country of origin, and gender. These aspects are closely associated with the private sphere, as well as child rearing and bearing. As explained above in the feminist critique of citizenship and law, all of these aspects can be combined and viewed through a lens of embodiment. Class background also plays a role, as it is easier to navigate a legal system when having certain privileges that entail social and cultural capital, as well as the financial resources that enable access to legal representation. This can be summed up in the concept of intersectionality (Crenshaw, 1989; Crenshaw, 1991), which stipulates that someone's social position and the oppression arising from it, can only be understood when taking the intersections of different identity categories into account. The identities a person holds, i.e. race, class, gender, are not separate, but are interdependent and influence each other. Kimberly Crenshaw argues that "patterns of subordination intersect in women's experience of domestic violence" (1991:1249), meaning that a black woman will have a different experience than a white woman, and a migrant woman a different experience than a woman who has citizenship status. Intersectionality as a conceptual frame is a "a powerful tool for analysis" (Mirza, 2013: 7), as it allows to both incorporate macro discourses and individualised subjectivities. British Feminist Heidi Safia Mirza (2013:7) uses a framework of "embodied intersectionality" to show how gendered and racialised discourses are lived through and mediated by the body. She argues that by combining embodiment and intersectionality, the material and external effects of the social world can be better understood in relation to the internal aspects of the shaping of subjectivities (Mirza, 2013). All those aspects described in this paragraph need to be taken into consideration to understand the situation of undocumented migrant women in the UK.

The perspective of rights claiming described above, which focuses on written legislation and access to rights, revolves around a formal understanding of law, what socio-legal scholars

refer to as a ‘law first’ perspective. The aim here is to expand the scope beyond that and understand the role law and rights play in the everyday life of undocumented migrant women, beyond formal rights claims.

### **3.4.1 Performativity of Law and Everyday Life of Undocumented Migrants**

The law and the absence of rights play a decisive role in shaping undocumented migrants’ everyday life. Law in that sense, is more than rules and regulations. Immigration law can thus be described as performatively producing its subjects through different strategies. The concept of performativity is widely used by the feminist philosopher Judith Butler in relation to the way gender works. She refers to it as “the reiterative ... practice by which discourse produces the effects that it names” (1993:2). Through utterances and declarations acts are called into being through naming them (Hall, 1996). All speech acts are performative, which means that speaking is not merely a fact. Speech acts are an expression of power relations and thus create the effect which is named, such as categorising someone as ‘illegal.’ As Zetter (2007:173) argues in his research on ambiguities in refugee classifications a “label recognizes both a process of identification and a mark of identity...[it] has a tangible and real world meaning, but is also metaphorical and symbolic”. Commonplace communication and speech acts are defining and forming identities. The very process of calling a migrant ‘illegal’ is more than just a linguistic practice. It assigns an identity and determines the place of the migrant in that very culture. It sets a boundary and marks the beginning of the inculcation of a norm. Through repetition over time by various authorities this first interpellation is reiterated. Performative speech acts thus assert power over the body and create naturalised effects (Butler, 1993).

Another way to look at the effect of immigration law in everyday life is to consider it as tactics, which produce discipline and coercion, as measures to govern irregular migrants are punitive and exclusionary (Inda, 2011). Law is thus more than the rules coded in legislation, it is a discourse and a practice, a system which dominates its subjects but which can also be resisted (Lazarus-Black and Hirsch, 1994:4). The threat of deportation, the effects of raids and

other policing mechanisms create fear and stigma among undocumented migrants, as “like border policing, the raid is a practise that seeks to secure the nation through the abjection and exclusion of individuals and populations deemed threatening to the social body” (Inda, 2011:79).

Beyond the experience of the law against the migrant, it can also be considered as an arena of struggle between different groups, as:

migration rules reflect political struggles, both between those individuals and groups who have gained advantages from greater mobility and those who lost out, and between states over how to maximise gains and minimise losses for their citizens (Jordan and Düvell, 2002:3).

This struggle is also reflected in the implementation of human rights on the level of the nation-state, and how rights are delivered with citizenship still being the primary vehicle to access rights.

Illegality is produced as an effect of the law, and it is necessary to distinguish between legitimacy and legality, as undocumented migrants live their lives among citizens and are in practise often accepted as members of the community. However, in a more general sense, immigration law excludes people from within and the label of being ‘illegal’ seems nearly insurmountable to migrants who are caught by it, as it is difficult to attain a legal residence status (Dauvergne, 2008).

When framing the relationship between law and power, Starr and Collier (1989) maintain that legal orders create asymmetrical power relations and can thus not be described as neutral. States rely upon law to stabilise and uphold those arrangements of power (Star and Collier, 1989). In relation to undocumented migrants there is an enduring hegemony of immigration law and citizenship, which naturalises the categories it created, which then reify such categories, such as migrant illegality. Nicholas De Genova argues that “undocumented migrants are constituted in order to ... socially exclude them under imposed conditions of enforced and protracted vulnerability” (2002:429).

### 3.4.2 Identity, Law, and Power

As shown above, the identity and status of undocumented migrants is performatively produced by immigration law. Judith Butler (1993) claims there is no pre-discursive identity. She uses this argument in reference to gender, but it can also be upheld for migrants whose identity is based on the production of migrant illegality. Law is a regulatory social practise that has the capacity to yield new subjectivities (Merry, 2003). It is critically important for shaping gender roles as migrant women are more likely to be stereotyped as care givers, while men tend to be seen as criminals (Calavita, 2006). It also plays a crucial role in the binary construction of gender as it shapes “women’s experience and normative understandings of women’s place” (Calavita, 2006: 108), in addition to their identity.

Identity can be understood as a narrative, in which individuals define and say who they are (Yuval-Davis, 2011). The membership with a particular group is defined as “self and/or others’ perceptions of what being a member ... might mean” (Yuval-Davis, 2011: 14). Identities are constantly in the process of being made (Hall, 1996; Mirza, 1997), and emanate through interactions among groups and individuals over time (Engel and Munger, 2003). Collective narratives often serve as a resource for individuals to create a sense of order and meaning for their individual identity (Yuval-Davis, 2011).

Poststructuralist thinking has criticised the notion of a unified, integral, and originating identity (Hall, 1996; Moore, 1994). The self is rather considered as the location of multiple and contradictory subjectivities, which can exist simultaneously. These different subject positions are held together by the experience of identity and the physical grounding of the body as well as the historicity of the subject (Moore, 1994). Discursive practises through which cultural meanings are assigned and produced provide different subject positions. Identity as a practice requires a constitutive outside and operates across differences. The various axes of differences, such as race, gender, age, and ethnicity interact with each other within a range of discourses and available subject positions. Identities are always markers of

inclusion and exclusion as every identity simultaneously names what it lacks, as they are constructed within a play of power and exclusion. A person who is identified as a man is likewise not a woman, a person who is black is not white and so forth. Those ascriptions entail hierarchies and forms of subordination.

Gendered and racialised identities are located within historically created and regionally specific class and ethnic structures. Gendered self-representations are constituted by several subject positions on gender, in which individuals act out what it means to be a woman or a man (Moore, 1994). The experience of being a gendered subject is given meaning within a discourse, which is also influenced by legal regulations, because:

gender is continually transformed through its performance in legally regulated contexts. It is constituted and reconstituted through regulatory practices such as the law that shift the conditions for performing gender (Merry, 2003: 351).

Law, especially immigration law, plays an important role in constructing race and shaping racialised identities (Calavita, 2007). In a comparative historical study of British and U.S. American immigration law, Carter et al. (1996) show how immigration law is central to the construction of national identity, and marking immigrants of colour as the other; the stranger. Law hinders migrants from certain countries from migrating legally which holds up racial boundaries, excludes specific groups of migrants from full belonging, and constructs the national identity (Calavita, 2007). In the context of the UK, this must be considered within the history of colonialism, which apart from exploiting and subjugating the people within the colonies, established racial hierarchies and connections between the empire and its colonies. Despite the formal independence of the colonies, the legacy and links still exist, and continue to influence migratory movements (Haas and Czaika, 2017), as well as migration legislation, especially in the period between 1960 and 80, as I will explain further in the next chapter.

Migrants' identities are constructed in a multi-layered process, which is constituted by experiences prior to the migration process as well as the life in the host country. Being undocumented is a stigmatised identity, it "renders migrants suspect in the eyes of the rest of



society” (Abrego, 2008: 723). Leisy Abrego (2008) argues that the sense of identity and the understanding of the self are affected by internalising the status of being undocumented, which is in turn created by immigration law. In her study about Latinx undocumented migrants in the U.S., she shows that immigration law plays an important role for an undocumented migrant’s identity. Undocumented migrants mostly fear the law and internalise their status of being ‘illegal’ by accepting that they have no rights and constantly feel unwelcomed in the host society (Abrego, 2011). Being undocumented is a category of governance as well as an identity category, as the unwanted migrant is framed in opposition to citizens and other ‘regular’ subjects of the state (Nyers, 2011), which often means that it is also a racialised category. There is a gap between the identities assigned and constructed by official immigration categories and “undocumentedness as a process which ... resonates more closely with the perceptions of migrants themselves” (Bloch et al, 2014:151).

Undocumented migrants are seen as unwanted and unwelcome. They have relatively little power vis-a-vis the state that deems their existence to be ‘illegal’ and forces them to live a marginalised life. The power of law is immediately present in their everyday life. Michel Foucault (1980) conceptualises power as permeating and pervading all social relations. Even though the state defines to a vast extent what is legitimate, it is dispersed throughout society:

It is never localised here or there, never in anybody's hands, never appropriated as a commodity or piece of wealth. Power is employed and exercised through a net-like organisation. And not only do individuals circulate between its threads; they are always in the position of simultaneously undergoing and exercising this power (Foucault, 1980:98).

Power manifests itself in everyday life through disciplinary practises that constitute categories and regulate social life (Hirsch and Lazarus-Black, 1994). Due to their status, undocumented migrants experience the states’ power and violence, but at the same time also strategically navigate through the restrictive localities they are living in. This concept of power is appropriate for studying the law, which is not a unified entity comprised of a coherent set of rules and regulations, as is often assumed in a legalistic understanding of law (Calavita, 2010).

Within a long tradition, legal professionals and academics consider law as separate from other disciplines, operating within a self-contained system (Naffine and Owens, 1997). From a socio-legal understanding, law is not separate from society, but exists within and alongside it. Extra-legal factors are taken into account when trying to understand legal issues within such a framework, based on acknowledging that law does not only exist at the courthouse and police station, but everywhere within our social lives (Calavita, 2010). The feminist legal scholar Carol Smart (1989) argues that law is not unified and operates through a plurality of principles and knowledges. However, it claims a unity and has “the power to define (itself and other discourses)” (Smart, 1989:4), which stabilises its unified claim to truth and objectivity that derives from the very usage of the term ‘law.’ Despite its flaws, using the term still helps to theorise the law’s long reach into everyday life.

Laws are interpreted in patriarchal and racist ways which can be traced back to cultural, social and economic structures that locate men and women in different positions. Law is in that sense male as subjective experiences of oppression are rendered invisible and thus, it can never fully accommodate women’s experience (Menon, 2004). Critical race theorists have criticised feminist legal scholars for neglecting race and class issues in their scholarship by treating them as separate categories (Calavita, 2007), despite gender being racialised and race being gendered (Glenn, 2002). Kimberly Crenshaw (1989) maintains that the law is complicit in the oppression of women of colour, as a result of how ideas of femininity that influence, for instance, how rape and sexual discrimination is codified into law, are mostly constructed around the subjectivity of white, able-bodied, heterosexual women.

### **3.4.3 Legal Consciousness**

Legal consciousness is a useful concept to employ when thinking about one’s relationship with the law. It deals with images, perceptions, ideas as well as attitudes about the law, and emerged in socio-legal studies in the early 1990s. The aim of legal consciousness studies is to decentre the study of law in society from formal legal spaces and locate it within the mundane and

everyday life practices of ordinary people. Ewick and Silbey (1998) assign a constitutive role to the law, which structures our everyday life but is likewise also structured by everyday life practices. It is necessary to empirically analyse how law is experienced and dealt with in everyday life, in order to understand how the law is perceived from the bottom up, from the perspective of laypeople that encounter and deal with the ‘law in action’. This approach to studying law in society manages to position the power of law in relation to the peoples’ conceptualisation of it, by focusing on their beliefs about the law and the way they act upon them (Calavita, 2010).

The concept of “legal consciousness includes all the ideas about the nature, function, and operation of law held by anyone in society at a given time” (Trubek, 1984:592). The aim is “to trace the meaning and power of the law (...) in the acts of ordinary citizens (...) as they go about their work and lives” (Barclay and Silbey, 2008: 668). Engel makes a distinction of legal consciousness, which can refer to aptitude, competence, or awareness, as well as perceptions or images of the law (1998). The study of legal consciousness thus focuses on people’s experiences, attitudes, and beliefs about the law (Deflem, 2008), as well as their background and often ignored assumptions about legality which structure and informs their actions. It analyses what people do as well as what they say about the law, thus combining cognitive and behavioural responses (Kubal, 2011). Legal consciousness is formed by social actions and the two mutually change one another, through encounters with the law and legal bodies. These include the police or courts, in addition to the meaning that individuals assign to those experiences.

Ewick and Silbey (1998: 39) argue that law and society constitute each other, so that law can only be understood if it is analysed within everyday experiences and practices:

consciousness is understood to be part of a reciprocal process in which the meanings given by individuals to their world become patterned, stabilized, and objectified. These meanings, once institutionalized, become part of the material and discursive systems that limit and constrain future meaning making

This constitutive understanding aims to detect subtle ways of law in action, as it assumes that not only does the law structure society, but it is also structured by society (Halliday and Morgan, 2013). Law is not only understood as being formalised and in engagement with official legal actors, thereby acting as an autonomous force upon individuals in social situations. Rather, it is considered to be an internal feature of society, embedded in the commonplace of everyday life, in addition to the neighbourhood and workplace. Legal consciousness then derives from social life and individuals' social experiences, as well as from knowledge and use of the law (Fritsvold, 2009).

When discussing the concept of consciousness, this “presupposes a self, a cognitive thinker” (Engel, 1998:111). Such an account gives a subjective and individual understanding of the working of the law. However, this does not mean that legal consciousness only relates to an individual phenomenon, which focuses on attitudes and ideas that form the social life (Ewick and Silbey, 1998). Although the consciousness is located in the self, that same self is also part of a wider group and should therefore be studied within the broader phenomenon. It grows out of the structures that people are in (Engel, 1998). The concept of consciousness investigates commonalities in the thinking of groups within such an understanding. As Sarat argues (1990:334) “consciousness ... suggest greater structure and constraint” and draws:

attention to the way similarly situated persons come to see the world in similar ways. (...) Subjectivity is not free floating and autonomous but is, instead, constituted, in a historically contingent manner, by the very objects of consciousness.

Consciousness is not an abstract idea in this understanding, “not merely a state of mind. Legal consciousness is produced and revealed in what people do as well as what they say” (Ewick and Silbey, 1998:46), and through what happens to them. It is a type of social practice, through which meaning is assigned. Consciousness is understood as individuals' participation in giving meaning to the social world while also forming and being formed by it likewise. Thus, it assumes a construction of the social world in which individuals can assert agency, whilst still being limited by structural constraints. An undocumented migrants' legal status poses

implicit and explicit restrictions on their everyday lives, although they can still make decisions about it within the space constrained by the law. It is this constitutive perspective that tries to balance the position of legal consciousness between a location in the self, and the fact that the self is also shaped and constituted by the broader social structure.

When studying legal consciousness, the focus is mostly on individuals that have comparable experiences:

The group of selves (...) may understand the world in similar ways without ever having met or interacted with one another. Their identities have been shaped by parallel experiences, but the lines of their existence need not have intersected (Engel, 1998:113).

Legal consciousness studies rely on narrative analysis, in which the working of the law is sustained or challenged by individual's experiences (Deflem, 2008). The narratives are considered to be embedded in a wider societal context. Only by taking into account the complexity of stories of individuals is it possible to fully comprehend the working of the law and the formation of consciousness within it. This interactionist framework analyses narratives about legal authority in order to understand how the law, when it is practiced, is challenged or sustained by everyday perceptions (Deflem, 2008). Legal consciousness research focuses on how individuals interpret events, and explains their behaviour and the way "they view themselves in relation to the world around them and in relation to legal norms, procedures and institutions" (Engel, 2005:294).

The literature on undocumented migrants' relationship with the law points towards a "legal hyperawareness" (Menjivar, 2011), which manifests itself in their everyday lives. Legal consciousness can then serve as an interpretative framework that guides individuals' interactions with the law and informs their beliefs in whether the law brings about its promises or dangers (Jacobs, 2009). Methodologically speaking, scholars tend to avoid direct questions about the law, and instead observe and question "the characterizations of legality which emerge in the ways in which subjects discussed their lives and actions" (Halliday and Morgan, 2013:15).

The question arises how residing in restrictive localities with hostile laws such as in the UK and without the right to stay influences one's legal consciousness and how the status of being undocumented is connected to one's sense of belonging and entitlement to stay in the host society. The concept of legal consciousness is closely tied to a person's identity and her sense of entitlement or understanding as a rights-bearing subject. As female migrants are often performing gendered work and are thus associated with the domestic sphere - with the law generally being seen as connected to public sphere - it may be more challenging for undocumented female migrants to develop an understanding of their rights and the law, especially shortly after arriving in the host society (Schwenken, 2013).

Sally Engle Merry (2003) argues that battered women who turned to courts to claim their rights undergo a change in subjectivity. After turning to the police, their identity is defined by an understanding of being an autonomous self, rather than solely being rooted in a sense of belonging to the family structure. Yet examinations of rape trials reveal an opposite tendency, as the law often undermines women's subjectivity and agency through a narrow definition of rape and by taking into account the victims'/survivors' personal behaviour, especially their sexual history, to a great extent (Du Toit, 2007). The trial can thus deny the experience of the women and may increase their vulnerability rather than protecting them (Smart, 1989). Due to a culture of disbelief that affects women, people of colour, and others who are marginalised, and the way law works in a gendered and racialised way, socially excluded groups are often prevented from accessing their rights and claiming them.

Similar to many other studies about ordinary people's encounters with the law and attitudes, as well as beliefs about it, Merry's work (2003) discusses the identity changes of women who are full citizens and thus protected by the law. Yet the experiences of inhabiting another location, and being present in the legal system without a legal status, means that the identity of undocumented female migrants is shaped by a different kind of subjectivity. Indeed,

an undocumented migrants' life is to a vast extent structured and controlled by legal rules and norms. This is also true for people within the citizenship system, however, the difference is that undocumented migrants are not protected by rights and are thus more exposed to the control aspects of a rights regime. The rules have to be followed more carefully, as the smallest breach could lead to deportation and threaten their livelihood. Undocumented migrants therefore have to exercise extreme care and need to know the rules and certain laws in order to not be detected by the authorities, and to be able to navigate through their daily lives. The power of the law is immediately present in their daily life. Rights are not always beneficial for undocumented migrants as claiming rights entails significant costs such as the risk of being deported. Undocumented migrants may also not engage in claiming rights as it would mean accepting the common discourse which states that they are 'illegal,' and then incorporating this into their identity.

The framework of legal consciousness developed by Ewick and Silbey (1998), which identifies three stances towards the law – before the law, with the law and against the law - has been widely used in studies investigating legal consciousness. The question arises whether this conceptualisation is useful for studying the relationship of undocumented migrants with the law. Even though it tries to decentre the law and bring it into the practices of everyday life, legal consciousness fails to capture the position of non-citizens who may have limited resources to engage with or understand the law and are predominantly exposed to the aspect of rights as control. Ewick and Silbey (1998) assume that members of marginalised groups are more likely to stand 'against the law', as they do not believe the law can bring justice or support their plight. Leisy Abrego (2011) agrees with this analysis, arguing that due to their vulnerability undocumented migrants mostly stand 'against the law' through a fear of legal repercussions. Having such a resistant legal consciousness can then lead to taking steps to challenge the injustices experienced due to exclusion through the law. These challenges can

be seen as actions that are framed within the idea of civil repair (Alexander, 2006). Actions are diverse, and may include lodging a human rights claim, challenging decisions of social services to not support a family, or engaging in political organising. Other stances towards the law may lead to other outcomes in terms of rights violations and whether an individual may use the law – if possible – to challenge institutions that withhold or deny rights.

In Abrego's study on undocumented students' legal consciousness (2008) she demonstrates how various factors influence one's relationship with the law by comparing the experience of being undocumented in the U.S. over two generations. She argues that the legal consciousness of first generation undocumented migrants is marked by fear, whereas for the 1.5 generation, not having status is experienced as a stigma (2008:362). She reiterates that members of disenfranchised groups stand *against the law*, but that their legal consciousness is fluid and contextual and can shift towards being *with the law*, depending on situational variables. As her study is located in the U.S., a country where there is a significant number of undocumented people who live in close-knit communities, her findings about claims making and collective mobilisation of undocumented migrants cannot be easily applied to a different context, especially when looking at the situation of undocumented women, who often live isolated lives away from public space.

### **3.5 Conclusion**

In this chapter I presented the theoretical framework for this research, which examines rights and legal consciousness, and what role the absence of legal status plays in terms of belonging and identity formation. I looked at the ideal aspects of rights which are embedded in the understanding of human rights as a universal category. Yet, for rights to be claimable, they need to be enshrined in legislation. Due to the continued power of the nation-state, human rights have done little for undocumented migrants in practice, despite the existence of conventions for their protection.



I demonstrated how citizenship remains the main vehicle through which rights are delivered. Citizenship has an undeniable influence on those who live without status. It implicitly confines undocumented women to the private sphere, which makes it more difficult for them to know about their rights, as this requires access to the public sphere. The experience of living without status is mediated through bodily aspects and different identity categories. This needs to be taken into account in order to develop an understanding of how law produces its constitutive outsiders, and how those who are pushed outside survive and claim recognition by what excludes them, as well as whether and how they accept the identities ascribed and performed through immigration law or struggle against them. This is especially pertinent due to ascription of being “illegal” to those who break immigration law, which many who fall into this category resist against.

The concept of legal consciousness lies at the centre of this inquiry, because it is a useful concept for understanding the relationship someone has with the law. In order to understand the processes that forego rights claiming and the ways in which non-citizens relate to the law in the host country, a narrow conceptualisation of legal consciousness may limit the ways that this can be understood. When trying to understand migrants’ legal consciousness and the way the law shapes their identity, it is important to keep in mind that the trajectories of migrants are not linear. Their migratory experience may stretch over a long period of time in numerous countries. Undocumented migrants may also return to their home country for a certain period of time until once again deciding to migrate to another country for work. Numerous factors can therefore have an impact on their legal consciousness. Bearing that in mind, these topics are still lacking further analysis and precisely because of that, significantly more research is required.

In the next Chapter, I will sketch out the history of immigration law in the UK and set the context in which the research is located. I give an overview of the development of

immigration legislation from World War II onwards and sketch out recent immigration legislation that aims at curbing irregular migration in the UK in more detail. I focus on provisions that are likely to affect undocumented migrant women. I explain what human rights provisions exist within British domestic law that can be used by undocumented migrants to regularise their status.

## **4 IMMIGRATION LAW IN THE UK FROM PAST TO PRESENT**

This Chapter aims to sketch out the wider legal context in which the research has been done, as well as considering estimates of the size and socio-demographics of the population of undocumented migrants in the UK. I argue that the wider context in which undocumented migrant women are located influences their everyday life, and shapes both their identity and legal consciousness. First, I review research that aims at estimating the size of the undocumented migrant population in the UK. Then, I give a brief overview of the history of immigration to the UK since World War II and map out recent changes in immigration legislation in the UK and how those changes affected the experience of living in this country without status. Since the early 2000s, a number of new legislative measures have been passed and implemented that increase vulnerability in the lives of undocumented migrants. Simultaneously, a discourse about ‘illegal’ migration is fuelled by the creation of a so-called ‘hostile environment’ for undocumented migrants. I focus in particular on recent legislation likely to have a differential impact on women such as changes to healthcare and local authority provision. In the last section of this chapter, I give an overview of the different legal avenues which are available for undocumented migrants to regularise their status with human rights provisions that are part of British domestic law. This Chapter is not an extensive overview of every piece of immigration legislation that has been implemented. Rather, it aims at sketching out key features of the environment and context in which undocumented migrant women currently find themselves when living in the United Kingdom.

### **4.1 Irregular Migration in the UK**

The legal definition of irregular migration is based on a binary understanding of legal and illegal, although the concept of legal status and the way it is experienced is far more complex. It is more accurate to see status as movement on a continuum. The most common pathway towards being undocumented in the UK is overstaying a visa (Vollmer, 2011). A large part of

the undocumented population are asylum seekers whose claim got rejected and either cannot leave the country or do not want to.

There is no juridical differentiation between illegal entry, overstaying, and breaching the conditions of the visa. These offences are all treated the same way and can lead to six months of imprisonment, deportation and/or a heavy fine (Vollmer, 2011). The way government officials try to deal with the issue of irregular migration and manage it, is through strict law enforcement and punitive measures designed to exclude those who live in the UK without official status. However, in Britain there is no requirement to officially register a home address or carry an identification card, which gives a certain degree of flexibility for undocumented migrants compared to other European countries.

As external border controls of the EU become increasingly strict, it is assumed that most undocumented migrants enter legally, but do not have the permission to work or stay, such as asylum-seekers, tourists, students, or those who work in an undeclared job (Düvell, 2006). Furthermore, the tightened rules of residence for non-EU migrants in the UK has led to an increase in irregular migration (Jordan and Düvell, 2002).

#### **4.4.1 Estimates of the Undocumented Migrant Population**

Irregular migration is by its very nature not recorded. Statistics are unable to keep track of how many undocumented migrants live in a certain country at a specific time, can therefore, this can only be estimated (Vollmer, 2011). These estimations are problematic for both methodological and statistical reasons, as the statistics are weak and migrants' legal status can change over time. Furthermore, the question arises whether it is ethical to try and provide statistics on a part of the population that wants to remain invisible, especially due to the sensitive nature of the issue and the discourse surrounding it (Gordon et al, 2009).

A few studies have tried to estimate the number of irregular migrants living in the UK since 2001. This is both due to the hidden nature of the population and the significance the topic has gained in the political arena in recent years (Gordon et al, 2009). The study by

Woodbridge (2005) and Gordon et al (2009) are considered to provide robust and more reliable estimations of the size of the population in the United Kingdom (Sigona and Hughes, 2012; Vollmer, 2011).

Woodbridge (2005) uses the residual method to estimate the size of the population of undocumented migrants. This method takes the foreign-born population recorded in the UK Census of April 2001 as a starting point. An estimation of the foreign-born population legally residing in the UK is then deducted from the total number of the foreign-born population in the Census record, which results in an estimation of the number of irregular migrants (including rejected asylum seekers). The estimation of the number of foreigners legally residing in the UK is based on Home Office Data and official government statistics. This method estimates the number of irregular migrants in the UK in 2001 as ranging from 310,000 to 570,000, with a central estimate at 430,000. In that estimation, irregular migrants constitute 0.7% of the whole population (Woodbridge, 2005). This measure is considered as robust, yet excludes the UK born children of undocumented migrants, as well changes in legal status, such as rejected asylum seekers (Gordon et al, 2009).

Gordon et al (2009) use Woodbridge's findings and update the findings with estimates of the numbers of undocumented children, migrants who regularised their status after the A8 countries became members of the EU, and the growth of the population of overstayers. This study includes the number of rejected asylum seekers, that did not leave the UK. Their estimate of the population end-2007 ranges between 417,000 and 863,000, with a central estimate of 618,000 irregular migrants (Gordon et al, 2009: 48). The study suggests that the majority of the population of irregular migrants lives in London, with the central estimate lying at 442,000. This estimation was also used by the EU funded research project CLANDESTINO (2009). The research project aimed at creating more knowledge about undocumented migrants living in selected EU countries, improving the quality of data about them and developing

recommendations for ethical policies in regard to managing undocumented migration (Clandestino Project, 2009). Compared to other European countries, research of the Clandestino Project estimates that the UK has a higher number of irregular migrants (Vollmer, 2011).

#### 4.4.2 Socio-demographics of Undocumented Migrants in the UK

Due to the hidden nature of undocumented migration, only tentative information regarding the socio-demographic features of the population is available (Clandestino Project, 2009). Countries of origin may be estimated by looking at those that feature in asylum applications, as well as those of people held in detention centres, and of rejected asylum seekers. At the end of June 2015, the largest groups of people in detention were from India, Pakistan, Bangladesh, Nigeria, Afghanistan, Albania, Jamaica and China (Gower and Hawkins, 2015). The top ten nationalities of asylum applications in 2015 is shown in the table below.

*Table 3: UK Asylum Applications, Top Ten Nationalities, 2015, (Migration Observatory, 2016)*

Rank	Country	Number of Applicants	Share of Total Population
1	Eritrea	3756	9.7%
2	Iran	3694	9.5%
3	Pakistan	3254	8.4%
4	Sudan	3014	7.8%
5	Syria	2846	7.3%
6	Afghanistan	2807	7.2%
7	Iraq	2609	6.7%
8	Albania	1809	4.7%
9	Nigeria	1509	3.9%
10	Sri Lanka	1396	3.6%

The gender distribution in the population can also only be based on estimates. It is estimated that women constitute half of the population of migrants worldwide, sometimes outnumbering men, especially when it comes to working in sectors like domestic care and sex work (Scrinizi, 2003; Clandestino Report, 2009). When looking at numbers of asylum applications in the UK, women constitute around 30% of applicants between 2009-2016 (Home Office, 2016d), while women made up 16% of detainees in UK detention centres between 2009 and 2015 (Home Office, 2016b). In their research about the lives of young undocumented migrants in the UK, Bloch et al (2015) interviewed seventy-five undocumented migrants, 46% of the interviewees were women. Out of fifty-five undocumented migrants interviewed for the book *Living on the margins. Undocumented migrants in a global city* (Bloch and McKay, 2016), fifteen were women, which makes up 27% of the total sample.

Concerning age, Gordon et al (2009:49) estimated that 40% of undocumented migrants are between twenty and thirty-four years old, 22% between thirty-five and forty-four, 9% between forty-five and fifty-four and 4% are older than fifty-five. According to that estimation, 25% of the population of undocumented migrants are younger than nineteen years old. The research project “No way out, no way in: Irregular migrant children and families in the UK” (Sigona and Hughes, 2012) estimates that at the end of 2011, 120,000 undocumented children resided in the UK, with half of them being British born. This estimate is based on Gordon et al (2009) who estimated the number of undocumented children as ranging between 44,000 and 144,000, with a central estimate of 85,000. Sigona and Hughes (2012) claim that more than half of undocumented children in the UK are younger than twelve years old and live with their parents or relatives.

## **4.2 The British Migration Regime**

Historically, migrant movements to the UK have been influenced by the imperial past, with newcomers mostly arriving from former colonies or new Commonwealth countries (Solomos, 2003). Citizenship tended to be granted through the principle of *ius soli* (rule of territory),

while Commonwealth citizens gained the right to enter and settle in the UK, as well as citizenship rights as citizens of the UK and its colonies, under the 1948 Nationality Act (Sales, 2007). The majority of migrants arriving in the UK in the 1950s were from the Caribbean and the Indian subcontinent – the so called Windrush generation – and were recruited to fill labour shortages (Green, 2007). Entering Britain during that time was rather easy for Commonwealth citizens, as there was no immigration control. Despite the arrival being uncomplicated in a legal sense, black and brown people experienced high levels of overt racism at that time.

The 1961 British Nationality Act introduced the first restrictions for entry by Commonwealth citizens and marked the departure from the *ius soli* principle for citizenship (Green, 2007). From the 1960s onwards, immigration policy was concerned “about restricting the entry and settlement of the former subjects of the empire” (Joppke, 1999:100), i.e. for black and brown commonwealth citizens, who were given citizenship status with lesser rights than white citizens (Yeo, 2017c). The debate around immigration became increasingly racialised, and restrictions for entry were justified by promoting “racial equality among citizens in a multi-ethnic polity” (Düvell and Jordan, 2002). At the same time conservative anti-immigration rhetoric was on the rise, as seen in Enoch Powells controversial “Rivers of Blood” speech in 1968, which promoted populist racism (Solomos, 2003). In subsequent years, a series of immigration acts were passed to control and limit migration flows, which led to the fuller institutionalisation of immigration control (Chimienti, 2012). This included stricter requirements for family reunification, deportation of those who broke the conditions for entry, and the removal of settlement rights for many Commonwealth citizens by introducing the notion of ‘patriality’ in the 1971 Immigration Act, which meant that settlement in the UK was made dependent on parentage. This Act included the first legal definition of an ‘illegal entrant’, which is a person “(a) unlawfully entering or seeking to enter in breach of a



deportation order or of the immigration laws, or (b) entering or seeking to enter by means which include deception by another person” (Immigration Act 1971).

The 1981 British Nationality Act extended the link between citizenship and ethnicity by only giving the right of abode to full British Citizens<sup>3</sup>, a status which was introduced alongside a subset of lesser citizenships, namely the tiers of Citizens of Dependent Territories and British Overseas Citizens (Sales, 2007). The Act further abolished the *ius soli* principle of granting citizenship, as it included an ethnic redefinition of Britishness as being White, due to the link of citizenship with blood ties. The Act included the first definition of British citizenship, a status only granted to those who were born in Britain and whose parents or grandparents were born in Britain. This was in contrast to the idea of Commonwealth citizenship which gave right of entry to the citizens of former colonies. Only children born to British parents or parents who were permanently settled were granted citizenship (Kofman et al, 2008). Visa requirements for visitors from countries such as India, Pakistan, Bangladesh, Nigeria and Ghana were introduced in 1986, which was a contentious issue at the time (Solomos, 2003), as travel from the Commonwealth had previously been visa-free. Those legal regulations reflected the dominant conservative discourse, which was aimed at defining British society as white, and black and brown immigrants as an ‘other’ which did not belong (Natarajan, 2013).

The 1987 Immigration (Carriers’ Liability) Act introduced new control mechanisms for people entering the UK by imposing fines on airlines and shipping companies who transported people without the right visa or entry clearance. This change in legislation shifted the responsibility on employees of those companies to check documentation of travellers and identify those who have false or no travel documents (Vollmer, 2008).

### **4.3 The Shifting Debate from 1990`s**

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<sup>3</sup> In fact, the legal status of being a British citizen is a recent invention, which had not existed prior to this Act, as the status was called citizen of the UK and its colonies (Yeo, 2017c)

The focus of the debate around migration shifted towards asylum seekers in the 1990s, both in the public and political rhetoric (Vollmer, 2008). The breakup of states in Eastern Europe and the Soviet Union generated new flows of migration and increased the numbers of asylum seekers (Kofman, 2002). Different measures were passed that aimed at reducing the number of asylum seekers. This included denying in-country claimants the access to welfare benefits, extending the denial of the right to work for asylum seekers, stepping up the practice of detention, and undermining the appeal system. The restrictions were justified with the claim that most asylum seekers are frauds and only claiming asylum to take advantage of the system (Jordan and Düvell, 2002). Policy measures to restrict asylum seeking also had an effect on irregular migrants, since many asylum seekers had to enter in an undocumented capacity. Moreover, different categories of migrants merged in public and political debates in the UK, often equating asylum seekers with irregular migrants (Geddes, 2005).

The phenomenon of irregular migration became increasingly politicised in the UK and has been ranging high on both the public and political agenda since the 1990s, as “breaking migration law came to be viewed more and more as ‘devious’ and ‘criminal’” (Vollmer, 2010:282). The government started to introduce restrictive legislation and control mechanisms to curb unwanted migration, which in turn increased the number of irregular migrants (Vollmer, 2010). Another element in the public debate was concern about national security and threats relating to terrorism, as well as a rising awareness about trafficking and human slavery (Yuval-Davis et al, 2005). The discourse around trafficking was and still is characterised by gendered and racialized stereotypes of women from non-European countries being victims of trafficking. By introducing legislation to combat trafficking, the UK portrayed itself as rescuing poor women (often women of colour) from evil, foreign, hyper-masculinised traffickers (Anderson, 2010).

As legal ways to enter the UK were tightened and the rejection rate of asylum claims rose, the numbers of irregular migrants grew (Kofman, 2002). Curbing irregular migration has been a focus for policy makers since the mid-1990s (Spencer, 2011), and the employment of an irregular migrant was first defined as a criminal offence in 1996.

#### **4.4 Migration Policy under the New Labour Government (1997-2010)**

Migration policy under the New Labour government that came into power in 1997 can be discussed within a framework of managed migration (Morris, 2002), which aims to curb ‘illegal’ migration whilst fostering high skilled economic migration, as well as speeding up asylum decisions (Sales, 2007). The policy of managed migration seeks to enforce compliance with immigration law and boost the economy. Increasing detention and deportation, control of access to services, and stepping up employer and carrier sanctions were the main instruments to control unwanted migration introduced in that period (Sales, 2007). Simultaneously, the Labour government implemented the ECHR into domestic law with the 1998 Human Rights Act, which means that the ECHR is binding in British law (Solomos, 2003). Furthermore, human rights claims could then be directly made to British courts. Overall, the politics of the Labour government increased net migration to the UK (Geddes and Scholten, 2016).

Sticking to the framework of managed migration, the Labour government introduced a points-based immigration system. This system selects migrants based on certain ‘desirable’ skills, such as qualifications, language skills, or job experience and occupation (Gower, 2016). Under this system a higher number of work permits were granted and more international students came to study in the UK. Moreover, the British labour market was opened to workers from the new Eastern and Central European Union member states in 2004, the so-called A8 accession (Finch and Goodhardt, 2011). The opening triggered an increase of migration from those countries. Between 2004 and 2009 around 1.3 Million people from A8 countries arrived

in the UK (Somerville et al, 2009). The A8 accession also meant that migrants from those countries who were formerly undocumented automatically gained status in the UK as EU citizens, although the number of those is unknown (Vollmer, 2008).

In 2009, the European Convention on Action against Trafficking in Human Beings came into force in the UK. As a result of this ratification, the government introduced the National Referral Mechanism (NRM) for victims of trafficking, along with a law that made human slavery a criminal offence, the Coroners and Justice Act 2009. The NRM was designed to enable government institutions such as the police, immigration enforcement, and local authorities to identify victims of trafficking, and provide support to third sector organisations such as the Salvation Army and Kalayaan, civil society organisation providing support for migrant domestic workers (Fudge and Strauss, 2014). If reasonable grounds exist to believe that someone is a victim of human trafficking, the person will get temporary admission for forty-five days. A conclusive decision about whether the person is actually a victim of trafficking needs to be made within this time. If the applicant is recognised as a victim of trafficking, then the Secretary of State for the Home Department (SSHD) can grant Discretionary Leave to Remain for one year and one day. This is dependent on the cooperation of the victim in an investigation against the trafficker or due to personal circumstances (pregnancy, illness, completing a training course, etc.) (Finch, 2013). The permit can be renewed if the circumstances continue. It is unclear how often leave is granted to victims of trafficking. A Freedom of Information request submitted to the Home Office in 2015 has been left unanswered (Shephard, 2015).

The mechanism has been criticised for favouring EEA nationals in its application, who are recognised disproportionately as compared to non-EEA nationals. This indicates an overemphasis on legal status (Annison, 2013). A report by the Anti-Trafficking Monitoring Group showed that victims of trafficking who apply for asylum often do not receive the same

support as those who do not, and the Home Office is often found to treat asylum applications and NRM referrals as part of the same process (Annison, 2013).

#### **4.4.1 Legislation Changes Relating to Irregular Migration**

In 1999, the passage of the Asylum and Immigration Act increased penalties for illegal entry (Green, 2007), and changed the law concerning irregular migration by including penalties for third parties facilitating entry by means of deception. It also changed the treatment of visa overstayers, who were from that point on liable for deportation. Overstayers were previously treated in a different way than ‘illegal entrants,’ if they had resided in the UK for a certain period and made their living in the country (Vollmer, 2008). In the 1999 Act, immigration officers were granted power to enter buildings and search for immigration law offenders (Jordan and Düvell, 2002).

Following the attacks on September 11<sup>th</sup> 2001, irregular migrants and asylum seekers were even further criminalised. Anti-terror laws which were said to uphold national security, allow the suspension of human rights and indefinite detention of suspects (Yuval-Davis et al, 2005:515), and the global War on Terror has led to stricter immigration control, with greater emphasis on security issues.

The government introduced the Overseas Domestic Worker Visa Scheme (OWS) in 2002, which is considered to be a response to campaigns raising awareness about modern slavery among migrant domestic workers (MDW) in the UK, and rising pressure from NGOs regarding legislation around trafficking (Fudge and Strauss, 2014). This visa is designed for non-EU citizens to come to the UK to work as domestic workers. It is only open for MDWs who enter with a non-British employer, or a British citizen who has lived overseas and returns to the UK (Fudge and Strauss, 2014). The scheme gave workers employment rights under UK labour law. The worker needed to live with the employer and be employed for at least one year. After a five-year period the domestic worker would be able to apply for settlement

(Lalani, 2011). The visa holder was dependent on the employer and could only change employers if suffering abuse. The charity Kalayaan has highlighted that nearly 50% of workers that registered with them between 2008 and 2010 suffered psychological abuse from their employer and around 20% reported physical abuse, showing the vulnerability of MDWs (Lalani, 2011). In 2009, the government presented plans to restrict the OWS to six months and prohibit MDWs to change employers, arguing that victims of trafficking would be sufficiently protected by the NRM (Fudge and Strauss, 2014). Campaign groups warned that such changes would increase the vulnerability of MDWs in the UK, as not everyone who is subjected to forced labour has been trafficked, and that the NRM fails to identify MDWs who have been trafficked (Lalani, 2011). Furthermore, not all victims of trafficking Kalayaan supported were willing to report this to the police, instead choosing to change employers.<sup>4</sup> As a result, the law created significant vulnerabilities for migrant women.

The 2002 Nationality, Immigration, and Asylum Act further restricted access to public services for irregular migrants (Vollmer, 2008). In 2003, the government introduced the long residence concession, which allowed a discretionary grant of LTR based on a long period of residence. The period for those who remained lawful in the UK was ten years, and fourteen years for those who have resided in the UK unlawfully (ILPA, 2008). In the same year, the Home Office granted a 'discretionary' family amnesty to asylum seekers who had a dependent minor, both for those with pending and refused applications. By 2006, around 16,000 families received status as part of this one-off regularisation (Vollmer, 2008).

The 2007 UK Borders Act increased powers of the UK Border Agency (UKBA)<sup>5</sup> to detain and deport migrants, and broadened the scope of enforcement for immigration officers, namely to enter and search premises (Clayton, 2016). The powers granted to immigration

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<sup>4</sup> Reporting a trafficking incident to the police is a compulsory element of the NRM.

<sup>5</sup> Now Immigration Enforcement (IE)

officers are now equal to those of police officers and were aimed at tackling illegal working (Vollmer, 2008). The Act included provisions for automatic deportation of foreign national offenders, if they have been imprisoned for specific offences, or for more than one year. The Border, Citizenship and Immigration Act 2009 imposed a duty on the SSHD to safeguard the well-being of all children in the UK, meaning that a decision maker in an immigration case must be properly informed about the children affected by the case and take their best interests into account (Clayton, 2016).

New legislation shifted controls from primarily being located at the outer border, where they were performed by border guards, to internal controls, which requires non-state actors such as employers, housing officers, and registrars for marriages or birth or social workers to check immigration status when interacting with non-nationals (Morris, 1998; Sales, 2007). Additionally, the resources for enforcement staff and data sharing between different agencies were increased; high-profile raids of ethnic businesses were carried out to ensure the visibility of immigration law enforcement activities (Spencer, 2007).

The 2006 Immigration, Asylum and Nationality Act increased penalties for employing people without the right to work up to £10,000 and/or a period of imprisonment to prevent 'illegal' working, which also included those who employed nannies or housekeepers without a visa. The responsibility to check employees' documents and their right to work was thus shifted on to the employer (Vollmer, 2008). The Act extended data sharing between different state institutions to gather more information about irregular migrants, including the UKBA, police, and customs (Immigration, Asylum and Nationality Act 2006).

Bill Jordan and Franck Düvell (2002) argue that historically, irregular migrants were easily accepted by employers, simply because there was less emphasis on internal controls in the British migration regime. Legislation under New Labour changed this by implementing internal control mechanisms.

#### **4.5 Towards a Hostile Environment: Legislation and Discourse after 2010**

The 2010 elections brought the Conservative Party to power, governing in a coalition with the Liberal-Democrats with David Cameron as prime minister. The political discourse around migration from 2010 onwards became harsher with immigration being described as out of control by politicians, and migrants being portrayed as stealing jobs from British people (Robinson, 2013). This period is characterised by the introduction of austerity measures and cuts in public spending, immigration legislation that pledges to cut down net migration, and the creation a ‘hostile environment’ for irregular migrants as well as renewed attacks on the 1998 Human Rights Act. Politicians claimed that with their hostile and harsh measures against migrants, they have listened to voters who have previously been ignored, thus appealing to the silent majority, and showing that in their perception, migrants are not considered as part of the public (Forkert, 2014).

Recent immigration legislation can be summed up by the framework of a ‘hostile environment’, a term first used by Theresa May in a newspaper interview in 2012. At that time May was Home Secretary (SSHD) and explained that “the aim is to create here in Britain a really hostile environment for illegal migration” (Kirkup and Winnet, 2012). This is reflected in the 2014 and 2016 Immigration Acts, which restricted access to basic services for undocumented migrants, and further criminalised their existence. The underlying idea is that by creating such hostile environments, undocumented migrants will ‘voluntarily’ leave the UK, and be less likely to migrate in the first place. In the following section those changes will be illustrated. The first part will examine changes outside the formal Acts, before changes in the 2014 and 2016 Immigration Acts are outlined.

##### **4.5.1 Changes in Immigration Rules from 2010 Onwards**

In July 2012, new immigration rules were introduced. The long residence concession threshold was increased from fourteen to twenty years, which immigration solicitors have described as draconian (Yong, 2012). Settlement in the UK for a person who has resided unlawfully is now



only possible after twenty years of continuous stay. Under the 14-year rule there were grounds for compassion when assessing the applications which were raised under exceptional circumstances (Yong, 2012). The rules introduced a new criminality criterion, which means any criminal conviction, regardless of its nature, constitutes a wider bar for regularisation (Finch, 2013). This is especially relevant for undocumented migrants, as it is not exceptional to engage in criminal activities to survive, since their status excludes them from legal employment. Nevertheless, the rules do incorporate pathways for regularisation under private and family life rights (Finch, 2013), which are explained in detail below.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 restricted legal aid for immigration cases to claims for asylum, and humanitarian protection under Article 3 of the ECHR. This means that any other immigration case has to be funded privately, which poses another challenge for undocumented migrants in regularising their status (Finch, 2013). A report by Amnesty International criticises that the legal aid cuts have introduced a two-tiered system of justice which effectively hinders the enjoyment and enforcement of human rights, especially for migrants (Amnesty International, 2016).

In 2012, the government restricted the ODW visa scheme to a six-month period and removed the possibility to change employers (Fugde and Strauss, 2014). ODW holders from then on could no longer change their immigration category or apply for settlement. Organisations working with domestic workers and victims of trafficking highlighted that the restrictions on the ODW category in 2012 made domestic workers more vulnerable (Peachey, 2013). The right to change employers is considered an important safeguard against abuse and exploitation (Gower, 2016). A report on the changes in the ODW category concluded that “informed, empowered and safe workers will be more likely to support or even initiate such enquiries [into employers’ abuse] than embattled, insecure and frightened workers” (Ewins, 2015:7). The restrictions also meant that MDWs are more likely to become undocumented if

they experience problems with their employer and have to or decide to leave to stop abuse (Mantouvalou, 2016). Due to concerns about the vulnerability created with the restrictions and pressures from advocacy groups, the government commissioned an independent review of the ODW visa scheme (Gower, 2016). The research found that the conditions of the visa did not protect MDWs fundamental rights and requested that visa holders get the right to change employers as well as apply for LTR for up to thirty months (Gower, 2016).

In March 2015, the Modern Slavery Act received royal assent, providing more protection for victims of slavery, increasing penalties and clarifying existing offenses of human trafficking and slavery. It also set up the office of an Anti-Slavery Commissioner and includes special measures for victims who are witnesses in criminal proceedings. The Act was recognised to be a significant step towards fighting against human slavery and trafficking, but was criticised by legal scholars and advocacy groups to focus too much on prosecution and not on victim protection (Jolly, 2015). During the final stages of the bill the government blocked an amendment that would have reintroduced the right to change employers in the ODW visa scheme (Conway, 2015). Domestic workers now need to first be recognised as a victim of trafficking by the NRM before they are able to change employers. This means limiting protection for domestic workers who are victims of trafficking, which casts doubt on how seriously the government takes modern slavery as it:

makes no substantive change as a matter of practical reality to the lives of those domestic workers—largely women—who are expected to challenge abuse and exploitation in the first instance in order to seek safety. It leaves a woman who flees abuse to become undocumented and thus criminalised. (Jolly, 2015: no page)

In April 2016, the rules for the ODW visa scheme were changed and allowed MDWs to change their employer within the six-month period their visa is valid, with the condition that they continue working as domestic workers (Gower, 2016). Campaign group Kalayaan (2016) criticised that this change in conditions will not give greater protection to domestic workers,

as it does not give them enough time to find a new employer. In general, the legislation focuses on prosecution instead of the protection of victims and survivors.

#### **4.5.2 The 2014 Immigration Act**

The government stated that the 2014 Act is designed to make the immigration system fairer for British citizens and those who have the right to remain, while being tougher on migrants who have, according to the government and current immigration law, no right to be in the UK. Immigration officers are granted more powers, they can search detained persons, enter premises and search for documents, as well as enter third party premises if they have reasonable grounds to believe that relevant documents are found there. They can use reasonable force when necessary (JCWI, 2014). The legislation shifted border controls even more into the realm of everyday life by introducing immigration checks when opening a bank account or applying for a driver's license. Driver's licenses of people without LTR can be revoked, and driving thereafter becomes a criminal offence. To prevent sham marriages, all proposed civil partnerships and marriages that include a non-EEA national without permanent residence must be referred to the Home Office for consideration.

The Act aims to make access to services difficult for 'illegal' migrants (health care, accommodation), which is believed to result in behaviour discriminatory to ethnic minorities and migrants lawfully present, and has been widely criticised by civil society organisations such as JCWI, Justice, landlord associations, and legal professionals (JCWI, 2016). This piece of legislation laid the groundwork for immigration document checks by landlords/ladies and agents (Gower and Hawkins, 2015). Migrants without LTR cannot legally enter into a residential tenancy agreement. If a landlord/lady rents to someone "illegally", they can be fined up to £3000 per adult. This scheme was first being tested in a pilot rolled out from December 2014 in Birmingham, Wolverhampton, Dudley, Walsall and Sandwell (Grant and Peel, 2015).

As part of the 2014 Act, a majority of appeals against immigration decisions were removed, and the number of immigration decisions which can be appealed thereafter were reduced from seventeen to four. Only a refusal of an asylum claim, claim for humanitarian protection, human rights claim, or a decision to revoke humanitarian or asylum protection can be subject to an appeal. ‘Harmful’ individuals, namely those with criminal convictions, can be deported before they appeal, unless they face serious irreversible harm as a result of the deportation (this includes death and/or torture, not violations to the right to family and private life) (Rooney, 2014).

The Act codified ‘Public Interest Considerations’ in human rights claims to private and family life, also known as Article 8 claims. Prior to that, the procedures were only part of case law and thus more open to interpretation. When assessing an Article 8 claim, the courts are required to take the public interest into consideration. It is considered to be in the public interest that the applicant speaks English and is financially independent in order not to be a burden on taxpayers and to be able to integrate into society. If the applicant is a foreign offender, it is said to be in the public interest to deport them, unless the sentence is below four years, the person has lived in the UK lawfully most of their life, they are integrated into British society, and they face serious obstacles to reintegration in their country of origin (JCWI, 2014). Other changes made were made in regards to the deprivation of citizenship; this may occur if citizenship was acquired by naturalisation and the SSHD believes that depriving the person of citizenship is instrumental to the public good because they have behaved in a way that harms the country’s vital interests, such as engaging in terrorism (JCWI, 2014).

The 2014 Act introduced the ‘migrant and visitor cost recovery programme.’ This includes a National Health Service (NHS) surcharge of £200 per year that has to be paid by migrants on top of their visa fees upon application. The cost of non-emergency healthcare for migrants who are not ordinarily resident in the UK has also been increased. This means that

giving birth can cost up to £9000 (Dexter, 2016), which will have a great impact on women without status. Doctors of the World, a charity that runs clinics for people without immigration status in London report about encountering an increasing number of pregnant women and sick people who are too afraid to access health care (Dexter, 2016), which will probably increase due to the hostile environment measures. The programme has placed more Home Office and immigration enforcement staff within the health service. The health surcharge also applies to applications for regularisation under Article 8 rights, meaning that when applying for leave to remain for thirty months, which is the most common route for undocumented migrant women to regularise their status, £500 need to be paid for the NHS (NRPF Network, 2017).

The 2014 Act marked the end of long term detention of children and introduced a new process of removing families whose applications were refused. The families are first encouraged to leave voluntarily, and only if they refuse to leave the country can they be held in 'pre-departure accommodation' for a maximum period of seventy-two hours before the departure (Gower, 2015).

#### **4.5.3 The 2016 Immigration Act**

The Home Office (2016) argues that the 2014 Act did not go far enough in restricting 'illegal' immigration, as it poses an ongoing 'problem' for the UK. The Immigration Act 2016 again focuses on migrants who do not have the right to stay in the UK. It introduces more punitive rules to expand the hostile environment and make those without right to remain leave the country (Yeo, 2017a). Parts of the Act have been said to possibly violate human rights, such as the right to rent scheme, freezing bank accounts, the deport first/appeal later scheme, and making working 'illegally' a criminal offence. The 2016 Act has been highly controversial and contested by various civil society organisations, as:

These proposed new regulations present a multitude of state strategies to make the life of migrants, both those who are legal and illegal in the eyes of the State, more contentious and precarious. ...this new series of regulations makes the entire citizenry duty bound to border protection. Moreover, it affords the general populace an opportunity to report on and denunciate those who they deem to be lacking in adequate

English language skills. This is making territorial agents and border detectives of us all (Crawford et al, 2016:115).

The Right to Rent scheme, first introduced in the 2014 Immigration Act, was rolled out in the whole country, despite widespread criticisms and a lack of transparent public evaluations of the pilot scheme. Assurances given to Parliament to evaluate the scheme before a national implementation have been overridden by the Conservative Party. An independent evaluation of the scheme undertaken by JCWI (Joint Council for the Welfare of Immigrants) in collaboration with Shelter, NUS (National Union of Students), Generation Rent, and the Chartered Institution for Housing showed that the scheme encourages discrimination against tenants who look or sound foreign (Grant and Peel, 2015). All individuals subject to immigration control who do not have leave to enter or remain in the UK are disqualified to enter into a residential tenancy agreement (Grant and Peel, 2015). Tenants without the right to rent can be evicted from their properties with new powers given to landlord/ladies and agents (ILPA, 2016). The tenancy agreement can be cancelled within twenty-eight days in a written notice. This notice is enforceable like a high court order. A possession order from a court does not need to be obtained, including cases with the evictions of families with children (Crawford et al, 2016). Empowering landlord/ladies and agents to act in this manner is especially problematic since many different documents can prove that a person has the right to stay in the UK, and those who are not legal experts lack the training to determine someone's immigration status. Further, landlords have many people queueing for properties, and checking their immigration status creates additional work. As a result, they can turn away anyone they are sceptical about, and choose someone who is a white British citizen (Grant and Peel, 2015). The right to rent scheme is expected to have devastating effects on limiting the options of vulnerable migrant women experiencing domestic violence who have no or an

insecure immigration status, as they cannot access refuges or shelters<sup>6</sup>. Under the new Immigration Act, they will not be able to rent private accommodation. The campaign group Sisters Uncut argues that migrant women experiencing domestic violence will be trapped in violent relationships, or will face homelessness and deportation (Sisters Uncut, 2016). The right to rent scheme is likely to force more people to rent in substandard conditions from rogue landlords, who abuse and exploit vulnerable tenants (Grant and Peel, 2015).

The 2016 Act creates a new criminal offence for people working ‘illegally.’ The maximum prison sentence for working ‘illegally’ has been increased to fifty-one weeks and/or a fine. Immigration officers can seize earnings as proceeds of crime (Crawford et al, 2016) and close businesses. This offence further criminalises those who work in breach of their visa conditions or without right to remain (ILPA, 2016). This could violate Article 4 of the ECHR (“No one shall be held in slavery”), as it may deter victims of trafficking from seeking help (Lea, 2016). The Act makes driving while residing in the UK unlawfully a criminal offence, and also creates new powers for immigration officers and the police to seize and search for driving licenses (ILPA, 2016). It places a duty on banks and building societies to perform checks on existing accounts, notify the Home Office, and then close or freeze the bank accounts of undocumented migrants (Home Office, 2016a). This could lead to an infringement of the right to peacefully enjoy property, especially if bank accounts are wrongly frozen (Lea, 2016).

The “deport now, appeal later” provisions were extended to all human rights claims, which include appeals made on Article 8 grounds (private and family life). Appeals as part of the Refugee Convention or Article 3 grounds (the right to be free from torture, inhumane or degrading treatment or punishment) are not included (ILPA, 2016). This means that

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<sup>6</sup> Domestic violence shelters are financed through housing benefits. A migrant woman without status or with NRPF cannot claim housing benefits and can thus not access the service. There is a specialist refuge in London that provides shelter for migrant women fleeing domestic violence with additional needs such as mental health, substance abuse, sexual exploitation or NRPF (London VAWG Consortium, no date)

individuals who have not yet acquired legal status could be deported to their country of origin. Family life applications were specifically targeted by this rule, and appellants were not present when their appeals went through the court system. The “deport now, appeal later powers” resulted in the separation of families for a prolonged period of time, with detrimental effects on the well-being of children, as migrants who apply under Article 8 rights have family members in the UK (Patel and Peel, 2015). These provisions were said to severely erode human rights and the rule of law. Given the high success rates of appeals (one in three decisions which are appealed against are overturned), the new powers were believed to impede access to justice and a fair trial, as gathering evidence and contacting one’s solicitor from far away posed a serious challenge to appellants (Patel and Peel, 2015). After a long process of litigation, the provisions were ruled unfair and unlawful by the Supreme Court in the judgment *R (Kiarie; Byndloss) v SSHD* [2017] UKSC 42, which was handed down in June 2017. Campaigners and human rights lawyers described it as a landmark judgment that shows the importance of effective appeal rights (Naik and Hoshi, 2017).

The 2016 Act introduced a new section to limit support for failed asylum seekers, who can show that there is a genuine obstacle of removal and that they are destitute. Families who reach the end of their asylum process will no longer be able to receive Section 95 support (the general support for asylum seekers), but will need to apply for the new section 95A provisions (ILPA, 2016). The Home Office is yet to publish regulations defining what constitutes a genuine obstacle (Harper, 2016), and there is no right of appeal for Section 95A. Lodging a judicial review remains the only option to challenge the refusal of support (Harper, 2016). Many families whose asylum claim was rejected and are unable to leave the country will be made homeless and destitute with no means of support or possibilities to earn money (Refugee Council, 2015). The Act also makes changes to local authorities’ provision of support for undocumented migrant children and their families. Section 17 of the 1989 Children’s Act



imposes a duty on local authorities to safeguard and promote the welfare of all children regardless of their immigration status. This part of the law is especially important for irregular migrant families, as it translates into a duty to accommodate and support migrant children and their families, if they are in need, i.e. destitute or facing homelessness. Section 17 is still valid, but new provisions in the 2016 Act aim at simplifying the process for local authorities when assessing undocumented migrant families and providing support (Home Office, 2016c). The local authority no longer needs to establish the families' immigration history or carry out a human rights assessment. The guidance to these provisions clearly states that this support is contingent on the family either waiting for a resolution of their immigration application or departure to their country of origin, stating that "there is no general obligation on local authorities to support those without immigration status who intentionally make themselves destitute by refusing to leave the UK when it is clear they are able to" (Home Office, 2016c: 13). It is unclear how the changes in the law will affect the situation of undocumented families, who already face major obstacles when trying to access local authority care.

To sum it up, the measurements introduced in both the 2014 and 2016 Immigration Acts involve increased data collection and sharing between the Home Office, other government departments such as the NHS and Department for Education, charities, and private companies (Corporate Watch, 2017a). This is in addition to steps aimed at the criminalisation of irregular migrants and curbing access to services and housing, as described above. A third aspect involves collaboration between government agencies, the NHS, landlords, private companies, employers, and so on.

#### **4.5.4. Government Initiatives to Create a Hostile Environment beyond Legislation**

In 2013, the government launched a series of initiatives to draw public attention to irregular migration. A van with a billboard attached to it reading "In the UK illegally? Go home or face arrest" was driven around six London boroughs for five weeks (Jones et al, 2015). Similar

pictures were advertised in ethnic minority newspapers. The Home Office launched a Twitter campaign with the hashtag #ImmigrationOffenders, posting pictures of raids and stops of people at transport hubs (Dhaliwal and Patel, 2015). Those measures and campaigns were part of the wider Operation Vaken, which aimed at encouraging people who do not have the right to remain in the UK to go back to their country of origin. The ‘advertising’ campaign got a lot of attention from the media, as it tied in with racist ideologies popular in far-right movements that were active in the 1970s, which brought up painful memories from that time, especially for ethnic minorities:

The phrase was directed at people who appeared not to be white and British, many of whom had settled in Britain as subjects of the British Empire, or lived in the UK since birth; it implied that those groups could never be considered ‘at home’ in the UK (Jones, no date)

The research project “Mapping Immigration Controversies” was launched as a direct response to those high-profile campaigns. It sought to document controversies, identify how government communication interacted with public opinion and activism, produce research that is useful for communities, and finally, understand the effects of the campaigns (Jones et al, 2017). Their research showed that the campaigns launched in 2013 were causing fear and anxiety, both among migrants and non-migrants, including people opposed to immigration. Focus groups were carried out in various communities around the country, and people strongly expressed their fear in relation to the consequences of the hostile environment based on witnessing immigration raids, racial profiling on the streets, and experiences with trying to access legal representation and emotional support. People with LTR discussed anxieties about their legal right to stay being revoked (Dhaliwal and Patel, 2015). Additionally, it was found that communication about immigration coming from the government was not based on evidence about what kind of measures work to manage migration (Jones et al, 2017). The wide array of legal statuses appeared to be confusing for people, and distinctions between different categories such as asylum seeker, refugee, and ‘illegal’ immigrant were not clear. The study showed that the British government’s stance on immigration has made it more acceptable for

the public to be openly anti-immigration. The researchers emphasise that such a point of view can easily cross the line to being racist. Additionally, participants from BME backgrounds reported an increased level of harassment and being questioned about their immigration status, despite being settled in the UK or having British citizenship (Jones et al, 2017). White people can be 'illegal' too, but race and class have become the markers of assumptions about illegality (Dhaliwal and Patel, 2015). The research criticised factual misrepresentation of migration related issues in media and public debates.

Adding on to legislation passed under previous governments, new laws move border control away from the actual port of entry into the everyday lives of people. Employers, landlords, educators, as well as health and housing providers have taken on the qualities of border guards, and migrants need to prove their 'legality' to them. This creates an environment of suspicion, as establishing whether a person is 'legal' or 'illegal' is extremely complex (Dhaliwal and Patel, 2015). This requires a close examination of someone's paperwork and immigration history, which is difficult without proper knowledge of immigration law and regulations, that change regularly. Furthermore, decisions regarding immigration status are often appealed and overturned by courts (Dhaliwal and Patel, 2015). The change in enforcement practices described by participants of the Mapping Immigration Controversy research becomes evident when looking at the increased number of immigration raids and deportations. A FOI request to the Home Office showed an 80% increase in raids in London between 2010 and 2015, with 4,703 immigration raids in 2014 (Kleinfeld, 2016). Solicitors argue that in light of racial biases, random spot checks by immigration officers at transport hubs or on the street are excessive because a person's skin colour does not constitute a reasonable suspicion to justify questioning their immigration status (Dhaliwal and Patel, 2015). A report published in 2014 by the Independent Chief Inspector for Borders and Immigration showed that in two-thirds of immigration raids, officers were misusing the power to enter and

search businesses, and were regularly not complying with Home Office guidance on how to obtain authorisation (Vine, 2014). IE does not have the right to check a person's immigration status without reasonable suspicion. In the UK people are not required to carry identity cards with them, which in theory makes it easier to walk away from an immigration raid. However, this can prove to be difficult, considering how intimidating immigration officers can be and without knowing one's rights during a spot check. There have been a number of recent crackdowns on certain communities aimed at filling charter flights going to Nigeria, Ghana, Pakistan, and Jamaica, all former British colonies which have a large British diaspora, as campaign groups report (Boothby, 2017; Corporate Watch, 2017b; Leeds No Borders, no date).

This new mode of immigration enforcement combines hard and soft policing methods. The Home Office aims at building relationships with community organisations such as religious groups and NGOs, which are often places of sanctuary for ethnic minorities, undocumented people, or women fleeing from domestic violence. The first attempt to do that was Operation Skybreaker in 2014, which involved immigration officers talking about immigration in community organisations and faith groups, offering businesses to help check their paperwork, and working with local authorities in five London boroughs to stop irregular migrants from accessing services (ORGANISATION A, 2014). In an investigation into the collaboration between charities and the Home Office, the non-profit research and journalism group Corporate Watch revealed that several homelessness charities in London worked closely with Immigration Compliance and Enforcement Teams to help in raids among rough sleepers in the capital (Corporate Watch, 2017a). Charity outreach workers are turned into informants, passing on information about the location of non-European rough sleepers to be detained and deported.

Sukhwant Dhaliwal and Meena Patel (2015), both members of the Mapping Immigration Controversy project team, point out the link between austerity politics and immigration, which they see as scapegoating migrants for the failure of neoliberal politics:

This avowed hostility has been bolstered by an austerity agenda that has led to the decimation of voluntary sector support and advocacy services and also monumental restrictions on the availability of legal aid, in turn denying migrants the support they may require to understand the immigration system, let alone navigate it in the context of hostility (no page)

#### **4.6 Current Issues: Immigration and Brexit**

Legal immigration today is mostly limited to highly skilled and EU migrants, asylum seekers, and family reunion. In general, immigration law has become more restrictive and complex. Between 1999 and 2016, eighty-nine new types of immigration offences were created (Aliverti, 2016). Yet in spite of increased restrictions, net migration to the UK increased from the 1990s to today. More than seven million people migrated to UK in the last twenty years (Robinson, 2013). Apart from EU migration, which has been ranking high on the agenda due to rising net migration overall, migration to the UK and especially to London mostly continues to be part of an older system which involves links with the Commonwealth countries and former colonies (Jordan and Düvell, 2002). One reason for the rising number in net migration is that the British government has little control over the largest groups of migrants, namely those from other European countries, due to commitment to the freedom of movement and labour for EU citizens. Britain has had an exceptional position in the EU, as it is not member of the Schengen Zone and thus still exercises controls at its external borders (Geddens, 2005).

In June 2016, a small majority of British voters (52%) voted in favour to leave the EU in a non-binding referendum, starting the Brexit process (Gietel-Basten, 2016). This led to the resignation of then prime minister David Cameron; Theresa May, who was formerly the SSHD, became his successor. An underlying theme in the Brexit campaign was to regain control of immigration to the UK. The leave campaign argued that due to high numbers of immigrants coming to the UK, public services and infrastructure such as the school system or

the NHS were strained. They furthermore alleged that migrants are ‘jumping the queue’ for social housing, thus taking it away from the native (i.e. white) British population (Gietel-Basten, 2016). Another prominent issue was welfare benefits, supposedly being exploited by EU migrants in ‘benefit tourism’. These arguments were feeding into an already established and functioning anti-immigration discourse built by former and current governments in addition to the media. At the time of writing, it is not clear what impact Brexit will have on migration to the UK and human rights provisions that protect vulnerable migrants. In the following section I give an overview of human rights provisions part of British law that create pathways for regularisation for undocumented migrants.

#### **4.7 Pathways to Regularisation for Undocumented Migrants**

This section aims to give a broad overview about the pathways to regularisation for undocumented migrants. However, this is not exhaustive, as in the common-law system the law is developed in stages drawing on all existing sources of law and not only those related to immigration (Finch, 2013). Thus, when an application for LTR is lodged, different cases are used to construct a legal argument to show that the applicant has the right to remain in the UK. Commonly used cases and judgments, as well as parts of written legislation will be explained below.

There has been no general amnesty and naturalisation for irregular migrants in the UK, and pathways out of irregularity are difficult and complex. Due to the increase of the threshold for long term residence from fourteen to twenty years, it became more difficult for undocumented migrants to attain legal status. Discretionary leave is only granted on the discretion of the SSHD (Clandestino, 2009). Settled migrants or persons with a limited leave to remain can bring their spouses to the UK when fulfilling certain requirements, which were tightened in 2011 (Jayaweera and Oliver, 2013), including proving that the relationship is genuine. In order to support a spouse, the applicant settled in the UK needs to show a minimum

income of £18,600, which is higher than the yearly income in a job paying minimum wage, meaning that family unification is difficult for those who work in low paid jobs. The spouse has to show a sufficient knowledge of the English language, in order to ensure an ability to participate in the labour market and after a probationary period of five years the spouse can apply for permanent settlement, which was extended from two years in 2012 (Jayaweera and Oliver, 2013).

If a person has established a private and family life in the UK she can apply for LTR under Article 8 rights of the ECHR. When applying for LTR under Article 8 rights, such applications are generally referred to as human rights applications. The requirements for being granted LTR on the basis of private life are specified in Paragraph 276ADE of the Immigration Rules, as well as in Appendix FM. This appendix sets out the requirements that a person needs to meet if they apply as the family member of a British citizen, a person who is settled in the UK or has limited leave to remain, or someone who has either refugee status or humanitarian protection (Home Office, 2018). Applying for LTR under Article 8 is a common route taken by applicants who are undocumented, as this is one of the few ways to regularise their status. A person can get LTR in terms of Article 8 rights on the basis of her private life in the UK if she:

- (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
- (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
- (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or (vi) subject to paragraph 276ADE(2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK (Home Office, 2015a:40)

As noted earlier on, the long-term residence requirement was extended from fourteen years to twenty years in 2012. The applicant needs to show that she has lived in the UK for twenty years by providing letters from former employers, friends, or other institutions. This is a

difficult undertaking as many employers refuse to issue letters which reveal that they have employed people illegally.

In terms of family life, a person can apply for LTR if she has a parenting relationship with a child that is under eighteen. The child must have lived in the UK for a minimum period of seven years or is a British citizen and it is not considered reasonable for the child to leave the UK. The requirements to apply as a sole carer are specified in Appendix FM, which is applied to family life with a child. The applicant has to meet certain eligibility criteria, which include not being subject to a deportation order, not having committed a criminal offence which has led to a prison sentence within the last four years, not being sentenced to a prison sentence between twelve months and four years, and not being a repeated offender that caused serious harm (Home Office, 2018). Furthermore, an applicant is not eligible for LTR if she owes £1000 or more to the NHS for hospital charges (Finch, 2013). The applicant also has to show that she has sufficient knowledge of the English language. If these stringent requirements are fulfilled, the Home Office grants LTR that is limited to thirty months. Indefinite leave will be granted after ten years of residence under private life regulations (Finch, 2013). Another route to gain leave as a parent is derived from the 'Zambrano' right, which arises when a TCN (Third country national) is the sole carer of a dependent minor child who is a citizen of that EU member state (Rutledge, 2015). It is a derivative right established by the Court of Justice of the European Communities in 2011 in the case of Ruiz Zambrano. The UK is required by EU law to grant entry and residence to the primary carer of UK citizens following this judgment.

Supreme Court judgements change law and influence the interpretation of existing immigration rules. In the case of undocumented women who apply as the sole carer of a British child (or a child that has lived in Britain for seven years continuously), the best interests of the child has to be given primary consideration. Even though this will not determine the outcome



of a case or application, no other factor can be given more weight (Free Movement, 2011). When lodging a human rights application, the decisions of High Court and Supreme Court judgments can be drawn on to build a legal argument and strengthen the case. One argument made in the case of undocumented women applying for LTR as the sole carer of a British or settled child is that the mother should be granted permission to stay in the country to ensure that the family is not separated, which would lead to a significant disruption of the child's life. If the child has never visited the country their parent is from, it is unrealistic and unreasonable to expect them to relocate if the application is refused. This principle has been assured in the High Court judgment *ZH (Tanzania) (FC) v Secretary of State for the Home Department* [2011] UKSC 4, where Lady Hale stated at § 31:

They are British children; they are British, not just through the “accident” of being born here, but by descent from a British parent; they have an unqualified right of abode here; they have lived here all their lives; they are being educated here; they have other social links with the community here; they have a good relationship with their father here. It is not enough to say that a young child may readily adapt to life in another country. That may well be so, particularly if she moves with both her parents to a country which they know well and where they can easily re-integrate in their own community (...). But it is very different in the case of children who have lived here all their lives and are being expected to move to a country which they do not know and will be separated from a parent whom they also know well<sup>7</sup>

The judgment set a precedent, as it ruled that the behaviour of parents cannot be ascribed to the children. The applicant in *ZH Tanzania* had applied for asylum under false identities, but this did not override her children's best interests, which were in that case to remain in the UK, as this was the only country in which they have ever lived. The UKBA then issued guidance for case workers to determine whether it would be reasonable to expect a child to leave the UK (Finch, 2013).

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<sup>7</sup> The case was a mother's appeal to the supreme court that her removal from Britain would be a disproportionate interference with her right to family life. The main issue in that case was the weight given to the interest of the children and the affect the deportation of their parents would have on their lives (Children's Legal Centre, 2011). The mother came to Britain in 1995 and claimed asylum. Her 3 applications were refused. In 1997 she formed a relationship with a British citizen. They have 2 children together, who were both born in the UK. The court of appeal upheld that the mother could be reasonably expected to relocate to Tanzania, but the supreme court ruled that this would violate the best interests of the children (Knights, 2011)

As the right to family and private life is a qualified right, nation-states can lawfully interfere with it under certain circumstances. In the context of immigration, this usually means that the exercise of Article 8 rights can be interfered with in the pursuit of protecting the freedom and rights of others, the economic well-being or public security of a country, or the stated aim of enforcing effective immigration control (ECHR, 1950). The conditions under which such interference is lawful are laid down in the judgment *R vs. SSHD ex parte Razgar* [2004] UKHL 27, commonly referred to as the Razgar test. It was formulated by Lord Bingham in § 17 of the judgement and involves a five-stage test, which the decision body needs to apply to Article 8 applications. The test asks:

1. whether someone's removal from the UK interferes in their private or family life
2. whether the interference has such gravity that Article 8 needs to be engaged
3. whether the interference (namely removing the applicant from the UK) would be in accordance with the law
4. whether the interference is in accordance with the aim of a democratic society (in terms of national security, public order, prevention of crime and disorder, protection of rights and freedoms of others), and
5. whether the interference is proportionate to the objectives sought by the authority.

The definition of proportionality is not rigid and thus leaves a considerable space for the decision maker in the Home Office to decide whether or not removing the applicant from the UK interferes with their right to private and family life. In some cases, prior criminal convictions are used to justify an interference, under the justification that it is aimed at preventing crime and disorder. In other cases, solely overstaying one's visa can be sufficient for the decision maker to decide that removing someone is justified, despite being the sole carer of a British citizen. The law is not entirely clear and a considerable space for negotiation remains, but in practice undocumented migrants are scarcely able to claim their rights without

professional legal representation. In practice, the right of nations to shut their borders tends to overshadow the rights of individuals (Dauvergne, 2008).

Another obstacle to claim rights as an undocumented migrant are the fees which need to be paid for a human rights application. As of April 2016, the cost for one person applying is £811, which recently increased from £649. The same amount is due for every other person on the application, regardless of whether they are children or adults (Yeo, 2016). Furthermore, an immigration health surcharge of £200 per year needs to be paid since April 2015, which amounts to £1000 for a five-year visa.

The Home Office introduced a new fee waiver policy for migrants who apply under family and private life regulations in 2015 (NRPF Network, 2015). The application fee is waived, if the applicant is otherwise not able to exercise her human rights under the ECHR when having to pay fees (Home Office, 2017). In order to qualify for a fee waiver, the applicant has to demonstrate that she is destitute. This includes not being able to meet essential living needs and/or not having adequate accommodation. If an applicant has adequate accommodation, she needs to show that she would become destitute when paying application fees. This can be demonstrated by evidence of very low or no disposable income, an inability to borrow from friends or family, and not being able to save the money within the next twelve months (NRPF Network, 2015). Applicants need to submit documentary evidence to show their destitution. The revision of the fee waiver policy in early 2015 was the result of two key judgements<sup>8</sup>(Muzira, 2015), and it can thus be argued, a negotiation of the way human rights are implemented on nation-state level, as the state tries to make it as difficult as possible to claim human rights. The process is set by the immigration rules, but the law can be contested by the courts, as it happened in the case *Carter vs SSHD*. Carter could not afford the

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<sup>8</sup> Omar, R (on the application of) v Secretary of State for the Home Department [2012] EWHC 3448 (Admin) and Carter, R (On the Application Of) v Secretary of State for the Home Department [2014] EWHC 2603 (Admin)

application fees for a human rights application and the rejection of his fee waiver application resulted in the breach of his Article 8 rights. The court ruled that the fee waiver policy was not compatible with Convention rights and thus had to be reviewed. The Home Office released a new policy in 2015 to have a clearer guidance on fee waiver applications.

Depending on the individual case and circumstances of the applicant, different sections of the law may be used to apply for LTR, with other judgements than those described above being drawn on to construct a legal argument. The aim of this section has been to give a general overview about the legal requirements to apply for LTR as an undocumented migrant.

The pathways to regularisation are extremely complex and difficult to understand for those who are not legally trained. Robinson (2013) criticises the fact that certain parts of migration policy fail to protect the human rights of migrants. It is difficult for migrants to understand legislation and challenge the decisions made on immigration applications or through the asylum process, especially without legal aid:

The Acts themselves are largely impenetrable to the non-legally trained ...As the pace of immigration legislation has increased, it has become more difficult to keep abreast of this complex mixture of laws and accompanying rules. Many immigrants get poor legal advice from lawyers unfamiliar with the intricacies of this specialist area of the law and the rights and opportunities available to their clients (Sales, 2007:156)

Despite the closure and restriction in legislation regarding immigration, Britain comparatively still has rather liberal sets of rules for obtaining citizenship (Green, 2007). However, citizenship remains nearly unattainable for undocumented migrants.

#### **4.8 Conclusion**

In this Chapter I laid out the historical developments of the British migration regime and how the focus of migration policy changed from Commonwealth migration, to asylum seeking, and then to irregular migration. The description of the varying frameworks of immigration control gives an overview of the context in which undocumented migrant women currently find themselves. Until the 1980s, migration legislation was aimed at curbing migration from former colonies and non-white Commonwealth countries. Britishness was ethnically defined as being

connected to whiteness, and legal entry for migrants from former colonies became increasingly difficult. In the 1990s the focus shifted towards asylum seekers, who were scapegoated as being fraudulent and exploiting the system. The measures introduced to curb the numbers of asylum seekers also had an effect on undocumented migrants.

In the 2000s, immigration legislation was characterised by the idea of managing migration, which introduced a points-based system. Similarly, legislation was introduced that criminalised activities of undocumented migrants. Since the Conservative Party has been governing in 2010, first in a coalition with the Liberal-Democrats and then from 2015 onward alone, the rules have become increasingly restricted. Two Acts were passed, which were criticised by campaigners and lawyers for infringing on the human rights of migrants and increasing discrimination against ethnic minorities. These ‘hostile environment’ measures also shifted the border into everyday life, as they require landlords/ladies, health professionals, social workers and others to perform document checks. As legal status is a complex issue, this may result in discrimination against ethnic minorities. The immigration legislation passed under the rule of the Conservative Party has built-in mechanisms that create vulnerabilities for women without status, such as not having the possibility to change their employer for MDWs, high fees for human rights applications, or not being able to rent an apartment. Furthermore, it has become more difficult to access health care when living without status, which is a crucial issue for women who are pregnant and may not access care due to the fear of being detained and deported. An important aspect of new legislation is the fear it creates among migrants and non-migrants alike.

As a result of changes to the Long Residence Concession, it has become almost impossible for women who do not have children to regularise their status. The requirements to regularise status based on human rights provisions are defined in a very narrow fashion. Those who apply need to be model immigrants without criminal convictions, which is often

an unrealistic expectation, since even driving when not having status has become illegal under the 2016 Immigration Act. Draconian measures that have been introduced will not stop irregular migration, but rather, will lead to more precarious lives and higher levels of violence and suffering among undocumented migrants.

The following chapter is the first analytical chapter which examines the legal consciousness of undocumented migrant women in the UK I am going to discuss the role that rights play in their everyday lives, what experiences they have living and working in the UK, how they survive without status, and what stance they take towards the law. I will develop a critique of the concept of legal consciousness which implicitly assumes belonging to a national community of citizens or right holders. In the last part of the chapter, I am going to show how law performatively shapes the identities of undocumented migrant women, which happens through speech acts of people in the women's direct surroundings, as well as social workers, nurses, and doctors.

## 5      **LEGAL CONSCIOUSNESS AND PERFORMATIVITY OF THE LAW IN THE LIVES OF UNDOCUMENTED MIGRANTED MIGRANT WOMEN IN THE UK**

### 5.1      **Overview**

In this Chapter, I present my findings about lived experiences of the law by undocumented migrant women in the UK, using the concept of legal consciousness. I discuss how the law shapes their identity performatively and is able to maintain its hegemony. Simultaneously, the women try to uphold their autonomy and agency by strategically navigating the restrictive environment and disrupting legal regulations with individual acts of resistance, often merely to survive.

I first discuss the legal consciousness of undocumented migrant women by applying the conceptualisation theory developed by Ewick and Silbey (1998), which I then expand. The original typology identified three stances towards the law and is not exhaustive enough to understand the situation of migrants who are physically present, yet outside the protection of the law. I propose an analysis which shows how legal consciousness is itself stratified and dependent on one's positionality in society. Thus, I widen the concept of legal consciousness by showing how undocumented migrant women do not only stand *before the law*, *with the law* or *against the law* - as proposed by Ewick and Silbey (1998) - but also how they are *living away from the law* with their identities being shaped by it. I intend to show how the law through its performativity is shaping the women's identity. This happens through speech acts and personal behaviour in homes, workplaces, and when trying to access local services.

I develop a typology of experiences, responses, and reactions of undocumented migrant women. This means that one person can have different stances to the law depending on context. In the last section, I incorporate the concept of performativity into my analysis, which gives the possibility to develop a more dynamic approach to analyse the experience of law in the everyday life of undocumented migrant women.

In most situations, the women interviewed for this study exhibit a legal consciousness standing *against the law*, by rejecting its promise to bring justice and fair process. This supports Ewick and Silbey's (1998) argument that marginalised groups of people are critical towards authorities and the law. By being subjected to power and excluded within society, undocumented migrant women have a thorough and embodied understanding of how the law operates. Legal consciousness is regarded as polyvocal and contingent (Ewick and Silbey, 1998; Nielsen, 2000), which holds true for undocumented women, who have differing orientations to the law depending on the context and situation. I argue that the original conceptualization (Ewick and Silbey, 1998) in three different stances is too narrow, as it implicitly considers law to be static. Non-citizens without legal status have a different relationship with the law than citizens or non-citizens with status. They lack the protection of law and are exposed to the controlling aspect of rights.

Legal consciousness studies often refer to analysing the role of law in the lives of 'ordinary citizens' (Ewick and Silbey, 1998; Nielsen, 2000), which is an analytic lens that does not easily fit when analysing the legal consciousness of undocumented migrant women. Despite trying to live ordinary lives, including working, taking care of their children, and so on, their lives are not ordinary in the sense that they do not have rights readily available. They are thus in a fundamentally different position than citizens, as they constitute the outside that upholds citizenship, especially since they are predominantly women of colour. This means that acts which are considered to be quotidian, simple, or ordinary when they are performed by a person who is located within the realm of rights, are not as easily carried out by women without status and can involve high levels of anxiety. Lacking rights, undocumented women live under constant fear of being deported as their protection through the law is not guaranteed. This is exacerbated by the fundamental role that certain rights play in liberal society to easily go about one's life – work, access to health care, renting a house, opening a bank account, etc.



A common thread in the stories of undocumented migrant women is the violence and abuse they experience. This can be domestic violence at the hand of their partner, husband, or employer. In other cases, violence is perpetrated by family members of the employers, such as the employer's cousin threatening the domestic worker with rape. Prior to elaborating on the legal consciousness of undocumented migrant women, I give an overview of different pathways into irregularity. I will then present the three stances of legal consciousness and how these apply to the lives of undocumented migrant women in the UK.

## **5.2 Becoming Undocumented as a Legal Status**

The majority of women participating in this research became undocumented as visa overstayers. They mostly enter the UK on a visitor visa to join their spouse or other family members already living in this country. A second category is women who come to the UK to work as domestic workers and become undocumented by means of overstaying their visa. A third way of becoming undocumented is having an asylum application rejected and being left with no more appeal rights. Female asylum seekers often encounter structural barriers to being granted refugee status (Freedman, 2008a). A report by the charity Asylum Aid criticises the lack of gender sensitivity in the way that claims by female asylum seekers are assessed in the UK (Asylum Aid, 2003). Issues of assessment are another way that the implementation of law creates vulnerability for women who face gender-related prosecution (Freedman, 2008a).

There are situations when regularisation for undocumented migrant women through their spouse is theoretically possible, but the non-status of the women is used by her partner or husband to control her. Regularisation through family reunion furthermore requires an income of a minimum of £18,600 which is higher than an income earned on national minimum wage, as noted earlier on in Chapter 4. The law in that sense creates vulnerability, as in many cases there is no possibility for the women to regularise their status on that basis. The lack of status within a marriage shapes its dynamics and creates different power relations, thereby adding another form of oppression to gendered power imbalances. In their research about the intersections of domestic violence and immigration Erez et al (2009) argue that men tend to use their spouses' status to control them or force them into compliance, which can occur in the form of threats to call the police or immigration enforcement. The vulnerability of not having status enables the perpetration of patriarchal violence within the domestic sphere.

## **5.3 Legal Consciousness: Standing Against the law**

As mentioned above, most women interviewed exhibit a stance *against the law*. When standing *against the law*, the law is experienced as being powerful, unfair, and restricting one's

lives in multiple ways (Ewick and Silbey, 1998). Law in this understanding is not able to deliver justice and needs to be avoided or resisted, as it will not bring about the change it promises like resolving disputes or recognising the truth. Being located *against the law* involves a “sense of being caught within the law” (Ewick and Silbey, 1998:48), as well as having a negative association with it. Legality is understood as a product of power, which is exercised arbitrarily by legal actors. It entails a consciousness of being less powerful and having limited resources, and thus people within this stance generally avoid evoking the law. The legal system is seen as unfair, which can neither solve the problems that people are facing in everyday life, nor is it able to protect them (Ewick and Silbey, 1998:147).

Due to not having the legal right to reside in the UK, the law is ever present in the lives of undocumented women, namely in its capacity to control them. As protection through rights is mostly absent, their negative side is amplified. This is closely linked to the legal consciousness that undocumented migrant women exhibit in various situations, as they predominantly have negative associations with the law.

The law excludes undocumented migrant women from living ordinary lives and being full members of communities. Many women find it extremely challenging not being able to work and provide for their own families, and therefore being dependent on other people, a commonly described feature about the lives of undocumented migrants (Abrego, 2011; Bloch and McKay, 2016). The law is experienced like a black box: exact knowledge about it is absent, which does not come as a surprise considering the numerous changes in immigration legislation in the UK in past years, as well as its complexity. Consequently, the information and knowledge shared about legal specificities are often not trusted, as Mercy explains: “You have to wait for a certain number of years until you are entitled. I don’t know, some tell you seven years, some tell you ten years, different things. It is hard to know who tells you the right thing” (Mercy, Interview, 2016).

A lot of the fear experienced results from uncertainty about legal regulations. Due to more restrictive legislation, undocumented women find themselves confined to the private sphere, which intensifies their understanding of the law being an unknown yet incredibly powerful entity out of their reach. The women feel as if they are being punished, but do not understand what they are being punished for, as they do not perceive themselves as having committed a crime or broken the law. Due to their extreme marginalisation and exclusion, they say there is often no choice but further breaking the law to survive, shoplifting to get food for their children, doing sex work<sup>9</sup> to earn money, or working cash in hand. The women who engage in those activities are not happy about breaking the law, but do it for their survival.

The negative association with the law becomes more visible in the lives of migrant women whose legal status changes over time. Olivia experienced a downward movement after becoming undocumented in the UK. She had a visa when she arrived in the country, but was unable to pay the legal fees to appeal against the decision to not extend her limited LTR. Her legal consciousness was directly influenced by encounters with the law and the experience of becoming undocumented, such as being in the court room or fighting against the decision of the Home Office to revoke her son's European passport<sup>10</sup>. Drawing from her narrative, she had a different association with the law before she became undocumented. While she had status, she was able to use the law for her own goals to a further extent. However, this changed when she lost her appeal and was forced to live a more precarious life. Due to inhabiting different legal statuses over time, she developed a different understanding of the law (Nielsen, 2000). Her case also shows the fluidity of legal status (Bloch and McKay, 2016).

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<sup>9</sup> Prostitution itself is not illegal in the UK, but soliciting in a public place for doing sex work is. The difficulty for undocumented migrant women to engage in sex work mostly derives from the stigma attached to this kind of work.

<sup>10</sup> Olivia's son holds citizenship from another European country. Due to issues of anonymity the country will not be mentioned here, as this was a prominent case within the Home Office, which also involved the embassy of the other country and could therefore lead to the identification of the interviewee.

In various circumstances, undocumented migrant women develop an understanding that the law is not fair. Rose for example feels treated unjustly by the law. She worked long hours as a caregiver in the UK and claims she has never broken the law, thus presenting herself as a good character and claiming deservingness (Landoldt and Goldring, 2015). She strongly voices her feelings of being treated unfairly when explaining that “I worked so hard in this country. One is working so hard but all the pain, I feel like a beggar, I never worked under someone else’s name, I follow all the law, but still the pain” (Rose, Interview, 2016). She furthermore reiterated that the work she has done would not be done by white people, pointing to the racialisation of the sectors she was able to find work in. Due to the limited control some undocumented women have over their lives, they compare their situation to slavery or living in bondage. Many women explain that they feel treated like animals and do not understand why they have to suffer to such an extent, despite having done nothing wrong, apart from being ‘illegal’.

The women describe their living conditions as extremely stressful, with little stability in their lives, as this statement from Tulaho illustrates:

If you are outside and you see the police, you all the time think they are coming to get you. It’s very stressful, all these things, is passing to our children. You can’t imagine how stressful it is and they pass it on. They make it very hard for the women, especially for those with the children (Interview, 2016).

60% of the undocumented migrant women I met and interviewed during my fieldwork were also single mothers with primary caring responsibilities for their children. Joan explained that it was less challenging to survive on her own before her son was born. As a mother, she says that she has a different kind of responsibility. Most mothers similarly assert that their children give them hope and optimism to endure living without status. For those women, the future and education of their children gives them motivation to continue through the hardship that living without status entails.

Pregnancy increases the vulnerability of undocumented migrant women, with the law having tangible bodily effects. Many women do not access any prenatal health care out of fear,

before experiencing complications or being brought to the hospital to give birth. Legal status has a direct effect on the body in this case, and gives a feeling of being caught within the system. Some women I interviewed experienced premature birth or other complications due to high levels of anxiety after encountering immigration officials in hospitals when they were just about to give birth. Others experienced long term health issues after the birth or were not being able to breastfeed due to stress. A lack of access to health services due to status is a common issue among undocumented migrants (Bloch and McKay, 2016), which is likely to increase due to the implementation of the 2016 Immigration Act, which places more border controls within the NHS.

### **5.3.1 Finding the Loopholes**

Despite being trapped in many ways in a life without status, undocumented migrant women try to resist the law's totality in their everyday lives, which locates them in a stance *against the law*. One strategy of circumventing the law and being employed despite not having the right to work is to forge a National Insurance Number (N.I. Number) to register with the tax authorities (HMRC). Rose worked as a care worker in the late 1990s. She did not have status and was thus not able to officially register for a N.I. Number, but instead she forged her own. Immigration legislation was less strict at the time and employers were not required to check the immigration status of their employees. Moreover, government bodies then exchanged less data. Rose was thus able to get away with her act of resistance and could subvert the law, by playing the system to survive inside it. She paid taxes and received official tax statements. Rose did not accept that she was not allowed to work and resisted by forging her N.I. Number. This act shows how she resisted the law and the way it is held up through institutions. Ewick and Silbey (1998:183) describe such everyday acts as “the ways relatively powerless persons accommodate to power while pursuing their interests or protecting their identities”. This can include humour, tricks, disrupting institutional processes, violence, not taking prompt action, gossiping, or storytelling.

Rose was formally included into a bureaucratic system by working and paying taxes. Despite being a non-citizen without status, she fulfilled duties associated with citizenship, showing her partial incorporation. She yet stays excluded from full protections through rights, as “access to duties usually proves less restricted in practise than access to rights” (Chauvin and Garcés-Mascreñas, 2012: 246). This example shows that the relationship between citizenship and non-citizenship is not dichotomous, but dynamic and relational (Landoldt and Goldring, 2015). Rose resisted legal regulations that hindered her to secure employment to stay in the UK and survive. This was possible due to loose institutional arrangements and loopholes in the law that allowed Rose to negotiate access into registered employment.

In other instances, avoiding contact with the authorities and keeping a low profile illustrate that undocumented migrant women predominately do not believe in the functioning of the legal system, and know that staying hidden means continuing their life in the UK. Cathy who claimed asylum after entering the UK, was advised by a lawyer not to engage with her asylum claim any longer, because she lost her correspondence with the Home Office after having to leave the place where she lived. Due to her lack of status she had to endure high levels of exploitation through employers, which caused notable emotional stress and mental health issues. Like Rose she invented a N.I. Number to be able to work. While working as a cleaner in London, she overpaid taxes. She then contacted the tax authorities to claim the money back: “The one time I was being charged too much I called up, the HM Revenue or whatever they are called. And they sent me a tax refund. So that means that money was going somewhere” (Cathy, Interview, 2016). Her actions show a resistant consciousness part of her standing *against the law*. She identified cracks in the operation of power and used them to her individual benefit. Such understanding of resistance is brought forward by Ewick and Silbey (1998: 187) who argue that “acts of resistance often seek precisely the sorts of material and

social resources that are denied to individuals by the relationship of power in which they occur”.

By forging N.I. Numbers to be able to work, both Rose and Cathy created opportunities for themselves to be employed despite being undocumented and thus managed to sustain their livelihoods. In turn, paying taxes both made a normative claim to be allowed to stay in the UK, and by that subvert a commonly shared discourse that undocumented migrants do not pay taxes and exploit the British welfare state. Like Rose, Cathy also performed duties associated with citizenship, while the rights of being a citizen were not available to her (Landolt and Goldring, 2015).

At the same time, Rose is entangled within the law, which is another aspect of being *against the law*. The strict immigration legislation controls her life and offers very little protection, as well as imposes limited choices. She experiences the law like a net, which is “palpably present..., limiting movement, and curtailing meaning and action” (Ewick and Silbey, 1998:184). Rose’s understanding of legality demonstrates why the conceptualisation of legal consciousness developed by Ewick and Silbey (1998) is too narrow when applied to people who find themselves outside of citizenship and without legal status. They may be standing *against the law*, but if the law invades every aspect of their lives then there will be no possibility to evade it. They may at one point in time turn towards it and claim recognition by the law, as their livelihood depends on it.

Despite standing *against the law* and not believing in law being just, both women claim that they have earned the right to stay in the UK due to the hard work they have done over many years. This again shows the limitation of conceptualising undocumented migrant women as a marginalised group standing *against the law*. Even though they do reject its promise, they similarly do depend on it for their livelihood. They may not believe in the functioning of the legal system, show resistance against it or find loopholes to make the system work for themselves, but may be forced to turn towards it, as it creates high levels of vulnerability and destitution.

#### **5.4 Standing “Before the Law”**

Another stance identified by Ewick and Silbey (1998) is *before the law*. When standing *before the law*, it is considered as authoritative, detached, and objective (Ewick and Silbey, 1998). Undocumented migrant women are only rarely seen as inhabiting a stance that locates them *before the law*. Due to their marginalised position, they experience the power of law in the most intimate parts of their lives. Within this modality, the law is described as neutral. Everyone is understood to be treated equally by the law. The law appears as fixed and distant, a system of coherent rules and processes, which is “perceived as independent of human action, desire or interest, (...) depicted as impartial” (Ewick and Silbey, 1998:76). Legality is considered as separated from everyday life, having a timeless character that transcends the moment. The concept of people standing *before the law* is similar to the characteristics that liberal law claims for itself, namely being fair and neutral (Ewick and Silbey, 1998:106). When located *before the law*, people often express loyalty and acceptance of the law, and believe that legal procedures can bring justice. Single actors in the system may be criticised, but the legal institutions in general are perceived as acting justly when administering the law.

Undocumented migrant women experience the opposite of such understanding of the law, as the law creates vulnerability and exploitation in their lives. Yet, in some instances and situations, a stance *before the law* can be seen, such as in the narrative of Alejandra. She agrees with the strict policies and legislation brought forward by the British government in the last decade, despite having suffered from them due to being undocumented for twenty-three years. Alejandra worked as a nanny for different families. She mostly worked for room and board, receiving only small amounts of cash. She worked for wealthy families who refused to pay her higher wages. She is standing *before the law*, engaging in an anti-immigrant discourse in which she condemns migrants who live in the UK without status, do not speak English, and



believes they exploit the welfare system<sup>11</sup>. She justifies her right to remain in the UK with her productivity and the contributions she has made. Alejandra distances herself from what she describes as ‘bad migrants’ and does not want to be associated with them. She does not make the legal system responsible for the exploitation and hardship she experienced. This situates her *before the law*, as she privileges law above her own life experiences (Nielsen, 2000).

Mercy shows a similar legal consciousness in relation to her access to health care; she strongly voices that she has not and will not break the law. She did not register with the G.P., and neither did she go to the hospital when she was ill, as she said this would mean breaking the law. She accepted its authority regardless of the suffering it caused in her life. She appeals to God as a higher authority to protect her in difficult situations. Their stance exhibits a certain level of contradiction between their legal status and what they believe about the law<sup>12</sup>.

Alejandra’s legitimisation derives from using terms of dominant migrant discourses and by devaluing the group she is associated with. I worked with an immigration advisor during my fieldwork who shared similar experiences with undocumented migrants. He explained that those living without status often distance themselves from the way they are depicted in the public discourse. They do this by claiming that they are unlike others who lack status, because they have always worked or are generally good people. Drawing such moral distinctions goes beyond legal definitions of who is eligible to remain in the UK lawfully. Jones et al. (2017) observed a similar rhetoric among migrants interviewed as part of the Mapping Immigration Controversy research project. They argue that migrants do engage and internalise dominant discourses in which their identity is devalued and disparage the group they belong to, in order to legitimise both their rights and belonging within the national community (Jones et al, 2017:

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<sup>11</sup> The belief that undocumented migrants exploit the welfare state is very dominant in the discourse in the UK around undocumented migration. It is however almost impossible to access welfare provisions without having status.

<sup>12</sup> Differentiating the fact to live without status from being a criminal or illegal activity appears to be common among undocumented migrants, see also Bloch and McKay (2016)

137f). The understanding of Mercy and Alejandra shows the polyvocality of legal consciousness, as well as legal status not being the sole explanation for a certain stance towards the law.

### 5.5 Being “With the Law”

The third modality of legal consciousness is standing *with the law*. When located in a stance *with the law*, individuals consider it as a negotiation against others, an arena of strategic self-interest. Existing rules can be used in a game-like approach to reach one’s goals and exert one’s self-interest (Ewick and Silbey, 1998). People emphasise the role of prior experience in this narrative, resources, and knowledge, which determine the outcome of legal matters. The focus is less on the legitimacy of the rules and more on the effectiveness of the law to mediate various and conflicting interests between different actors. The law is perceived as socially constructed and ultimately a human invention, that can be challenged and changed. Even though it is considered as an arena of contest, the use of legality is not infinite as:

People recognize the constraints that operate on law. They understand that there are rules governing what law can do, rules that stipulate when, where for what, and by whom law might be invoked (Ewick and Silbey, 1998:131).

Undocumented migrant women have little power due to their legal status. The question thus arises whether they can use the law to achieve their own goals. Seeing the law as a game means having a position with a certain level of privilege, such as being a citizen or a migrant with secure status, in which one can afford to lose. A person who has no rights and is in a position in which they predominantly experience the controlling elements of the law is unlikely to be able to reach their own goals and assert their self-interest by using the law. To exhibit a legal consciousness *with the law*, a certain level of privilege is needed, which shows how legal consciousness is itself stratified.

Most undocumented women are not accepting the identity ascribed to them, and try to use the law for their own goals. This is nearly impossible, as the law is incredibly powerful and it is not a fair ‘game’, especially in a restrictive legal environment. Even if undocumented

migrant women have certain rights (see Chapter 6 on claiming rights) they encounter various obstacles when trying to claim them. They often find no possibilities to regularise their status, thus remaining in a space of exclusion and vulnerability. In the case of Felicity, this can be seen in how she considers herself to be a rights bearing person and strongly asserted her entitlement when interacting with her caseworker in social services.

Felicity first exhibited a legal consciousness *with the law*, which then changed due to experiences of discrimination when approaching her local authority for support. She approached social services after receiving an eviction letter. She assumed that if she ensured social services would assess her youngest child early on, the local authority would house her family before becoming homeless. She knew that the local authority has the duty to accommodate her family under Section 17 of the 1989 Children's Act. The caseworker who assessed her child concluded that the family was not destitute and thus not eligible to be housed. At that point the eviction was two months away and Felicity acted too early to be taken into social services accommodation.

When trying to access Section 17 accommodation, families are only housed once they are already or just about to become homeless, i.e. a few days prior to the eviction. Felicity approached her caseworker again when the eviction date drew closer, and then experienced high levels of racism and discrimination. They first refused to assess her child, and the social worker broke the law in that instance. The case worker and her supervisor claimed that Felicity had no pending application with the Home Office and would thus not be eligible to be assessed, nor housed. In fact, she had a pending application for LTR, which is nevertheless not a legal prerequisite for the council to fulfill its Section 17 duties. She was eventually assessed, but social services then refused to give her the decision not to house her family in writing, which made it difficult for the legal advisor supporting the family to challenge social services legally (for a discussion of the role of migrant rights organisations, see Chapter 7). Felicity was given

misleading information by her caseworker who was claiming that the Home Office is responsible to house her, even though she was not claiming asylum and was thus under local authority care. When undocumented migrant women attempt to use the law for their own goals, in this case not to become homeless with two small children, this proves to be difficult when approaching a powerful institution, whose members go to great lengths and break legal regulations to discriminate against vulnerable members of their communities.

When thinking about the concept of civic stratification (Morris, 2003) and legal consciousness combined, being *with the law* is a stance that is easily inhabited by those who experience a civic gain, such as white male citizens or high-skilled migrants. Experiencing a civic gain means that due to high moral and material resources, a person within that category enjoys full rights which may enhance the value of the codified right. Undocumented migrant women are the opposite of the white male citizen in terms of power and status, both regarding social and legal status. Within the framework of civic stratification, they mostly experience civic exclusion, and rarely have a legal consciousness *with the law*. Within such a hierarchy of rights, there are a lot of different identities which intersect in various ways with moral and material resources. The white male citizen and undocumented migrant woman are considered on opposite ends of a spectrum here.

Olivia used the law to achieve her own goals, but during that time she still had limited LTR. This shows the intersection between legal status and a person's stance towards the law. When she got pregnant, Olivia found out that children born in another European country were automatically entitled to citizenship by birth. She then decided to travel to give birth in another country, which was possible as she had status at that time. Her son was born in a country where he automatically received citizenship and she stayed there for three months before returning to the UK:

I found someone in there, I was due in December and I left to go, because I wanted a passport for my child. The father had no stay, no residence here, so he could not come. The baby was born in December 2003 and I came back to London in February 2004. Back then you were entitled to residency, but it

changed shortly after. Only my child got the passport, it changed then. When he was two weeks old he got his European passport (Olivia, Interview, 2016).

In order to get a European passport for her son, Olivia strategically used to the law to pursue her own interests. She did not perceive the law in the UK as legitimate and used her knowledge and resources to achieve her goals, which would then locate her in a stance *with the law*. This was only possible due to her having status, otherwise she would have not been able to leave the UK. Her life drastically changed after becoming undocumented and so did her legal consciousness, as she experienced the law in more threatening and exclusionary way. After losing her leave to remain she developed a more negative association with the law.

### **5.6 Shifting Legal Consciousness? Leveraging and Learning Legality**

In order to receive support in emergency situations such as being about to become homeless as described above, or to regularise their status, undocumented migrant women in the UK engage with the legal system, by leveraging and learning legality (Hernández, 2010). Housing is an important issue in the women's lives, as they often cannot rent directly from landlords due to their lack of status. Furthermore, in a city like London, housing is expensive and thus often not affordable (Bloch and McKay, 2016). In her analysis, Hernandez aims to unpack the implicit correlation between socio-economic status and a legal consciousness standing *against the law*, and argues that:

acquiring legal knowledge is the basis for new rights awareness in which individuals become conscious of themselves as rights-bearing citizens. Legal knowledge is the predecessor of legal action and a legal consciousness that reflects a willingness and aptitude to invoke the law (2010:111).

She discusses how one's relationship with the law is influenced and mediated by aspects of inequality such as race, class, gender, and/or socioeconomic status and concludes that rights claims can be beneficial for poor women of colour if they have legal support through which they can understand positive aspects of rights.

Undocumented migrant women in the UK contact their local MP to support their claim, approach social services, and try to find lawyers to legally represent them. In those situations, they learn and leverage legality, which happened in the case of Felicity. Looking at her

situation in depth shows that without the support of a lawyer, she would not have been able to leverage legality, even though she had knowledge of the law. She got support from a migrant rights organisation to help communicate with social services, which then forced them to follow the law. When Felicity and her family were evicted from their house, they went to social services to claim their right to be housed. Instead of fulfilling their duty, social services illegally took the children into foster care. This happened against the will of Felicity and her partner, who had the children dragged out of their arms and then were forced to leave the offices by security guards and the police. The children were returned to their parents after a lawyer's intervention who threatened to take social services to court. After this traumatic experience, Felicity's legal consciousness and understanding of whether the law protects her drastically changed. She felt threatened by the law, understood that it does not protect her, and was thus standing *against the law*. In that situation, due to her status, she experienced a civic deficit, as she was not able to claim the right to be housed by the local authority. This will be discussed in more detail in Chapter 6.

Bridget's story shows how after being in contact with the law, her knowledge and awareness of rights changed. She was brought to the UK by her husband and then exploited and abused by his family. After enduring high levels of violence, she was eventually taken out of the house by social services. She then applied to be recognised as a victim of trafficking with the help of an organisation. She explained the problems she encountered with the application:

I applied and they made a conclusive ground decision. I met path A and path B, but not path C. He forced himself onto me, while our son was sleeping next to us. He was so tall, but only if he had forced me to do it for money it would fulfil criteria for human trafficking (Bridget, Interview, 2016).

She points out the limitations of the NRM. Despite having lived through incredibly abusive situations, and having been trafficked to perform forced labour, it was not clear whether she would be recognised as a victim of trafficking. After lodging her application and by that making a substantial and formal rights claim, she acquired more knowledge about her legal

situation with the help of her lawyer and other organisations and thus became more confident in asserting her rights.

Even though Hernández (2010) includes a case study of an undocumented woman, who consults a lawyer concerning her status and feels empowered by that encounter, I argue that she paints a too optimistic picture of the law being empowering and able to protect undocumented women. She fails to thoroughly consider the cost that claiming rights entails (Choo, 2013). She furthermore does not take the positions of non-citizens into account. Hernández (2010) claims that understanding the law is useful for marginalized groups that seek to resolve their conflicts by utilising the law for their own strategic interests. If a woman does not have status though, claiming rights - even if existent - may not have positive outcomes as this will reveal her identity to the authorities and could result in her detention and/or deportation as a consequence, meaning that it is not cost free (Choo, 2013). While her framework clarifies and helps to unpack the trajectory and legal consciousness of undocumented migrant women, a more thorough analysis of the intersection of legal consciousness, non-citizenship, and *illegality* is needed, namely because undocumented women have little power vis-à-vis state institutions. Knowing their rights and leveraging them is not necessarily sufficient to access those same rights.

The relationship of marginalised or powerless people with the law has been conceptualised in a general sense, without separating different forms of marginalisation and considering them in context (Boittin, 2013). In her study about legal consciousness of sex workers in China, Boittin argues that law permeates the lives of sex workers in different ways compared to other marginalised groups because sex workers engage in illegal activity, and thus constantly fear being caught (Boittin, 2013). Their relationship to the law is therefore different, as it has a strong presence and shapes every decision they make on a daily basis which then “might contribute to understanding the strength of their opinions about prostitution

policies, and their willingness to name and blame” (Boittin, 2013: 273). Her findings challenge prior research claiming that for powerless individuals, the law plays a peripheral role in their lives, as the sex workers in her study have strong opinions about the legalisation of sex work and discuss the effect that working in an *illegalised* profession has on their lives, as well the abuse they suffer both at the hands of clients and the police.

Nielsen (2000) proposes a conceptualisation of legal consciousness based on situational circumstances that takes social hierarchies built by race, gender, and class, as well as prior experiences with the law, into consideration. Past research has attempted to develop an understanding that takes different axes of oppression and power into account, yet often explains individual behaviour and thought structures without considering wider material inequalities (Silbey, 2005). Such analysis often leads into policy recommendations, losing the critical edge that law and society study can offer to develop an analysis of how or whether “justice [is] possible through law” (Silbey, 2005: 325). Even after building in flexibility, the existing framework of legal consciousness is insufficient for fully capturing the lived experience of the law of undocumented migrant women. I propose to expand the concept and analyse the experience of undocumented migrant women from a wider perspective, allowing for a better understanding of how law operates that examines how they *live away from the law* and how their identity is shaped by the law.

### **5.7 Towards a Broader Conceptualisation: Living Away From the law**

Due to the hardship caused by their legal status and the belief that the legal system is unjust, undocumented migrant women try to live *away from the law* and its reach, in order to continue their lives in the UK. They build up their own networks of support, which are often embedded in their ethnic communities. This means living in friends’ houses for prolonged periods of time, as Mercy (Interview, 2016) describes: “Squatting from friends to friends’ houses, it’s so terrible. I don’t like this life, I never had this before, forcing yourself in your friends’ place.”



She expresses her desire to be independent from her friends, but her legal status makes their support vital.

Most of the women interviewed come from countries which were formerly colonised by Britain and thus have strong diasporic communities in the UK. For many women, faith plays a crucial role in their lives, and they believe that God is a higher authority than the law. Churches and mosques are vital places of support, both financially and emotionally, and create a sense of belonging and community for undocumented women. Members of their faith groups give financial support, provide food and clothes for the women and their children, and in some cases also give the women shelter, which Rose claims is due to them feeling pity and being more likely to help.

Living *away from the law* is informed by an understanding of being *outside the law*. Such a legal consciousness is formed by experiences of fear and injustice and an understanding that the law works against you. However, in the case of undocumented migrant women this goes beyond standing *against the law* and believing the system is not just, and also derives from not having access to the rights and certain safety networks citizens and migrants with status have access to, such as those which relate to health care, benefits, and council housing. Undocumented migrant women, through being marginalized, are constructed as the other, the outsider. Yet, they are not outside of law, as “there is no such thing as a “legal blackhole”, as being “beyond the law”” (Dayan, 2013:57-8). The law first defines and categorises certain groups of people and then punishes them to deprive them of rights (Dayan, 2013). This manifests itself in the everyday lives of undocumented migrant women, as their position allows for violence, exploitation, and abuse. However, the women are hardly ever victims of their circumstances; they fight and struggle, and continue to do so despite incredible hardship. In the following section I am going to sketch out what it means to have a legal consciousness *away from the law* and what characteristics such a stance has.

After experiencing sexual violence and having to leave the house where she was staying, Cathy tried to live *away from the law* in order to survive and not be detected by the authorities. Cathy did not take any legal action when she was sexually assaulted. This shows how she understood the private sphere being beyond the reach of the law. However, it implicitly structures the content and form of relationships by allowing power imbalances to remain as they are and not offering any remedy for those who suffer from them (Ewick and Silbey, 1998:198). Cathy then moved in with a friend she knew from church, showing the role of networks for undocumented migrants (Bloch and McKay, 2016). She decided to hide from the authorities, but had to face many difficulties due to being undocumented, especially with her employers as she explains:

When people know you don't have the papers, they will treat animals better than you. Just for one, they know you can't go to the police. They can exploit you with that, you are vulnerable with everything. With everything. .... Sometimes you will have to lie or say you have papers which you really don't have. Just to make you feel like, I don't know, some people don't people treat you well, you are someone new, its different. It's very difficult (Cathy, Interview, 2016)

Cathy worked in many different jobs, in kitchens, as a cleaner and as a maid. All the jobs she worked in were highly gendered, and often precarious. The experiences Cathy had as an undocumented migrant were highly influenced by being a woman of colour, which she described to change the way people treated her. She explained how people perceived her as an object of desire and she sometimes felt she did not have the choice to say no to sexual advances due to her lack of status, as this would have meant losing her job. Law clearly manifests and sustains gendered and racialised power relations in this case and assigns a certain role to women to be submissive and passive. She does not explicitly voice her ideas about the law. Rather, it makes itself present in the way she describes situations in which she suffered as a result of being undocumented, such as not being paid by her boss unless she agreed to engage in his sexual advances or being exploited as a worker. In that sense, trying to engage with the law as little as possible and somehow *living away from* the law gave her the opportunity to sustain her life in the UK but simultaneously created high levels of vulnerability. She did not turn to the law after being raped, as she knew that she would probably not get justice or protection, if she went to the police. Despite legal reform in cases of sexual violence in the last few decades, “victim-survivors continue to face insurmountable obstacles in seeking justice through the criminal law in the aftermath of sexual violence” (Henry et al, 2015:3). For

Cathy, who had no status, such undertaking may have led to her deportation. Furthermore, the criminal justice system and the police treat black and white rape survivors in different ways and mostly denies black women's experiences of sexual violence, thereby entrenching racism through legal procedures (Wriggins, 1995). In that sense, through excluding women without status the law helps to amplify oppression and can thus be a tool of further injustice (Henry et al, 2015).

Cathy was aware of having to avoid the law to survive when experiencing problems with her employers, which is another aspect that Ewick and Silbey (1998) identified in people who are standing *against the law*, namely the understanding of law being unable to respond to the troubles of everyday life. They name the cost in terms of time, money, or loss of privacy as the main reasons why those who are standing *against the law* decide not to invoke formal procedures when experiencing problems. For someone who is undocumented like Cathy, invoking the law in these situations would have had further repercussions, as it may have endangered her livelihood in the UK. This is why the stance she has towards the law is different than being *against the law* and is better conceived as living *away from the law*. However, the typology of legal consciousness I use is one of experiences and behaviour not people, and in other instances Cathy's stance can be described as being *against the law*. Yet still the typology is not sufficient to describe the whole range of experiences undocumented migrant women have in their everyday lives with the law.

Aysa had very different experiences than Cathy, but similarly lived *away from the law*. She was brought to the UK with an English family, who she had already worked for as a maid in Bangladesh. Shortly after her arrival, the cousin of her employer tried to sexually assault her and then threatened to kill her when she resisted. Aysa ran away and found herself in East London, in an area home to a large Bangladeshi community. One man she met when looking for help recommended that she go to the police, which she did not want to do as she feared

that this would mean returning to Bangladesh. In order to be safe, she decided to not to take any legal action and stay *away from the law*. She believed that the law will not bring her justice and resorted to finding a solution herself. However, due to being in an already vulnerable situation, she ended up being exploited by the person who first offered her help. Over a period of ten years she was forced to work in different people's homes as a housekeeper without getting paid. Aysa was facing a dilemma, as she on the one hand did not believe that she would get protection from the law, but at the same time faced high levels of exploitation and violence, which was made possible due to her not having status and thus being vulnerable. Experiences of forced labour among migrants like Aysa are of growing concern in the UK, as the 'Precarious Lives' research project shows (Lewis et al, 2014).

In order to survive it is often necessary for undocumented migrant women to avoid the law in their daily lives. They exercise extreme caution to avoid situations in which they would encounter the law or government institutions. This often proves to be difficult, as a proof of address is required for many daily tasks in the UK, such as registering for the GP or registering a child at school. Most undocumented migrant women are not officially renting and will no longer be able to after the invention and introduction of the "right to rent" in the 2016 Immigration Act. As a result, they do not have a proof of address. This means that living *away from the law* entails being highly dependent on other people and their support. Ariana faced problems when she wanted to enroll her daughter at school, as the school required a letter from the doctor which needed to state their home address on it. She was sharing a room with her daughter and her son in an overcrowded house. The landlady did not allow her to use the address for official correspondence, but Ariana repeatedly asked her to allow it, as she described to me: "I begged her, please, only this letter. So it worked, I had to find my way around it and make a trick, because all I really want for my children is to go to school" (Ariana, Interview, 2016). While *living away from the law* through renting 'illegally', Ariana had to

find a solution to still interact with the institutions of the state without endangering her livelihood in the UK.

An important aspect of *living away from the law* is the women's faith. When being part of a faith group, the women develop a sense of belonging and community they do not experience in their everyday life, in which they are mostly isolated and marginalised, without any contact with wider society. Within such groups, women can perform traditional gender roles; they receive support from other women and support them as well. Members of churches and mosques support women financially and psychologically. When in need of money, the group members donate for the undocumented women to apply for regularisation or for living costs in general. Belief offers stability and security for undocumented migrants. Places of worship exist away from the state and operate under different rules, which the women can follow in order to become members with control over their own lives through a religious lifestyle.

### **5.8 Performativity: Constructed by the Law**

When looking at undocumented migrant women's relationship with the law and the role it plays in their everyday life, it is important to consider how the law shapes their identity relationally and has an immediate impact due to not having legal status. The concept of legal consciousness is helpful in doing that, yet at points the typology is static. Fluidity that occurs within an individual's trajectory offers a partial correction. However, to develop a fuller dynamic approach, I will look at the way in which law performatively constructs the identity of undocumented migrant women by analysing speech acts, behaviours, and situations the women encounter in which the law is enacted. By using the concept of performativity, it becomes possible to understand how a social and political discourse operates on an everyday level and normalises thinking (Young, 2016). In that way, a perspective of how the law operates as both a juridical and disciplinary form of power (Young, 2016) can be developed. Such approach interrogates the relation of law and social life and the effects of law (Race,

2012), as well as how law is operationalised within linguistic as well as social practices (MacGregor, 2015). Additionally, the concept of performativity permits analysis of structural features of law and their effects, without neglecting the agentic power of undocumented women.

Despite living under extremely difficult circumstances, undocumented migrant women make choices about their lives and creatively develop ways to survive. Performativity is thus flexible enough to allow for structural and discursive factors and considerations that individuals and their identities are formed both contextually and relationally. The examples below allow for a deeper analysis of the role that law plays in everyday life and thus enhance the concept of legal consciousness. I focus on what people in the women's surroundings said, how they behaved towards the women, and how they acted in regard to them living without status. By denying access to basic rights and services, such as health care or welfare, the law assigns a certain position to undocumented women, which is produced through its performativity.

Using the concept of performativity, I analyse how the law is internalized and what processes shape women's identities, in a way that they understand themselves as having no status and what this entails. I use the concept of performativity to develop an understanding of legal consciousness which better incorporates tangible effects that the law has on the everyday life.

### **5.8.1 Identity Shaped Through Violence**

In many cases, it is violence in the forms of domestic abuse that performatively shape women's identities, namely being confined to the domestic sphere performing labour in the household. This can either be in their households or in another one. Several women interviewed for this study experienced forced labour. They were kept locked up as domestic workers by their employers without being paid. In other cases, their partner was violent and with this action performatively inscribed the identity of not being worthy or respectable, and thus having no

rights. This can be seen in the story of Hope (see above), who did not take any action against her violent husband as she believed she had no rights. He was constantly telling her that she had no rights and thus influenced her beliefs. In Ajike's case it was both living conditions and the treatment of her employer that performatively shaped her identity and made her believe that she has no rights. She lived as a domestic slave in a house in West London for seven years. The woman who held her there did not allow her to leave the house by herself and locked all doors apart from the bathroom door and the living room, when Ajike was alone in the house. For her not being able to drink water from the kitchen felt incredibly degrading and made her feel like a lesser human being. The woman she stayed with told Ajike not to talk to anyone outside of the house about her situation. When she was asked by other members of the community or friends of the family who she was, she was forced to tell them that she was a relative:

I have to tell them that I am family, they don't want people to know. They just say to people in church that she is my relative. But people would also know that, the children they dress very nice. And me I just like, old clothes. They of course know it. And every time I have a mark on my face, on my head, on my lips. When they asked, I had to tell that I hurt myself. I have to lie about that to people about the way that it happened. (Ajike, Interview, 2015)

Having to tell lies to other people and covering up who she was and what was happening shaped Ajike's identity. She endured high levels of violence, which undermined her self-worth. One time her employer beat her to such an extent that Ajike needed to be taken to the hospital, where she had to say that she fell off the stairs. She was confined to the domestic sphere and could not build any relationships outside, thus stopping her from seeking support. The domestic violence she was experiencing was aimed at keeping her in her place and showing her that she is worth less than the children of her employer. The clothes she was wearing gave her the feeling of being subordinate, and also showed this to other members of the community.

Bridget's story provides another insightful example of how speech acts and the behaviour of people within the household performatively inscribe fear and the feeling of powerlessness into an undocumented woman's identity. She came to the UK in 2010 to live with her husband, who she had married a couple of months earlier in a traditional ceremony in Nigeria. She first lived with him and his sisters, where she was forced to sleep in one room with their children. One of his sisters organised a job for her as a caretaker for a disabled child.

Bridget did not receive the wages she earned, as the money was directly going into her husband's sister's account. While pregnant she experienced complications and was advised by a doctor to stop working. The family did not challenge that at first, but repeatedly told her not to leave the house as she had no papers and would thus be caught by the police on the streets. This stopped Bridget from reaching out to people outside the home and seeking help. After three months, the family told her that she needed to start working again, and threatened her to not buy any items for her unborn child if she refused to go back to work. She started working again, but this time managed to get the money:

This family came down on me asking what right I have to take this money. I said to my husband that you don't care, you need to buy things, I don't need to explain you what I do with the money. He was telling people that he would kill me, he threatened me to push me down the stairs and beat me (Bridget, Interview, 2016)

As a result, Bridget's identity was predominantly marked by fear. She tried to fight against the mistreatment at the hands of the family of her husband, but the threats and verbal abuse only intensified. After her son was born, her husband started raping her regularly. Bridget was desperate to escape the conditions under which she was living. As she had few contacts outside of the house she was not able to do so and was also afraid that her life would be in danger if her husband caught her. The threat of detention and deportation if caught by the police was used by the family to abuse and exploit her. Their statements regarding her status and work upheld the idea that she had no rights and thus no choice but endure the abuse and threats she was experiencing. However, she did not give up finding a way to leave her situation which shows that not having rights did not define her whole identity.

### **5.8.2 The Effect of a Changing Legal Status**

This violence that shapes parts of undocumented women's identity manifests itself predominantly in the private sphere, which has its origins in patriarchal structures, as well as in state structures, and can be described as legal violence. The convergence of immigration and criminal law creates violence in the lives of immigrants and produces insecure immigration statuses (Menjívar and Abrego, 2012). Legal violence can manifest itself in physical ways, as described above considering how insecure immigration status enables domestic abuse. However, the concept also emphasises less visible instances that the law enables, which can have a damaging effect in the long term (Menjívar and Abrego, 2012).



Legal violence is more visible and felt more abruptly in the lives of women who move between different legal statuses over the course of time, especially when someone experiences the loss of legal status. This can be seen in the experiences of Martha and Olivia.

Olivia's life drastically changed after becoming undocumented, after which she experienced the law in more threatening and exclusionary ways. The relationship with her partner broke apart and she found herself being a single mother without the permission to work legally. She was shoplifting to be able to feed her son and did sex work to pay for the rent. Despite being arrested for shoplifting several times she did not feel like she had any other choice, as her repeated attempts to regularise her status failed. During that time, she met a man who financially supported her and her son. They moved into the apartment of her new partner, but he turned out to be violent and abused Olivia. This shows how the lack of status makes migrant women more susceptible to further abuse and oppression due to their vulnerable situation. She left the relationship but was unable to be housed by a domestic violence shelter, as this is dependent on legal status. She experienced exclusion from the law, which resulted in severe mental health problems and suicidal thoughts. As well as shaping her identity performatively, and feeling anxious, her feelings of being threatened by the law culminated when the Home Office annulled her son's European passport and questioned her motherhood, once she submitted another application based on her son being a European citizen<sup>13</sup>. The Home Office sent a letter to the embassy of her son's birth country, in order not to renew his passport and then turned down her application. Olivia framed this as a racial discrimination stating: "My mother's father is Indian, we are black people, I can produce any baby. They do not know my background" (Olivia, Interview, 2016). The law invaded the most intimate sphere of her private life and questioned her motherhood, which was possible due to her position in society. She experienced her life in the UK as a complete devaluation of her identity and integrity as a

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<sup>13</sup>The legal details of her case will be discussed in Chapter 6.

human being, as she explains “I was a counsellor for drug abuses, then I came here and became a prostitute. And why? Just because of the system? People usually get from rags to riches but not from riches to rags” (Olivia, Interview, 2016). She argues that the legal system and the actors inside it are responsible for her suffering and the violence she experiences, and is angry about the injustices she had to live through, despite feeling entitled to live in this country. Her narrative is a vivid example of the law being performatively inscribed into her identity and her likewise not accepting it, by naming and blaming the legal system as responsible for her suffering.

Martha from Eritrea became undocumented after her asylum claim was rejected. She had to leave the accommodation she was housed in and became homeless. She could not believe that this was happening to her, as she thought women would be protected by the state. She slept rough at a bus terminal for a few nights, but was forced to leave by the security. Those moments were crucial for internalising that she as a rejected asylum seeker had no rights and was not protected by the state. Moreover, the law was signified through her body, since she was made homeless and had to find ways to survive living on the streets. At night Martha was sleeping in busses going up and down London. Even though she found support by a charity who housed her with a family in North London, she feels stuck without having status and is unable to live the life she wants to live:

It’s worse than I expected, so bad. Without the paper, you can do nothing. Every day, Monday to Sunday, is same for me. I can go out but it’s like being in prison. I cannot work, have no money and I cannot study. (Martha, Interview 2016)

The examples of Olivia and Martha show how changes in legal status make the violence of legal regulations more visible. They had to get used to living without rights and no protection through the law, which they both described as being challenging and traumatic, and an experience they had not anticipated before it happened.

## **5.9 Conclusion and Outlook**

The analysis has shown the omnipresent and pervasive role law plays in the lives of undocumented women, who endure high levels of violence due to being excluded from protection through the law. The law permeates smallest aspects of undocumented migrant women's lives and excludes them from a community of right bearing subjects. Rights mean being able to participate in everyday ordinary life. As they experience the control aspect of rights, they perceive law as threatening, having a negative impact on their lives. It is experienced as a threat due to its complexity, the effects of legal practices, and the difficulties undocumented women have in understanding and navigating it. Undocumented status means that everyday life is lived through a constant state of exception. Seemingly simple tasks such as opening a bank account or registering children at school become a threat to their livelihood. Undocumented migrant women thus develop survival strategies to life *away from the law* in order not to be caught by the state. This is often accompanied by experiences of violence and abuse in the domestic sphere, which shows how law creates vulnerability among women without status. The analysis has shown how the legal system operates "to sort people into subpopulations facing different exposures to security and insecurity" (Spade, 2015:93), as well as how those people who are not seen to be deserving by the legal system are further stigmatised, which I will elaborate further in the next chapter on claiming rights.

The analysis has also shown how the existing framework of legal consciousness has failed to incorporate the status of being undocumented. Different studies have discussed the intersections of power and oppression with legal consciousness and have criticised the traditional framework for failing to include a thorough analysis of power. Menjívar (2006; 2011) published a wide array of work about the role of law in the lives of undocumented migrants in the US, but has moved away from Ewick and Silbey's (1998) conceptualisation. I argue that their framework is a useful starting point, but needs to be expanded to better understand the role law play in everyday life of both undocumented and documented migrants, as well as citizens. It is an advance to recognise fluidity within one person's experience, but by incorporating gendered and racialised forms of oppression into the analysis it becomes possible to develop a more in-depth understanding of the vulnerability law creates with its mechanisms of exclusion and how they in turn enable other forms of violence in the domestic sphere. Furthermore, using the concept of civic stratification has been useful for understanding how social status and material resources need to be considered when analysing legal consciousness. It made it possible to show how undocumented migrant women are unlikely to

have a legal consciousness *with the law*, as they lack the privilege and resources to engage with legal actors in a game like approach.

In the next chapter I look at direct encounters with the law. I first analyse encounters with institutions and how the identity of being undocumented is performatively inscribed while claiming rights to healthcare or social services accommodation. I then illustrate how undocumented migrant women can regularise their status, based on the legal criteria outlined in Chapter 3, bearing in mind the cost of claiming rights and whether law can bring justice to a group of people who have been excluded from. I will do this by using the concept of civic stratification, which was introduced in Chapter 3.

## **6 ENCOUNTERING INSTITUTIONS AND WRITTEN LAW – HOW UNDOCUMENTED MIGRANT WOMEN CLAIM THEIR HUMAN RIGHTS IN THE UK**

### **6.1 Introduction**

In this Chapter I will analyse the process of claiming rights, such as the right to healthcare, housing and private and family life. I am moving away from a law in everyday life perspective and closer to the written law in addition to practices undocumented migrant women encounter within state institutions such as hospitals and social services, as well as the Home Office. Due to restrictive legislation that creates vulnerability for women living without status, women are pushed to seek help from state institutions, in order to prevent homelessness and destitution for themselves and their families. Claiming rights then is a matter of survival, but simultaneously asserts belonging to a community of rights bearing individuals. I am looking at claiming rights on an individual level. Previous research has often focused on collective political organisation. Examples are the struggle for rights of undocumented migrants such as the *sans-papiers* movement in France (Freedman, 2008b), the struggle for regularisations fought by Salvadorans in the U.S. (Coutin, 2003) or campaigns for regularisation of undocumented migrants in the UK, such as the Stranger into Citizens campaign organised by Citizens UK (Grove-White, 2012). I focus on the individual level of undocumented migrant women in the UK when claiming rights, as there is no collective organisation for claiming their rights, which stems from their position away from the law and their frequent isolation in domestic settings. It is thus crucial to understand how this process of claiming rights works.

In the first part of this Chapter, I look at claiming the rights to health care and housing, as well as how undocumented migrant women experience making those claims. Undocumented migrant women repeatedly experience exclusion from accessing those rights, despite the existence of formal entitlements in some cases. I explain how this inculcates the identity of not having rights and creates fear, continuing the analysis of performativity of the law from the previous chapter. Secondly, I examine ways in which undocumented migrant women claim their right to private and family life to regularise their status. I discuss different ways the law can be used by women to regularise their status. The case studies and examples

presented show that human rights are a constant negotiation between different actors both within and above the nation-state. This will be analysed within the framework of civic stratification (Lockwood, 1996; Morris, 2002), a concept which helps to understand rights as a dynamic process and emphasises how the access to rights are dependent on moral and material resources as well as the presence or absence of legal entitlement. Most undocumented migrant women who fulfill the requirements of the law to be granted LTR are experiencing a civic deficit, as some rights are present, but they lack the resources to claim them. Undocumented women lack these resources due to discrimination based on race, gender, and immigration status. Another reason is the way that human rights are implemented on the domestic level, as the requirements of the law are difficult to fulfill and immigration law becomes increasingly restrictive, which makes rights claiming a difficult process.

## **6.2 Accessing Health Care without Papers**

When trying to access health care and claim it as a right, many women are denied treatment as they lack proof of address or cannot show a valid visa. In that way, they come to an understanding that they have no or lesser rights than British citizens. Being turned away from a GP is a crucial moment in which a norm of not being worthy of health care is being inculcated. However, GP's are neither obliged to ask for proof of address nor for identity documents (NHS England, no date) and in that sense denying treatment is a form of civic deficit that undocumented migrant women experience – the right to register at a GP surgery is present, but they lack the resources to claim it. It is not clear why health officials check immigration documents despite not being obliged by law to do so. This may have to do with internal NHS policies or exclusionary practices part and parcel of everyday life that discriminate against foreigners.

In the absence of illness, not having status does not play such a decisive role, however this changes once a person needs treatment. Women who are pregnant have no choice but to go to hospital for check-ups or to give birth. In those moments, which are already stressful in

themselves, undocumented women experience the harsh reality of living in a country with strict immigration legislation. Tulaho felt threatened by health professionals when she was going to the hospital while pregnant, which caused high levels of stress. She explained:

The hospital people started threatening me that I have to pay, but I could not pay, I had no money. The stress from there, calling me up and putting so much pressure on me. My baby got sick after she was born, she was in intensive care. All the stress... (Tulaho, Interview, 2016).

The behaviour of NHS staff towards her showed her that her access to health care is restricted due to her lack of status and comes at a certain financial cost, which she as an undocumented woman without a job could not cover. Restricting access to health care for undocumented migrants has been recently introduced in the UK. The NHS is charging undocumented migrant women a minimum of £3,000 for child birth, and if those fees are outstanding when later applying for LTR, the application will be automatically rejected (Gbikpi, 2017). Doctors of the World, which is a charity that runs a free health clinic for migrants in London, criticises the NHS for breaching its own guidelines while denying pregnant women maternity care they cannot afford (Harvey, 2017). It also denounces the practice of data sharing between the Home Office and the Department of Health, which means that undocumented migrants become even more afraid to access health care (Asokan, 2017).

Ariana had similar experiences to Tulaho. While she was pregnant she was not able to see a doctor as she had no proof of address. When she tried to register with several G.P. surgeries, they turned her away. She went to the hospital to give birth:

They say they would charge me £3000 for normal birth. When I came to the hospital they took me to a room and there was a doctor. I think he was a doctor. Asking for documents, proof of address, my GP – I did not have any of these. I was afraid and stressed, I then gave early birth you know (Ariana, Interview, 2016)

Her experience shows that health professionals enforce immigration legislation, which can be considered as a practice to establish borders away from the physical border of the nation-state. Those practices define who belongs and who does not, and in the case of undocumented migrants constitute a group that is physically present inside the nation-state, but

simultaneously pushed outside by not being able to access health care or other services. In this case, borders are made by non-traditional actors who recreate them in multiple locations in everyday life (Johnson and Jones, 2014), which is also reflected by recent immigration legislation in the UK. The provisions included in the 2014 and 2016 Immigration Acts essentially push citizens to perform border work.

Undocumented migrants encounter borders in various settings, supporting the argument of the “vernacularization of borders” (Cooper et al, 2014:16), which has been proposed within border studies to shed light on the role of borders in everyday life and border practices. This understanding of borders is opposed to perceiving them as linear lines demarcating nation-states. Those practices that establish borders in everyday life aim at separating and filtering populations, as they are encountered differently by different people (Cooper et al, 2014). In this case as they are being expanded into civil society “the sites increase in which the effects of being undocumented are experienced” (Bloch and McKay, 2016:155). The border as an instrument then signifies who belongs and who does not (Rajaram and Grundy-Warr, 2007).

### **6.3 Encounters with Local Authorities**

As described in the previous chapter, undocumented migrant women have the right to be housed under Section 17 of the 1989 Children’s Act in social services accommodation if they have children and are destitute. However, a caseworker from a migrant rights organisation in London explained that for undocumented migrant women:

Social services are the main enemy, they check the immigration status or contact the Home Office right away, sometimes an immigration officer is present when the women speak to the social worker. This leads to the women being in constant fear so they do not call the police, nor the social services as they fear to be arrested (Interview, 2015).

Among undocumented migrant women there is a general fear that if they seek help from social services their children will be taken away from them and put in foster care. After becoming homeless, social services refused to rehouse Felicity’s family and instead took her two children into foster care, as they claimed she was not able to take care of them. This grossly violated the law, however Felicity was not able to intervene and her children were taken out of her



custody. The caseworker responsible felt entitled to violate the law, as she was aware of the relative power difference between her as a white woman and Felicity, an undocumented woman of colour from Nigeria. Her privilege and the institution she worked in gave her the power to performatively inscribe the law into Felicity's identity and show her that she can break the law due to her client's lack of status.

It is commonly known by people working in migrant rights organisations and by undocumented women themselves that social services often mistreat people without status and do not fulfill their duties. Several women I met had similar problems when approaching local authorities. Rose described being treated badly by social workers, who housed her and her children in unsafe accommodation: "There were cockroaches and bedbugs, there was also a mental person. My daughter, she was scared of a lady, the kids were afraid, we were not safe" (Rose, Interview, 2016).

Through the behaviour of government employees, exclusion from the law is performatively enacted and constructs an identity based on the lack of status on a collective level. Immigration officials work with local authorities and are often present when the child is assessed. The women are put under a lot of pressure to leave the country, which many interviewees mentioned when talking about their experiences with social services. Encounters with local authorities mark another moment in which the identity of not being worthy of protection and not having rights is constructed.

Despite the harsh reality and violence many undocumented women experience for a prolonged period of time with little hope of escaping, the women I met were incredibly resilient and kept fighting for a better life. The law limits their lives to a vast extent and is experienced as threatening, yet undocumented women strategically navigate it and resist when possibilities to do so arise. Women with children are particularly resourceful and motivated by the thought of giving their children a better life and education than they themselves had. A

legal advisor described undocumented women who were too hopeful with their rights claims as being too naïve, as in many instances there is only a slight chance that the women will be able to regularise their status. This can also be seen as a resource to be able to survive in an unwelcoming and hostile environment. When claiming rights, such resilience means that the women are persistent in cases in which the institutions may deny access to certain services and care.

#### **6.4 Claiming the Right to Private and Family Life**

British law contains regulations through which undocumented women can regularise their status on the basis of the right to private and family life, which is a qualified right that is enshrined in Article 8 of the ECHR. The existence of a certain right does not automatically mean that it can be claimed easily, which I will outline in the following section. Despite human rights law being implemented in the domestic legislation of the UK by virtue of the Human Rights Act 1998, it remains difficult for undocumented migrants to claim their human rights in the UK.

If an undocumented migrant woman fulfills the requirements of the law to regularise her status, which were outlined in Chapter 4, she can apply for LTR. Applying for LTR is often a complex and long process. Its success is dependent on being able to access legal advice, having the money to pay the application fee, as well as fulfilling the narrow requirements the law formulates. The decision to apply and seek out support needs to be made prior to that, which involves overcoming emotions such as fear and anxiety. All of these elements are reflected in the idea of moral and material resources in terms of civic stratification. This shows how various aspects play a role when claiming rights.

The process of claiming the right to private and family life often begins when women find themselves destitute, facing eviction from their house, or not able to sustain themselves or their families any longer. Finding an organisation that helps pro bono is one of many obstacles that need to be overcome. The complexity of the law as well as the challenges

imposed by the state to be able to claim one's rights clearly show that the British state tries to limit the actualisation of human rights. It therefore often pushes undocumented migrants towards a state of exclusion from claiming rights. When denying a rights claim, the state inscribes the identity of not having rights and not being worthy of protection.

There is a gap between the law in the books and the way law is exercised ('law in action'), when trying to claim the right to private and family life. If undocumented migrant women do not fulfill the requirements of the law then they experience civic exclusion, a situation in which neither rights are present, nor the resources to make a rights claim are available. I begin by explaining how the concept of civic stratification relates to the case of undocumented migrants and their rights.

### **6.5 Case Studies: Challenges of Undocumented Migrant Women Trying to Regularise their Status**

Only a few legal avenues are available for undocumented migrant women to regularise their status. The women who try to regularise it and are successful with their rights claim often experience a civic deficit. This is a situation in which rights are present, but they are not able to formally claim them, due to a lack of material and/or moral resources. This includes money to pay for the solicitor, the application fee, and the immigration health surcharge. Many applications are rejected due to fees not being paid or the Home Office not accepting the fee waiver application. The requirements that applicants must fulfill are narrowly defined, leaving considerable room for interpretation. In such a situation "prestige factors, classically race or wealth, can positively or negatively affect a decision (gain and deficit respectively)" (Morris, 2003:81). Moral resources include one's social standing in society, networks and knowledge of the system. Undocumented migrants are often wrongly seen to exploit the system and break the law and thus have a low moral standing. The media stigmatises undocumented migrants as criminals who are undeserving (De Genova, 2013). This is especially true of undocumented women who lack moral resources, as they are confined to the domestic sphere and therefore

have limited access to support networks. They are also discriminated against due to their race, as women of colour have less standing in a society dominated by white men (Smart, 1989).

Although some undocumented women are able to successfully claim their human rights and receive the permission to stay in the UK, this is probably just a small minority. There is no exact data available on how many human rights applications have been lodged, accepted, or declined by the Home Office. Most undocumented women are excluded from claiming rights, and are thus forced to continue living in the shadows, working long hours, taking care of children, and often also suffer from violence at the hands of their partner or employer. In the next section I will analyse case studies of several women who attempt to claim rights and their encounters with the written law.

#### **6.5.1 Felicity: A Case of Civic Exclusion**

Felicity from Nigeria came to seek legal advice in November 2015, after receiving an eviction notice for the apartment she and her family had lived in for the last six years. Felicity's case was not strong enough to make an application for LTR under human rights law, meaning that she did not fulfill the requirements of the law to claim the right to private and family life. Her partner did not have British citizenship, nor were the children seven years old, which is the age limit for someone to apply for LTR as their sole carer or parent, as explained in Chapter 4.

Felicity arrived in the UK on a student visa in 2003, and she studied Finance and Accounting in a college in London. As part of her visa, she was allowed to work twelve hours a week. After two years she was not able to pay for her tuition fee any longer, so she had to drop out of the course. Her application to extend her visa in the UK was refused, but she was hoping to be able to get leave through her ex-partner who was a European national. He promised to marry her, but after a year however the relationship broke apart and Felicity was devastated. She felt that she has the right to stay here, since many of her family members live in the UK and she had been in the UK for twelve years, without any intention to return to

Nigeria. Her understanding of why she had the right to stay went beyond legal terms. She also mentioned threats of violence her father received when he last went to her home town and that she feared her daughter would be subjected to FGM when returning to Nigeria.

Felicity emphasised that she had never intentionally broken the law, and had tried several times to apply for leave whilst already undocumented. She did not work when she had no work permit, and from her point of view, her good behaviour and time spent in the country were sufficient to get the right to stay. However, this is not reflected in legal categories. In terms of civic stratification, it can be seen that by referring to herself as a law-abiding person she tries to construct an image of herself as a person that has moral resources entitling her to claim rights. She paid for a lawyer to make a human rights application with the few financial resources she had. However, this lawyer however turned out to be fraudulent, as he charged her for making an application despite her not fulfilling the legal criteria. This shows that as an undocumented migrant and the lack of moral standing, Felicity became more vulnerable.

Felicity did not fulfill the requirements laid down in Paragraph 276 ADE of the immigration rules, thus being excluded from claiming rights already present in the law. The only way the family could apply for LTR is if one of their children was already seven years old and had lived seven years in the UK. Many of her family members live in the UK, including her father, two sisters, and one brother. Even though her father is a British citizen, she was not able to benefit from this. Nevertheless, she felt entitled to stay, although this was not reflected in the law.

Her situation constitutes a good example of civic exclusion, as rights are not present for her and neither does she have the moral and material resources to claim them. She is stigmatised as an undocumented migrant, but tries to claim rights. In regard to her right to stay she experienced civic exclusion, while looking at her claiming the right to be housed under Section 17 of the 1989 Children's Act she experienced a civic deficit. The right to be housed

was present and she qualified for it. Every child that is present in the UK and is destitute has to be housed by the local authority, regardless of their immigration status. This includes housing the child's carers, in this case Felicity and her partner. The local authority did not fulfill their duty to house the family, showing that when claiming rights, the social status of the rights claimant as well as her moral resources played a decisive role to be able to access rights. The family was eventually housed by social services, but only after they were threatened with legal action for breaking the law and after a lot of suffering for Felicity and her family.

### **6.5.2 Ajike: A Case of Civic Deficit**

Ajike was granted LTR on the basis of private and family life provisions, as her two children are British citizens by virtue of their father being British. She arrived in the UK from Nigeria at the age of fifteen in 1998, believing that she would go to school here. Instead she was forced to work as a domestic worker in a family home in North London. Ajike was trafficked to the UK and stayed with a family that were manipulative, kept her locked up in the house, and regularly beat her. She never received any salary for her work nor was she able to go to school. Ajike had no passport, as the family who brought her to the UK kept it. She was able to escape from captivity in 2005.

After being homeless for a couple of weeks, she met a man who offered her to stay in his house. They commenced a relationship and their first child was born in 2006. Their second child was born in 2010 and both of the children are British by virtue of their father being a British citizen. The relationship ended in 2012. Ajike came to seek legal advice in 2014 and received her LTR three months after lodging the application on the basis of her children being British citizens. She was able to claim her rights with the support of an immigration advisor. As she lacked moral and material resources, she was not able to do so by herself, even though the right to remain in the UK was already present earlier on, namely since the day her first child was born, as she has the right to reside in the UK as the parent of a British citizen.

When looking at the file and the letters sent to the Home Office, no word was mentioned about her being a victim of trafficking, having worked seven years as a domestic slave. The application solely focuses on the children being British citizens, which gives Ajike as their sole carer the right to remain in the UK. In that case the welfare of the children is legally paramount to that of the mother. Moreover, it is difficult for someone to be (a) recognised as a victim of trafficking or modern slavery and (b) based on this recognition being granted a discretionary leave to remain (Rights of Women, 2014a). Especially if the trafficking has occurred in the past, it is hard for a victim of trafficking to be legally recognised later on<sup>14</sup>. This can be seen as another example of how the lived experience is often incompatible with the law to relieve suffering and protect a person. If Ajike didn't have children who are British citizens, it is unlikely that she would have been granted LTR. Ajike suffered for a prolonged period of time while performing forced labour. She endured violence at the hands of the family she was forced to work for. This does not mean that the law would have protected her on the basis of experiencing violence in the home, as laws protecting victims/survivors of domestic violence usually do not include women without status.

The legal argument made for her application states that she should be granted permission to stay in the UK to ensure that the family is not separated, which would lead to a significant disruption of the children's lives. As they have never visited Nigeria and have no cultural ties there, it is unrealistic and unreasonable to expect them to relocate to Nigeria, if Ajike's application to regularise her immigration status would be refused. Neither of her children could realistically be expected to relocate to Nigeria should the SSHD refuse to issue Ajike LTR. This legal argument is built on the parts of the law explained in Chapter 3, and the case *ZH Tanzania vs SSHD* is especially crucial in that argumentation.

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<sup>14</sup> In many cases, the authorities believe that a person who is a historical victim no longer requires protection or assistance under the trafficking convention. The Home Office often does not officially recognise historical victims as victims of trafficking, as the circumstances they currently live in changed since they have been trafficked and are considered not needing support (Hooper & Thomson, 2011).

Ajike was granted leave very quickly, as the case was clear legally, since she is the sole carer of two children who are British citizens. However, she experienced a civic deficit, as her right to remain in the UK was already present after her first child was born in 2006, as she has the right to remain as the parent of a British child. She remained without status for eight more years. This is related to her lacking moral and material resources to claim rights. She came to the UK as a young girl, being far away from home without knowing how the system in the UK works. After being destitute for many years, she eventually found a migrant rights organisation that helped her with her application. A person whom she met in church told her about the organisation. Ajike described going there for the first time as daunting and anxiety inducing. She had no idea what she was going to experience there and was afraid it may have negative repercussions. Such fear is closely related to being an undocumented migrant, who is seen as undeserving in the eyes of the public and carries the stigma of being 'illegal'. Since she didn't know her rights, Ajike was unsure what to expect when asking for help and had already internalised the idea that she was not entitled to any rights in the UK. The civic deficit she experienced is therefore influenced by many factors, which go beyond the idea of moral resources, as it is also this internalised stigma that impedes undocumented women from claiming rights and seeking out for support.

### **6.5.3 The Cost of Claiming Rights**

Claiming rights has certain costs for the women, as their identity will be known by the state. If their application is refused, they are increasingly likely to be deported. However, undocumented women are often destitute; especially when being the sole carer of young children. They often have no choice, and are pushed to ask for support from their local authority, since they otherwise would become homeless. They proceed to seek legal advice out of vulnerability, and are forced to turn towards the law as their last resort in order not to be deported or pressured into voluntary return by social services. When housed in social services accommodation, undocumented migrant women are often put under immense



pressure to return to their country of origin, even if they have a pending application with the Home Office (Interview with Immigration Advisor, 2015).

Many undocumented women experience racial discrimination when approaching the council for help or while being housed by them. Caseworkers do not follow the procedures properly, as they often refuse to house women without status and their children, despite their duty to safeguard all children in the UK. I observed several times that social services did not hand out assessment documents to undocumented women, which then makes it impossible to legally challenge them. For a woman without status, these situations are extremely difficult to navigate, as the caseworkers are in a position of power and it is almost impossible to challenge their decisions without legal representation.

From my experience working and conducting participant observations in two migrant rights organisations, and interviewing caseworkers from various other organisations, as well as reading correspondence with the Home Office, it becomes obvious that the aim of the state, in this context represented by the SSHD, is to make it as difficult as possible for undocumented women to claim the right to private and family life. The law is extremely complex; only an immigration advisor or a solicitor with specialised knowledge is able to fully understand it and construct a legal argument from the lived experience of the woman. Solicitors charge high fees, money that most undocumented women mostly cannot afford to pay. In that case, the lack of material resources hinders women to know about their rights in the first place and then being able to decide whether they can apply for the permission to stay in the UK. A few organisations in the UK provide free legal advice and representation, and finding them is often not easy and can be a matter of chance, especially for women who work in the domestic sector and have little contact with any community or support network. Furthermore, there are many stories of fraudulent immigration lawyers that benefit from deceiving vulnerable migrants, which is another factor creating insecurity about who to trust.

#### **6.5.4 Fee Waiver Applications: Another Hurdle to Overcome**

As mentioned in Chapter 4, the application fees for human right applications are high. There is a fee waiver that the Home Office grants if the applicant can prove that she has been destitute and it is unrealistic to expect that she can raise the application fees within the following twelve months. However, it is difficult to qualify for a fee waiver even though it is unrealistic to expect from most undocumented women who apply for LTR to be able to raise the fees. This can be seen as another way in which the state aims to exclude undocumented migrants from claiming rights. Additionally, fee waiver applications take longer than fee paying applications, as it is a two-stage process. Firstly, the application is sent to the fee waiver team to assess whether the applicant qualifies for the waiver. If so, the application is then sent to the casework team to consider the merits; if not, the application is returned to the applicant/the representative as invalid.

Precious, a woman from Guyana, who applied for LTR qualified for a fee waiver. It was argued in her application that she is unable to work or access public funds and thus cannot raise the fee for herself and her three children. At the time of applying, she lived in social services accommodation as the family was destitute. Furthermore, the family had only survived in recent years with the support of friends. The Home Office granted the fee waiver, as she qualified for exemption under the new policy introduced in April 2015.

Most of the women I met who applied for LTR would theoretically qualify for a fee waiver, especially after the new policy was issued. A freedom of information request submitted to the Home Office regarding fee waiver applications revealed that out of 4,822 applications that were received from April to September 2015, only 747 were accepted and 4,300 were rejected (Shephard, 2015)<sup>15</sup>. Applications for LTR under human rights law which

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<sup>15</sup> The Home Office states in their reply to the FOI request that the information is not reliable as it was recorded manually before April 2015. One can thus only guess what happened with the 225 applications not

include an application for a fee waiver are often rejected, including a rejection of the LTR that then needs to be applied for again. The Home Office often does not accept that the applicant fulfills the requirements for a fee waiver, therefore adding another difficulty in terms of material resources necessary to access one's rights. Reasons brought forward to reject fee waivers vary, but the Home Office often demands unrealisable measures from the applicants to raise the fees. A fee waiver application submitted by one of the organisations I worked with requested that the applicant should ask the father of her child to help raise the funds. This man is known to have abused her, which was clearly stated in the application. Another application was rejected because the applicant ate at a fast food chain and bought small items from shops, and the Home Office thus expected her to be able raise the funds.

In conversations with immigration advisers or caseworkers during my fieldwork, many clearly stated that the fee waiver policy is unrealistically designed and deprives undocumented migrants of the possibility to access justice. They claim that the Home Office expects vulnerable and destitute applicants to raise the funds despite evidence that they are unable to do so. Migrants who plan to apply under private and family life rules are therefore urged by immigration advisers to find a way to raise the money if possible. In that sense, material resources are not just necessary to be able to pay for legal representation, but also to cover the application fees. This complexity adds another layer that can impede the access to claiming rights, or simply slow down the process, when one is trying regularising their status.

#### **6.5.5 Tamara: A Case of Domestic Violence**

Tamara, a woman from Trinidad and Tobago, got LTR after living in the UK without status for eight years. She arrived in 2006 on a six months visitor visa with her son, who is a U.S. citizen. In 2010 she began a relationship with a British citizen and moved into his house. He was physically abusive towards her. She suffered from domestic violence for many years and

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included in this calculation.

refrained from reporting it to the police due to her lack of status. In 2013, Tamara was no longer able to endure the violence she was experiencing at the hands of her partner and reported him to the police. She then separated from him. Tamara and her son then lived in a refuge for women.

A year after living there, she approached a migrant rights organisation for legal advice regarding her status. In the documents submitted to the Home Office for her application for LTR under Article 8, it is emphasised that she and her son suffered a great deal of trauma and abuse during their time in the UK. The application is based on her being the sole carer of her son who has spent almost nine years in the UK at the time of the application. It is furthermore stated that the SSHD has the duty to safeguard and promote the welfare of all children in the UK, as regulated in Section 55 of the 2009 Borders and Immigration Act. The application focuses on his development at school and integration into the local community, stating that he is a popular student at school, involved in extracurricular activities such as football and the Scout Association, and has also been elected class representative.

Similar to the case of Ajike, the child's situation is considered legally paramount. Even though the domestic violence was mentioned in Tamara's application, it would not have been sufficient for her to be granted LTR. Only migrant women who came to the UK on a spouse or partner visa and experience domestic violence at the hands of their partners have the possibility to be granted leave under the Destitute Domestic Violence Concession (DDC) (Rights of Women, 2014b). The DDC gives them access to public funds for three months, in which the woman then has the possibility to apply for indefinite LTR (NRPF, 2015). According to professionals working in the field, the rationale of the Home Office seems to be that the survivor should not assume that they came to the UK to settle and is thus not entitled to LTR, unless someone is initially given leave as a spouse or partner of a British citizen or a permanently settled person. If a woman does not have status then domestic violence itself will

not provide a route to regularisation. Mentioning domestic violence in an application can have different impacts on the decision, as shown in the case of a Jamaican woman without status whose application was refused by the Home Office partly because of the domestic violence. The reasoning was that the two children did not have any contact with their father as a result of the domestic violence and could thus be reasonably expected to leave the country. In other applications, the domestic violence and suffering the survivor went through can be used to add moral weight to the legal argument, but in itself does legally not have an impact if a woman does not have prior status. This shows how the law is gendered and racialised, as it renders experiences of migrant women without status as ineligible for protection.

Being seen as a ‘good victim’ can thus help with the application for LTR. In Tamara’s application this was certainly the case. In terms of presence of rights, she could have applied for LTR earlier, as she had the right to stay as her son’s sole carer after he had been in the UK for seven years continuously. However, during that time she was suffering from abuse and violence at the hands of her partner, and had to figure out a way to escape the relationship without endangering herself and her son.

Research shows that women who experience domestic violence are most vulnerable at the point when they decide to leave their partner (McCue, 2008). Tamara knew that she did not have status and only called the police after a long time of suffering. She was lucky to be provided a space in a women’s refuge, as refuges usually do not host women without legal status or NRPF. The refuges are run with housing benefits, and women without status are not eligible to public funds. After leaving her relationship she was able to get legal advice, as she was supported by a domestic violence service that pointed her in the right direction to regularise her status. Her example shows again that being in the domestic sphere makes it more difficult for undocumented women to know about their rights and have access to support.

However, at the same time being a mother gives a woman a different moral standing in society, which can then help her to regularise her status.

#### **6.5.6 Olivia: Civic Deficit due to Criminal Convictions**

It is necessary to have a good character and no criminal convictions to regularise one's status. Criminal convictions can constitute another barrier when trying to claim rights and lead to not being able to access protection through human rights, despite them being present. The case of Olivia, a woman from Jamaica, provides a case study which shows how criminal convictions lead to experiencing a civic deficit, as it adds another layer to being perceived as morally undeserving.

Olivia applied for residency together with the father of her son, but the application was rejected when the Home Office appealed the tribunal judgment, which granted the family residency. Appeals are expensive, and Olivia was not able to pay for the solicitor anymore, nor the application or court fees. The couple split up and she moved out with her son, Chris. From then on, she had to regularly report herself to the Home Office. Not being able to legally work, and in a destitute situation where she had to care for her son Chris alone, Olivia started to do sex work and was shoplifting food. She was not happy with this lifestyle, but ended up in a situation where she had little other choice, as she did not want to go back to Jamaica, and since her son was a European citizen, she knew that they had the right to stay in the UK. She met another man with whom she started a relationship. He paid the rent for her flat, but she ended the relationship after he started being abusive and physically violent to her, being forced to again prostitute herself and shoplift to survive. She got caught shoplifting twice and the second time was kept at the police station for seventy-two hours. She received two non-custodial sentences.

Olivia decided not to shoplift any longer and went to the Citizens Advice Bureau for help in 2011, as she was destitute. She received support from social services, which referred

her to a solicitor. Her application for LTR as the sole carer for a European national was refused. It was later found out that the SSHD questioned whether Olivia was the mother of Chris. They also cancelled his passport. The case was severely mismanaged. Her moral credibility was at issue and questioned which then resulted in the denial of her rights; she experienced a civic deficit for a prolonged period of time.

A new application was lodged in August 2014, as she had the right to stay in the UK as the sole carer of a European citizen who is exercising his treaty rights. The legal argument made in the application was similar to other Article 8 applications. It emphasised the duty to safeguard all children in the UK, and the case qualified for the requirements of Paragraph 276ADE of the Immigration Rules as by that time Chris had already lived in the UK for longer than seven years. It was furthermore argued that the family unit has to be considered as a whole unit and as Chris had spent his formative years in the UK, it was in his best interest for Olivia to stay. Regarding her criminal convictions it was stated that neither of the offences were of a violent nature, and, as demonstrated by the sentences handed down, the offences were not of sufficient gravity to justify a custodial sentence. As Olivia's offences were of acquisitive nature, i.e. she was shoplifting, it was argued that they were offences which were directly linked to her lack of immigration status. If she would have been able to work to provide for herself and her son, she would not have needed to resort to such means to survive.

The application was refused in March 2015. Firstly, the SSHD argued that Chris is not British and is neither officially settled in the UK, as he did not have EEA residency. Secondly, it was said that several criminal convictions were not declared in the application (which was not true as a matter of fact), and due to her 'appalling' immigration history and 'criminal' activity she had no right to remain in the UK.

Olivia's case shows that due to her lack of moral resources, she experienced a civic deficit, not being able to claim her right to private and family life, despite the right being

present. The SSHD questioned whether she was the mother of her child, despite her having all the documents to prove that she is the mother of Chris. Furthermore, her criminal convictions were over emphasised, even though they were directly linked to her lack of immigration status. It can be seen how the state constructs vulnerability through the exclusion of certain categories of migrants, and then punishes them for trying to survive. Despite having the right to stay in the UK, she was not granted leave for many years and was thus made destitute. When the case was submitted for reconsideration, it was stated that Olivia is not a frequent or high-level offender, and that her previous convictions are certainly not sufficient severity to justify Chris being removed from the UK.

Without the support of a legal advisor, it would not have been possible for Olivia to question the conduct of her case by the Home Office. Olivia lacked the moral resources to question the decision, which was due to her being an undocumented migrant, and also having criminal convictions. Even with the support of the immigration advisor it was extremely challenging and took a considerable amount of time to convince the Home Office that she fulfilled the requirement on the basis of Article 8 to be granted LTR.

The immigration advisor submitted the application for reconsideration, as she was convinced that the Home Office did not apply the immigration rules properly to Olivia's application. The guidance of the SSHD for reconsidering an application states that an application can be reconsidered if it includes a child which has lived in the UK for longer than seven years. A case can be reconsidered if it is believed that the Immigration Rules or Policies were not applied correctly (Home Office, 2015b). In the reconsideration it stated that Chris is a qualified person under Immigration EEA Regulations 2006 under Section 6 as he has been in the UK for over five years, and has thus acquired permanent right of residence within the UK under Section 15. He could not have been reasonably expected to leave the UK, as he had



been living here for eleven years, with no ties to any other country. The refusal constituted a breach of his and Olivia's human rights.

She was granted LTR in December 2015, but not without further difficulties. The Home Office first declined the request for resubmission in July 2015, as no new evidence was submitted. The immigration advisor questioned this decision, as the policy under which the reconsideration was submitted had not been taken into account. In August 2015, Olivia received a letter from the Home Office stating that she was staying in the UK illegally and that she can be expected to be removed, which caused further stress and had a detrimental impact on her mental health. The Home Office asked for more documentation, which they had already seen in the past, and prolonged the decision-making process. She was then granted LTR under exceptional circumstances outside of the Immigration Rules, out of consideration for the best interests of her son Chris. It appears from this case that the management of Olivia's case has been deliberately poor in order for her to leave the UK and not claim her rights. Such conduct shows the gap between the law in the books and the law in action. Only because of her persistence in claiming her rights despite the hardship she suffered due to her lack of status, and with the support of the immigration advisor, was she granted LTR. Claiming her rights proved to be difficult as she lacked the moral resources to be considered a person of good character.

## **6.6 Changes Under the 2016 Immigration Act: Deport Now, Appeal Later**

When looking at the case studies of successful applications made under private and family life rules, it can be seen that despite the rules being included into domestic law, it is often insufficient to show an undocumented migrant woman fulfills the requirements of the law, such as being the sole carer of a British citizen, or a child that is under eighteen and has lived in the UK continuously for seven years, to be granted the right to reside. The legal arguments constructed in the applications are highly complex and take different High Court decisions into consideration to convince the SSHD that not granting LTR would be in breach of her

human rights. Recent changes in the immigration law show that the aim of the government is to further exclude undocumented migrants and remove appeal rights for Article 8 claims, as outlined in Chapter 4. The “deport now – appeal later” provisions were in power from May 2016 until they were revoked by a Supreme Court judgment in June 2017, which ruled them as unlawful and unfair (*R (Kiarie; Byndloss) v SSHD* [2017] UKSC 42).

For the time the provisions existed, they did represent an example of civic deficit. Migrants who had pending human rights claims could be deported before they had exhausted all of their appeal rights.

### **6.7 Immigration Act 2016: Increased Difficulties to Claim Human Rights**

The case of Esi, a woman from Ghana, exemplifies the importance of in-country appeal rights and can give an insight into possible effects of the 2016 Immigration Act. She arrived in the UK in 2000 to attend her father’s funeral. She was asked by a family friend to become her live-in carer, and then overstayed her visitor visa. Esi lived with the old woman until early 2012 and played a significant role in her life. She moved out in 2012 to reside with her partner, with whom she was expecting a baby. He had Indefinite Leave at that time, but a year later obtained British citizenship. Their son, Lee, was born in October 2012. Shortly after the birth, her partner became verbally abusive and threatened to take the baby away from her, using her lack of status against her. Esi left the house with her son in October 2013, and ended up being homeless for three months. In January 2014 she was then housed in accommodation by social services.

She first applied for LTR in May 2012 as the partner of a settled person. The application was rejected as they did not meet the definition of an unmarried couple contained in Appendix FM of the Immigration Rules, which states that the couple needs to live together for a minimum period of two years. She then applied again in October 2013 as the sole carer of a British citizen child on the basis of private and family life. Lee is a British citizen by virtue of birth, as his father is British. After the relationship broke down, Lee only saw his father twice

a month. He supported them with £150 per month, which he received by claiming child benefits for Lee. The parents remained on good terms after separating, but Esi became the sole carer of the child. The legal argument made is similar to the cases mentioned above.

Her application for LTR was refused by the Home Office and appealed against in a First Tier Tribunal (FTT). The FTT falsely ruled that Lee could move to Ghana with his mother, thereby depriving him of all the benefits he is entitled to as a British citizen. The judge ruled that going to Ghana with his mother would not be seriously detrimental to his welfare. According to the FTT, family reunion and immersion in the cultural life of both his parents were counterbalancing advantages. However, this would not be in Lee's best interest, thus disregarding the welfare of the child, which has to be the prime consideration in such cases as enshrined in Section 55 of the 2009 Borders, Citizenship, and Nationality Act. The reasoning of the FTT seems to suggest that Lee's citizenship is somehow not worthy of full consideration because of his parents' heritage, presenting a civic deficit as not being a white citizen made it difficult for Esi to claim his and her full rights. This shows that the law is stratified by race, creates disadvantages for people of colour, and discriminates against them when claiming rights.

Under the Immigration Act 2016, Esi could have been ordered to leave the UK after her application was refused and go back to Ghana, from where she would have then been allowed to lodge an appeal. This would have been extremely challenging for her, as she did not have a support network in Ghana, after living in the UK for thirteen years. Lee would have been separated from his mother to stay with his father, who he rarely saw. Otherwise he would have had to leave the country with her. It is hard to imagine what would have happened if she had been deported and it is questionable whether she would have been able to exercise the rights she had in the UK as the sole carer of a British citizen while being in Ghana. She was later granted LTR in the UK with the support of different migrant rights organisations who

submitted a new application on her behalf in October 2015. Esi experienced a civic deficit, due to her race and having no status in the UK. This case study also shows the importance of litigation in respect to upholding human rights, as this led to the abolishment of the “deport now – appeal later” provisions.

### **6.8 Conclusion: Undocumented Migrant Women and the Law - From Exclusion to Protection?**

Restrictive immigration legislation excludes undocumented migrant women and deprives them of legal protection, thus confining them to a space of legal non-existence (Coutin, 2003:34). When undocumented, the women are physically present, and socially active, but lack legal status and recognition. Being recognised by the law and regaining one’s legal personhood is a long and difficult process, as demonstrated by the case studies above. Restrictive immigration law creates vulnerability for women, who often find themselves in precarious situations, in which they experience a lot of violence and hardship. The law however, is in some cases the only way for women to find protection and turning towards it can be the last resort to get out of a precarious situation. This is in spite of it being discriminatory with respect to race and gender. Law in that sense can mean many different things and is constituted by numerous principles, events, and knowledges, “yet it claims a unity through the common usage of the term ‘law’” (Smart, 1989:4). Despite its diversity and the difference between different areas of the law, it has the power to define the reality and how things are. By using the singular term ‘the law’, as Carol Smart (1989) argues, it is possible to refer to the singular and unifying power law has over our lives.

Law is ever present in the lives of undocumented migrant women, and has precisely this unifying power in constructing identities and belonging within the nation-state, leaving many outside and vulnerable. This is also related to its performativity and the way it is enacted by citizens in everyday life. Being undocumented becomes part of someone’s identity and is performatively enacted, as described in the previous Chapter. This can in turn interact with

moral resources, as the belief of not having rights can lead to not inquiring about them, and thus not knowing whether claimable rights exist or not.

The chosen case studies show “the fact that migration raises one of the most fundamental political questions of all: Who constitutes the polity?” (Anderson, 2010:6). The polity consists not only of citizens and migrants with status, but also those who live on the margins without the right to do so. By claiming rights, accessing services, and asserting their belonging, undocumented migrant women position themselves in a political space, though they lack political rights.

Law is a powerful tool that manifests gender relations and further naturalises the dichotomy of gender and race (Calavita, 2006). It constructs gender identities and expresses ideas about gendered relations, whilst presenting itself as neutral and objective (Smart, 1989). How can this be understood with the current example of undocumented women claiming their rights in the UK? When looking at the case studies, it becomes apparent, that for a mother it is much easier to regularise her status and claim the right to private and family life, as she has a distinct moral standing. Without a child, a woman has to prove twenty years of continued residency and employment in the UK. I have only come across one case in which a woman from Columbia was able to be granted LTR under this long residence concession. Being trafficked to the UK or being a survivor of domestic violence is not sufficient to become legally recognised. If a woman fulfills her role as a mother and is the sole carer for her child, then protection from the law is more accessible, especially if her child is a British citizen. Being a mother is traditionally considered to be the natural role of a woman, who by becoming a mother fulfills her biological and reproductive function (Glenn, 1994). In an idealised understanding of motherhood, it is the mother who gives up her own needs and prioritises the child’s welfare over her own. She is the primary caretaker of the child and bringing up her biological child is her main focus during formative years (Glenn, 1994). This view is also

reflected in the Immigration Rules of the UK, which make it possible for an undocumented woman who is the sole caretaker of her child to regularise her immigration status and successfully claim her human rights. The law prioritises the wellbeing of the child over the mother's wellbeing. The child is in fact the center of the legal argument, which is manifested in Section 55 of the 2009 Citizenship, Borders and Immigration Act, which enshrines the duty to safeguard the wellbeing of all children present in the UK regardless of their immigration status. In terms of civic stratification, being a mother then increases a woman's moral resources and makes rights more readily available. When claiming rights, the mother's own life and experiences are used to strengthen the argument morally, but usually have no legal impact, such as in the case of domestic violence. Furthermore, it needs to be demonstrated that the mother performs her duties as the caregiver well, by submitting extensive documentation to the Home Office about the development of the child in school and participation in extracurricular activities.

Women's experiences are directly influenced by immigration policies, which often subtly confine female migrants to the private sphere (Kofman et al, 2002). This can also be seen in the experiences of undocumented migrant women with the law. There is a considerable gap between the way human rights law is enshrined in domestic UK legislation and the way undocumented women experience the law in action. Due to a lack of moral and material resources the process of claiming rights includes many obstacles which need to be overcome, even if rights are theoretically present. In that way, the law prolongs the suffering of many undocumented women, who experience high levels of violence, domestic abuse, and in some cases, human trafficking and domestic slavery. In the current climate of restrictive immigration policies, manifested by the Immigration Act 2016, it does not seem as if claiming human rights will become easier for undocumented migrant women.

However, an important role in claiming rights is played by community organisations, which offer free legal advice and representation to undocumented migrants, among other services such as free lunch, food bags, community gardening, or therapy sessions. In the next chapter I am going to explore the different roles those organisations and other groups such as campaign groups play in the lives of undocumented migrant women.

## **7. THE ROLE OF COMMUNITY ORGANISATIONS IN THE LIVES OF UNDOCUMENTED MIGRANT WOMEN IN LONDON**

### **7.1 Introduction**

In this Chapter, I explore the role that civil society organisations, such as community organisations and campaign groups, play in the lives of undocumented migrant women, focusing on claiming rights, rights work (Plummer, 2006) and civil repair (Alexander, 2006). I look at rights which are enshrined in legislation but are not easily accessible. In order to claim them, undocumented women need legal representation, as explained in the previous chapter. This is closely linked to their moral and material standing within society, but also to the way the law is designed and functions, as outlined in Chapter 3. Civil society groups play a variety of roles in the lives of undocumented migrant women, which I discuss in this chapter. They offer emotional support, create communities, act as a mediator between the state and undocumented migrants, do advocacy and campaigning, and are also involved in governance and control of migrants. This chapter is based on participant observations I conducted during my fieldwork. During that time, I worked as a caseworker in two different community organisations, offering services for migrants in London. It provides an insight on the dynamics of organisations I worked with, and this illustrates the more general process of accessing and claiming rights. It does not aim to give an exhaustive overview of organisations that work with and offer services for migrants in the UK.

Those working within migrant rights organisations – legal advisors, caseworkers, mental health support workers, volunteers and lawyers – have a thorough knowledge of the British legal and bureaucratic system and can support migrant women in their everyday lives with accessing social services accommodation, providing emotional support, referring them to other specialist services, or lodging an application for LTR. Lawyers and legal advisors especially have in depth knowledge of the law and can assess whether a person without status has sufficient grounds to apply for the right to remain based on human rights law. Campaign groups have close contact to undocumented migrant women and their families. They understand their situation and the difficulties they face. These groups can use their networks



to push certain topics on the political agenda and provide solidarity as well as emotional support.

With those activities, the community organisations and campaign groups participate in rights work, which Ken Plummer (2006:153) considers as crucial for the actualisation of rights as: “Rights are not given in nature...They involve the collective conduct and social meaning of many, and come into being through the interpretative and activist work of social movements..., philosophers to governments, ... writers and NGOs”. Rights work entails the definition, rationalisation, and interpretation of rights, as well as claims making. Civil society organisations and social movements have had a major influence in the post-war period in terms of shaping public debates in Britain, influencing policy and legislation, lobbying organisations and politicians, creating services for marginalised communities, as well as building networks of activism (Hilton and McKay, 2009). They engaged in a variety of topics from environmentalism, sexuality and gay rights, international aid and development, gender, and race. When looking at the role social movements played in the advancement of gay rights and decriminalisation of homosexuality (Plummer, 2006), as well as human rights, the importance of civil society in rights-based struggles becomes clear. This can also be conceptualised in the framework of civic stratification, as NGOs and community organisations can mobilise material and moral resources to expand rights, which were not present before. This is reflected in the category of civic expansion. As seen in the previous chapter, undocumented migrant women often need a lawyer to be able to claim rights, as they experience a civic deficit.

Due to their location within wider society, civil society organisations act as an intermediary between the political, i.e. the state and its institutions, and the social sphere (Hilton et al, 2013). They form a connection between the private and public sphere of life, and have an understanding of the issues migrant women without status experience in their everyday lives. As explained in Chapter 3, this connection and knowledge opens up the

opportunity for civil repair (Alexander, 2006), which can take the form of “challenging injustices through the law” (Morris, 2009:367). To illustrate the concept of civil repair, one example of an intrusion into the civil sphere from the non-civil sphere is a change in legislation by the government that threatens the integrity of the civil sphere, such as the hostile environment policy in the UK. Civil society organisations fight against this policy and by that aim to broaden solidarity between migrants and British citizens. Civil repair therefore “aims to mend the social fabric” (Alexander, 2006:34). In the context of this research, it is reflected in the different roles organisations play in the lives of undocumented migrant women, when supporting them to get housing from the council, lodging a rights claim and offering pro bono legal representation, or providing food for those in destitution. The legal aspect here is crucial, as it is this power from the legal system that makes it possible for actors from civil society organisations to challenge non-civil spheres, i.e. the government and its institutions. In terms of legal consciousness, in order to pursue a rights claim or other steps which can be conceptualised as civil repair, one first needs to frame issues faced in their life as an injustice, which is mostly part of a stance *against the law* or *away from the law*. When having a resistant consciousness and an understanding that the law is not just, undocumented migrant women are more likely to seek help from a lawyer or a community organisation (see Chapter 4). However, it can also be extreme precarity due to rightlessness that may lead to someone seeking out for support. In order for rights claims to work, certain moral and material resources are necessary, as discussed in the previous chapter. A similar argument can be made for civil repair, as it also – though not exclusively - involves using the law for one’s own goals. In this chapter, I show different forms of civil repair performed by community organisations, as well as rights work. I first give a detailed description of the organisations I worked with and the services they offer.

## **7.2 Migrant Rights and Community Organisations in London**

In the UK, charity is a common synonym used for NGOs and community organisations (Hilton

and McKay, 2009). As of December 2017, there were 168,000 registered charities in England and Wales (Charity Commission, 2018). There are various community organisations in London that offer services to migrant communities, which can be categorised in two different types: Organisations that cater to specific migrant communities from the same country or cultural background (Latin American communities, Chinese community services, and so on) and ones that offer services to migrants in general, regardless of their country of origin. The Refugee Council, a nationwide NGO, provides a service directory listing organisations offering services for refugees (Refugee Council, no date).

The community organisations I worked with were mostly small, with two to three full time paid employees, offering generic services to all migrant regardless of their status. I am focusing on those two organisations, which are both located in London. Organisation A supports around 2,000 service users yearly, Organisation B supports around 150 to 240 people every week. I furthermore draw on interviews with legal advisors from two other community organisations, as well as material hosted online about the work of campaign and activist groups. As explained in the Chapter on Methodology I anonymised the names of these organisations in order to protect the identity of the women who participated in this research.

The organisations are motivated by a vision to create a society without discrimination based on nationality or race, which welcomes migrants and enables them to live in dignity, and become members of that society (Organisation B, no date). Their aim is to fight racism against migrants, poverty among migrant communities, and promote health and wellbeing for both migrants as well as black and ethnic minority communities (Organisation A, no date). Another central element is to overcome obstacles that have been created by legislation, establish safe and welcoming spaces, and promote as well as safeguard rights for migrants. They operate with small budgets and continuously need to secure funding by means of writing applications for funds. They receive funding from religious organisations, funding bodies such

as the big lottery fund or the people's health trust, and self-organised fundraising activities. Migrant rights organisations also receive funding from local councils.

Migrant rights and community organisations in London operate in a challenging environment. This is due to numerous legislative changes part of the hostile environment policy, as well as funding cuts. The challenges they are facing stem partly from the legal aid reforms in 2013, which barred all migrants except asylum seekers from accessing legal aid for immigration cases. As fewer migrants are able to claim legal fees for their cases, this means a higher workload for community organisations providing free legal representation (Organisation B, 2016). At the same time, local councils have been forced to cut their budgets within wider austerity politics of the British government, which also effects community organisations. This means that local charities have also experienced the funding cuts as they do receive financial support from councils. This is reflected in the 2015 annual report by Organisation A. The report states that 2015 “continued to challenge the organisation financially. The organisation survived with the smallest revenue operating budget in its history” (Organisation A, 2015:2).

Community organisations in London heavily rely on voluntary work. Some volunteers have been working in the same organisation for many years which means that they have developed specialist knowledge, as well as close ties with service users. At the same time, due to the high number of volunteers working in community organisations, the organisations are often run in a rather chaotic manner as volunteer work is less stable than paid work. Another reason for this is the high workload of small organisations, which often have to deal with crises, as they are a first point of call for destitute migrants (Organisation B, 2016) During my placement at Organisation A I often worked at the reception, welcomed clients coming in and answered the telephone, which was a stressful task:

In the afternoon the telephone would not stop ringing. A young Afghani man who is threatened to be deported called. I told him to ring Duncan and Lewis solicitors, as they may represent him in court. A Gambian woman who is refused asylum, despite having suffered from FGM and only has five days to

make an appeal, she was very distressed. The solicitors have refused to take it up again and the other case worker in the office refers her to JCWI. Other people call to ask questions, they need to come into the office and bring documents, submit finger prints. Another client comes in who is living with her two kids in very substandard conditions. She wants to move, its very damp where she lives and her kids have developed health problems. The council refuse to rehouse her, even though they have a duty to do so (Fieldnotes, February 2016)

When new legislation is being implemented legal experts have to understand what the changes in the law mean practically for the migrants they are working with and familiarise themselves with the details. This is also the case for volunteers, as the law is complex and the organisations therefore need to make sure that everyone understands the implications of new legislation. They do this by organising workshops in which specific areas of the law are taught. As immigration law has become more restrictive in recent years in the UK, a higher number of people are and will be in need of support, as the aim of the law is to exclude them by creating a hostile environment. Those developments combined produce a higher workload for community organisations working with migrant communities. In the next section I explore the different roles community organisations I worked with play in the lives of undocumented migrant women.

### **7.2.1 Ameliorative and Support Role**

Community organisations are a point of support in emergency or crisis situations for vulnerable and destitute migrants. They aim to support vulnerable migrants and improve their living conditions. They provide a safety net when people are about to become homeless, experience abuse in their homes, and then need help to find emergency accommodation or negotiate access into social services accommodation. Many women without status live in insecure accommodation, and when becoming homeless they stay with friends or people they know from their church or mosque. During my fieldwork, I encountered many women who approached the community organisations with all their belongings packed in bags on the day they were evicted. Caseworkers then try to help find a solution for the woman not to become homeless, which can extend well beyond normal working hours. Undocumented migrant women are not eligible for support from mainstream services, meaning that finding

accommodation in such a situation is challenging. Many women with children end up being housed in social services accommodation, as they are eligible for Section 17 support (See Chapter 4 and 6).

Another crucial service provided by community organisations is running food banks or offering food packages for destitute migrants and their families. Some organisations also offer free lunch for their service users, which is a way of building a community space. Staff members of the organisations stress that such spaces are incredibly important for marginalised migrants, as they can meet people, socialise, and reduce their level of isolation within society. This is also facilitated through other projects organised by different community organisations, which include community gardening, group therapy sessions, and English language classes. An important service for migrant women with children offered by Organisation B are crèche facilities at each day centre, which gives the women the possibility to socialise and take a break from their mothering responsibilities.

A central element in those organisations involves community building, which is a crucial aspect of rights work. Actualising rights depends on creating communities and cultures of rights (Plummer, 2006; Plummer, 1995), as “the administration of rights is at least in part about the constitution of community through which rights are experienced” (Morris, 2013:64). The aim of community organisations is to create a space which gives everyone equal access to their services. If someone is refused asylum, or doesn’t have status, they are not excluded from participating, which is usually the case in mainstream services. Most women I interviewed are grateful for the support and help they have received from community organisations, since this meant being able to survive, continuing their life in this country by regularising their status, as well as finding out about their rights and how they can claim them. If becoming undocumented is understood as a social process which involves ‘learning to be illegal’ (Gonzales, 2011; Bloch, Zigona and Zetter, 2014), then the same accounts for the

reverse process, namely learning about rights and legality (Hernández, 2010). To understand one's lives in legalistic terms, and learn about rights, a community is needed, in which this social process is located. Migrant rights organisations are building and creating this very community, which is necessary for claiming rights.

A grassroots group that offers support to undocumented migrant women is the North East London Migrant Action (NELMA). The group brings together activists from different parts of London to campaign against issues faced by vulnerable migrants. They focus on families with no recourse to public funds (NRPF) that experience injustices at the hands of local councils (NELMA, no date). The group runs an accompanying scheme to support migrant families approaching social services for Section 17 support. They campaign against gatekeeping practices and mistreatment of vulnerable migrants on a local level. They offer practical support that can be framed in the idea of civil repair (Alexander, 2006). Activists give emotional support through the accompanying scheme to vulnerable migrants trying to access support from the council, as well as educating them in terms of their rights and are thus performing rights work. NELMA's aim is to give more than legal support, but work together with migrants directly and provide solidarity, which Alexander (2006) considers to be a central feature of the civil sphere. Their vision is informed by the belief of a world without borders, in which no one is 'illegal'.

NELMA activists perform rights work with their activism, as they create a public culture of rights for undocumented families and articulate rights (Plummer, 2006) that are enshrined in legislation but often violated by local authorities. In her article about implementing human rights for battered women, Sally Merry Engle (2003) stresses the crucial role of civil society organisations. She argues that the women's movement, shelters, and support groups are necessary for battered women to develop a rights-bearing identity. Survivors of domestic violence she interviewed emphasise the importance of civil society organisations, where they

can form new relationships, get support to pursue legal proceedings, set boundaries with the perpetrator, and meet other survivors (Merry, 2003: 367). This shows how rights need social practices and communities to be actualised, which are located in the civil sphere (Alexander, 2006). In community organisations, undocumented migrant women socialise, and meet with other women who have similar experiences. The legal support and representation helps them to encounter the state, learn about rights and receive emotional support. Services which are denied to undocumented women within mainstream service provision can be accessed in the civil sphere. By this community organisations aim to make right what the state as a non-civil entity has been denying to women without status.

### **7.2.2 Provision and Mediation Role**

Another role community organisations play in the lives of women without status is the provision of services and mediating between migrant women and the state. They do this by offering free legal representation or finding a lawyer. Some organisations employ legal advisors themselves such as in the case of Organisation A; others cooperate with public law projects, citizens advice bureaus, or private law firms that sometimes take up pro bono work. This is an important aspect of rights work, as the law is complex and cannot be easily navigated without expert knowledge. With this knowledge, volunteers and legal advisors help migrants to deal with the bureaucratic jungle of the British system. The right way to support a person when they need advice is not always straightforward, and working in those organisations is often chaotic, since there are few resources allowed for massive needs for support.

As explained in the previous Chapter, in terms of civic stratification (Morris, 2002; Lockwood, 1996) undocumented migrant women are likely to experience a civic deficit. If that situation occurs, they need support to claim their rights. A caseworker or lawyer working in a community organisation has more resources and knowledge of the law, both in a material and moral sense and can thus support a less privileged person in such situations to hold state institutions accountable to written legislation. In many instances, undocumented migrant



women who I met during my fieldwork explained how support workers in community organisations have helped them when interacting with social services, and ensured that they are housed in adequate standards. Organisation A helped Felicity to find a lawyer, who then managed to get her children back to their mother, as they were unlawfully housed in foster care. When housed in substandard conditions, community organisations can intervene and put pressure on social services to house the families adequately, which shows another aspect of civil repair.

Migrants that use the services of community organisations usually have no access to mainstream services due to their immigration status. They may have had negative experiences in the past when trying to access services, which adds another layer that can lead to avoiding approaching them directly. In that way, community organisations fill gaps that the state left in terms of service provision, which grew considerably in the 1980s when state institutions were strategically rolled back under the Thatcher administration (Hilton and McKay, 2009), as well as more recently, when migrant access to services was curtailed under the hostile environment legislation. By providing legal advice, community organisations take the role of an interface between the legalistic and bureaucratic system of the state and the life of migrants. Drawing on the case of migrant domestic workers in Hong Kong, Amy Sim argues that “NGOs play a vital role for sectors of society whose welfare falls beyond the purview of mainstream institutions” (2003: 486). Civil society organisations respond to parts of the populations that are in need of support, but who have been excluded by state institutions, due to restrictive immigration legislation (Sim, 2003; Ambrosini, 2015). In that way, the state fails to ensure human rights for everyone present within their national borders. The activities of NGOs eases suffering on the one hand, but can likewise be criticised as it may take responsibility away from politicians to act (Castañeda, 2007). The service provision is then functional to the states policies of excluding undocumented migrants, putting NGOs and community organisations in

a “double bind, since the[y] (sic) must interact with the state while remaining critical of its policies” (Castañeda, 2007:284).

Members of community organisations are critical of the Home Office and other government institutions, as they know by experience how they act towards undocumented migrants. As the family caseworker of a London-wide migrant charity explained, the service users, volunteers, and employed staff working in community organisations have a “common enemy” (Interview, 2014), namely state institutions such as the Home Office or social services. She described that social workers in social services are both overworked and not qualified to deal with immigration matters, which means that they often do not deal with cases of migrant women in an adequate manner. Anecdotes about experiences with those institutions are shared on a daily basis and can serve as creating bonds between people. The poor decision-making practice within the Home Office is well known within migrant rights organisations. A report by the parliamentary ombudsman in 2015 criticised the Home Office for delays and poor decision making. The report showed that the Home Office is the government department with the majority of complaints raised against it upheld, totalling 69% (Parliamentary and Health Service Ombudsman, 2015). In 2016, the number of complaints upheld against the Home Office rose to 75% (Parliamentary and Health Service Ombudsman, 2016). However, as a government department the Home Office has a certain freedom to act, and it remains difficult to hold it accountable for mishandling cases and making applicants wait for decisions for an extended period of time.

Caseworkers and lawyers need to be extremely patient to deal with those circumstances and the prolonged waiting time applicants have to endure when waiting for the outcome of their cases. In some instances, they get angry with the case workers, as they strongly feel they have the right to remain. In general, dealing with immigration cases is often very emotional, as people’s lives depend on it. The work done by volunteers, social workers, and caseworkers,

can also be understood within the concept of care work. In community organisations, care work is happening outside of the family and domestic sphere, in which it is traditionally located as a form of reproductive labour. Paid and unpaid care work is mostly performed by women (Wang, 2013). Care work provided for vulnerable migrants on the one hand gives informal social protection and can improve the wellbeing of migrant women, who often themselves perform high levels of care work for their families and communities, as well as paid labour. Karen, the mental health development worker in a South London community centre explained that she sees her work as contributing to public health of migrant communities, in which mental health issues are highly prevalent. She has a lot of informal conversations with service users in which she supports them in their daily lives but also aims to explain to them how the law works and tries to encourage migrants to stand up for themselves in encounters with government institutions. In her role, the care work is more formalised compared to that of volunteers. Many of the volunteers are white British citizens, and if those identity categories are not reflected on, then the care work runs the risk of reproducing existing power dynamics enshrined in citizenship categories between migrants and citizens (Wang, 2013; Stock, 2017). In that sense, the care work can be ambivalent and may produce outcomes which are not line with the visions of community organisations to build a society without discrimination.

Within the community organisations, people with different identities, as well as social and legal statuses, meet. Those encounters can provide an opportunity to challenge labels imposed by legal status and overcome differences based on social identities of race, class, gender, and immigration status (Stock, 2017). Organisation B tries to overcome the differences between service users and service providers by employing refugees and people from ethnic minority backgrounds, as well as encouraging service users to actively participate in the organisation as volunteers. The question arises whether those encounters and the work done

within the civil sphere can change dominant political discourses around migration, as the work of community organisations is not necessarily political in a traditional sense. The difference between the citizen and the foreigner is maintained in community organisations (Ticktin, 2011), as they operate under the parameters of the British legal system.

When migrants are waiting for a response for their application, which often takes a prolonged period of time, they often get angry or upset. The same applies to those whose application gets rejected. In those moments, caseworkers similarly find themselves in a difficult situation. One immigration advisor condemned Olivia, a regular service user, when she got angry, as the Home Office repeatedly rejected her human rights claim and doubted her motherhood (See previous chapter):

John told me about one of his clients, Olivia, and her situation, which is difficult for her. He said he would not let me interview her because she is aggressive and gets angry very easily. I was puzzled by his description, I had seen her before and she had looked tired, worn out. He showed me her file and I thought that it was not surprising that she was easily irritated in the face of how the British state had treated her. He didn't show much empathy with her emotional state, even though her situation is very tricky. John claimed that he was on her side but this was not visible to me in the way he talked to her and how I saw him interact with her later that day. He did not show much patience and brushed her off quickly when he explained the next steps he was planning to take with her case" (Fieldnotes, December 2015)

She was vulnerable and destitute and it was clear on a legal basis that her claim was well founded. Here it became apparent how the activities of community organisations work as a mediator or buffer between the migrants and the state. People working in those organisations have to explain how the system works and then translate the lived life of people into legal categories. This can create tensions between service users and community organisations. The situation with Olivia could not be resolved at that point, as there was no other possibility for her than waiting.

Even though NGOs "present themselves as alternatives to the status quo, their work has been characterised by ameliorative action on the small-scale, rather than engagement with more fundamental issues of the economy, society, and politics" (Milton et al, 2013:217). In this case, the community organisations share the vision to live in a society that welcomes refugees and migrants, upholds their human rights, and does not discriminate against ethnic

minorities and foreigners. They do this by building communities, supporting migrants with their rights claims, providing food, and fighting against state departments, which can be framed within the concept of civil repair. Providing migrants with legal representation to claim rights is a form of civil repair. However, rights claiming is a limited form of civil repair, as it only draws on the existing legal framework, which in the case of the UK is narrowly defined and does not offer protection for many.

The work done within community organisations can be seen as acts of citizenship (Engin and Nielsen, 2008). The migrants seeking advice make claims that mark their lack of social belonging. The caseworkers and volunteers, who are mostly British citizens, show their responsibility to those who are not welcomed by the public and act to change this. In that way community organisations aim to build “an active, dynamic and vital citizenry” which Engin and Turner (2007:13) describe as an “absolute precondition of democracy that uphold human rights”. Indeed, the practices of citizenship performed within the organisations expand beyond the borders of nations, and are characterised by solidarity. This shows the organisations’ aspirational and ideal understanding of society, which aims to work towards fulfilling the ideal of universal and equal rights for all. Those practices aim to widen the scope of citizenship as a lived experiencing by including those without status. This can have an influence on undocumented migrant women’s legal consciousness, as those acts of citizenship can change their understanding of what they are entitled to, leading to a different understanding of the law. However, Engin and Nielsen’s theories (2008) appear to be optimistic at points when it comes to understanding the continuing power of citizenship as a legal status, as it is not as simple as to perform acts of citizenship in order to gain protection through the law.

When looking at the overall situation of undocumented migrant women, the question arises of how much change from within the legal system is possible through rights claiming, as this does not change the wider system of restrictive immigration control, in addition to

stratified rights that operate on a more individual level. In that way “the language of rights can be alienating and individualistic, but since it refers to some desirable capacities the oppressed should have, it can be empowering” (Menon, 2004:59). Despite that criticism, the work of community organisations should not be condemned quickly, as being protected through rights means survival for formerly undocumented people. Once they have acquired status, the vulnerabilities created by the law decreases and women experience a higher level of safety. The work these migrant rights organisations do is incredibly important, yet rather than fundamentally challenging the status quo, they provide a mediating role within a democratic system.

### **7.2.3 Advocacy and Campaigning**

The community organisations I worked with are not only service providers on a daily basis but are also involved in wider advocacy and campaigning work, which happens within the conventional political sphere. I present four different examples of advocacy, reaching from protest, negotiations with local politicians, lodging legal challenges, and building coalitions between various civil society organisations to influencing drafting of new legislation. This shows how civil repair can take place in various arenas and takes different shapes. The advocacy and campaigning work is driven by a different societal vision in terms of how the UK welcomes migrants into its society.

- 1) Organisation A supported two of its service users to lodge a legal challenge against the Home Office after the so-called ‘Go Home’ vans were driving around London. The legal challenge was based on the fact that there was no prior consultation with the communities who were affected by the operation (Organisation A, no date; See chapter 4). They argued that the way operation Valken was rolled out violated the governments duties towards communities under the Equalities Act. No further legal action followed as the operation was only a pilot, and government institutions are not legally required

to consult communities prior to a pilot operation. However, thereafter the Home Office pledged to consult local communities before rolling out similar campaigns in the future. Members of Organisation A also lobby politicians and are involved in a wide array of campaigns around street homelessness of migrants in London, such as fighting against Operation Nexus that polices migrant communities and against racial inequalities in general in several London Boroughs (Organisation A, no date).

- 2) NELMA actively campaigns for the rights of vulnerable migrant families, and works to ensure that the local authorities in London uphold their duties in terms of the law. They do this by being present in meetings migrants have with the council when trying to access Section 17 support, taking notes, preparing migrants for the encounter with social services, and making sure they know their rights (NELMA, no date). The group was able to show how several local authorities across London systematically mistreat migrant families with intimidation techniques and unlawful gatekeeping. Jeffrey Alexander (2006: 208) argues that social movements use their networks and the public sphere to demand “justice through its networks and public spaces”. The activists managed to arrange a meeting with the mayor of the London Borough of Hackney, Phillip Glanville, and presented him evidence of the poor treatment vulnerable migrant families who are often undocumented face in Hackney (NELMA, 2017). By directly interacting with and confronting the elites, NELMA tried to put pressure on state institutions to intervene, which is a key role of grassroots groups in the civil sphere (Alexander, 2006). During the meeting in December 2016, the mayor made several promises to investigate and internally review the practises, and he also apologised directly to one migrant family involved in the negotiations (NELMA, 2017b). As of May 2017, none of these promises have been fulfilled and according to NELMA, the mayor had been unresponsive to their emails. This shows how it is structurally difficult

to challenge certain practices towards marginalised groups in society. This stems from the fact that local governments are at the forefront dealing with vulnerable migrants, while simultaneously being affected by austerity measures<sup>16</sup>. At the same time, they have to abide by government legislation, in which local councils have little influence. At the end of June 2015, local authorities had spent more than £500,000 to provide support for vulnerable migrants with NRPF (Local Government association et al, 2015). NELMA regularly publishes stories of mistreatment by several London councils on their Twitter accounts, such as those of Lewisham, Hackney, Haringay, and Hackney.

- 3) The third example of campaigning in relation to the lives and rights of migrant women is the campaign work that Southall Black Sisters (SBS) has done to abolish the NRPF condition and provide safe ways for migrant women to leave violent relationships without losing their immigration status. SBS is a grassroots charity led by and for women of colour. Their campaign brings together several women's organisations to highlight the impact NRPF has on women's lives without secure immigration status and who suffer from domestic violence in the context of marriage, employment, or trafficking. It is chaired by SBS and hosted by the Women's Resource Centre and includes twenty-seven key women's organisations (Women's National Commission, no date). SBS has campaigned against restrictive immigration rules that put women at risk since the 1990s (SBS, no date). The aim of the campaign is to abolish the NRPF condition for women who were abused and have insecure immigration status, and to provide funding on a long-term basis to ensure that all migrant women who experience domestic violence have access to refuges or local authority accommodation with their

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<sup>16</sup> By saying that I by no mean wish to defend the gate keeping practises and the mistreatment of vulnerable migrants of local authorities



living expenses met while they are awaiting the decision on their application to stay in the UK. Other demands are to prioritise applications when there is evidence of domestic violence, reform the domestic violence immigration rules to include all types of evidence of violence, extend the domestic violence rule to women with insecure immigration status and women that have been trafficked, as well as to provide legal aid so that survivors of domestic violence have access to good legal representation (Women's National Commission, no date). In 2004, the government provided limited funding for refuges to house women with NRPF, after direct pressure from the campaign (SBS, no date). After sustained campaigning the Home Office launched a pilot scheme in 2009, the Sojourner project, to assist women with NRPF who were experiencing domestic violence (SBS, no date) This scheme assisted women for forty days while they were applying for the right to remain. The funding was extended until 2011. The campaign was able achieved a major success in 2010, when the Home Office introduced the destitution domestic concession for women who apply under the domestic violence rule to access benefits and public housing for three months, while their application for settlement is pending (Latin American Women's Right Service, no date). This campaign was started twenty years ago. It has achieved some of its demands but other goals have not been achieved yet. Nevertheless, it shows that due to the campaigners' persistence, and by building coalitions between different civil society groups, campaigns that aim at changing existing legal frameworks and create more inclusive legislation can be successful.

- 4) Civil society actors also play a role in the process of drafting new legislation. Community organisations can submit evidence to Parliamentary Enquiries or Public Consultations, in addition to writing briefings for MPs and members of the House of Lords that give them a basis for debate when new legislation is drafted. Civil society

organisations as well as local councils have been active in the abolition of Section 4 support for refused asylum seekers. Section 4 support gave accommodation and a £35.39 payment on a card. A Parliamentary Enquiry into asylum support for children and young people published by the Children's Society in 2013 recommended the abolition of Section 4 to ensure that no child in the UK is destitute (The Children's Society, 2013). The enquiry gave detailed information of the lives of children and their families who receive asylum support and showed how Section 4 support leaves children and their families destitute and does not achieve its goal of making refused asylum seekers leave the country. With such enquiries, community organisations have the opportunity to share their experiences of working with migrants on a daily basis, including the consequences that certain provisions and policies have for them. In the drafting period of the 2016 Immigration Bill, a broad coalition of civil society organisations, such as migrant rights and human rights campaigners collaborated to influence the drafting of the legislation and minimise the toxic effect of the hostile environment provisions (Matthews, 2016). In August 2015, the Home Office published a consultation asking for proposals by members of the public and civil society to reform the support for refused asylum seekers and undocumented migrants (Home Office, 2016c). The consultation stipulated that Section 4 support provides an incentive for failed asylum seekers to stay in the UK and thus proposed to repeal Section 4 and replace it with another form of support. This form of support would only be offered if there is a genuine obstacle for a failed asylum seeker to leave the country (Home Office, 2016c). 113 NGOs responded to the consultation, as well as numerous councils and local authorities (Home Office, 2016c). The responses gave a detailed insight into the experiences those organisations have working with vulnerable migrants who would be affected by the changes of support. It is yet unclear how much influence the input

of community organisations and local councils into the new legislation have had, as the regulations of the Home Office have not been published at the time of writing. Considering the amount of work civil society organisations and local authorities have done to influence the outcome of the Immigration Bill and minimise the negative effect of new legislation on migrants in the UK, the success of those changes is rather small. It does constitute civil repair, however when taking the measurements of the hostile environment provisions into account, though a lot more needs to be done to ensure that failed asylum seekers and migrants without status are not destitute, which makes them more vulnerable to exploitation and violence, as seen in Chapter 5.

In terms of rights work, those campaigns and legal challenges make claims in the public domain. They are taking an issue which is experienced in the private sphere into the public, which is part of “social processes through which rights emerge” (Plummer, 2006:153). The campaigns show the effect immigration law has on people’s lives and presents a different way to think about migration compared to the way the media and politics depicts it. Campaigning is crucial for civil repair, as it can shed light on experiences in the private sphere which otherwise would not be visible, especially the experiences of undocumented migrant women who are often confined to the domestic sphere. Civil society actors aim to influence the government to change restrictive immigration legislation that excludes migrant women and often leaves them destitute.

#### **7.2.4 Control and Governance**

Another role community organisations perform is to participate in the control and governance of migrants, even though this is often unintended or unwanted. The legal advisors, volunteers, and support workers I worked with express that they are on the side of undocumented migrants, which is also part of their vision. In the case of Organisation A, their vision is to build a society for everyone without discrimination. However, as the organisations operate in

the legal framework of the British state, this also has consequences for their work. Working within a rights-based framework means that the negative aspect of rights, namely control and governance, cannot be avoided. In some cases, vulnerable families without status are not advised to ask for Section 17 support from the local authorities, as this automatically means that the Home Office will know about their presence in the UK. As immigration officers are working in many councils, the local authorities immediately put pressure on families to submit an application for LTR, or if they are not willing to leave the country voluntarily, threaten to deport them. If the applicant does not fulfil the requirements linked to most human rights claims, community organisations then advise them not to approach social services and to find a different solution. However, this is extremely difficult. A Nigerian woman I met during my fieldwork who has a six-year-old daughter with Down's Syndrome and a heart disease had to leave friends with whom she was staying. Even though social services would house her as they have the duty to safeguard the well-being of her daughter, it would also mean that they would pressure her to return to Nigeria, or put in an application, which would not be successful as she did not qualify for the requirements of a human rights application. She was desperate upon finding out that she had to wait for another year until she could go to the local authorities without endangering her stay in the UK.

One aspect of governance through NGOs is seen in the recent case of homeless charities St. Mungo's and Thames Reach assisting the Home Office with deportations of rough sleepers in London, which was revealed in a report by Corporate Watch, an independent research and publishing group (Corporate Watch, 2017a). This report shows that immigration enforcement conducts joint visits with homeless outreach workers, which are meant to support homeless people, but in that situation through their collaboration help the Home Office to deport rough sleepers.

Providing legal representation to lodge an application for LTR also involves an element

of governance, as granting rights gives the state the opportunity to administer and control populations. After receiving LTR, many formerly undocumented women remain destitute, as their visa has the NRPF condition attached to it. When applying for this to be lifted, the way rights are linked to control (Morris, 2012) and are not cost free (Choo, 2013) becomes visible. During my fieldwork, I encountered many women who were destitute as a result of the NRPF condition and thus continued to rely on support from community organisations. They struggle to survive as they cannot claim benefits and cannot work full time either, when being the sole carer of their children. This shows how legal status is not a linear process, as having LTR does not automatically solve issues migrant women are facing, as their social location is influenced by numerous parts of their identities, such as race, class, and gender. The way the labour market is structured means that as women of colour from non-European countries, only a few jobs are available, which are often located in the care, hospitality or cleaning sector, and are generally low paid. Goldring and Landau (2011) argue that migrants who at one point had a precarious immigration status often remain in precarious employment, even after having regularised their status and thus gaining fuller rights. Having LTR with NRPF gives migrant women access to more rights compared to someone without status, but this does not mean that they do not experience legal violence (Menjívar and Abrego, 2012). In this case the NRPF condition restricts the everyday life of a person and does therefore constitute a mechanism built into the law that creates suffering.

In order to lift the NRPF condition an application form needs to be filled out explaining why the person is destitute and needs access to public funds. Additionally, the applicant needs to provide six months of bank slips to prove the destitution. I worked with a service user, Andrea, who had received status after being undocumented for five years. She survived without working, as several friends regularly gave her money, which they paid into her account. Andrea was told that the people who financially supported her needed to write letters

for her application, which state the amount of money they were giving her, as well as their names and addresses. Right away, she said that her friends would not do that, as they do not want the Home Office to have access to their private data. Her fear of this being a measure of control through the state was not unfounded, as the Home Office runs background checks on those providing support for applicants. If they find anything suspicious, they report that person to HMRC. This shows the control aspect of rights that extends beyond the applicant to their support network. As a single mother, Andrea was not able to work in a full-time job in London, which she would have needed to financially support herself and her family. Yet, despite fulfilling the criteria for lifting the condition in terms of destitution, as a caseworker I was not able to submit the application as her friends refused to provide supporting letters. As a result, she had to wait another six months, and had to make sure that none of her friends' payments would appear on her bank statement. Even though the act of attending a community organisation for legal advice and making a rights claim can be understood as an act of citizenship (Engin and Nielsen, 2008), the law's power to regulate identities and their life chances means that those acts are not necessarily emancipatory.

### **7.3 Community Organisations as a Space where Law Meets Lived Life**

Community organisations are a space in which the written law meets the life of people. Legal categories are clear cut and appear to be straight forward. However, those categories as established in the law in the books operate within a binary framework, and “since the law seeks uniformity and concrete identities, it tends to flatten all ambiguity and multiplicity to fit dominant norms” (Menon, 2004:208). The work of legal advisors and immigration lawyers also includes the translation of the lived life of a person into these categories, to establish whether a person without status can claim rights or is eligible to support from the government. This means that the legal framework informs the way the legal advisor interacts with migrants, who seek legal advice. The lived experiences of undocumented migrants need to be translated

into legal language, as Kate Nash argues:

Making human rights claims using law can represent a huge obstacle for poor people. It requires legal expertise – whether to take a case to court, or to lobby governments or IGOs. ‘Translators’ are invariably necessary to mediate...There is a danger that people lose control of the issues that concern them: lawyers become the only ones who can direct campaigns because they are confident in a language that is inaccessible to anyone else (2015:36).

Migrants who seek legal advice are often distressed and in a moment of crisis, which made them seek advice and help in the first place. The mismatch between the lived life and the law becomes apparent in that moment. Legal advisors ask certain questions to establish whether a person has the possibility to regularise their status. This often involves explaining to individuals who are extremely distressed and vulnerable that there is nothing that can be done for them in terms of claiming rights and that they will probably become homeless or have to leave the country. This happened with Felicity, when she came to seek legal advice. In the initial consultation, I had to tell her that she cannot be housed by social services prior to her eviction. She was already distressed to begin with, but upon finding out that she could only wait, started to cry. I moved on asking more questions about her immigration history, in order to establish how strong the application for LTR was that she had made with another solicitor and if there were other ways for the family to regularise their immigration status. Questions like, when did you first come to the UK? What kind of visa did you have when you entered? How old are your children? How many years have the children been in this country? If you did, why did you overstay your visa? Why can you not go back to your home country? Her story was quite complex so I asked the immigration advisor, John, to help with the consultation. His questions to Felicity were informed by a legal approach to the situation. It was clear that he knew what kind of information he needed to know to understand her situation. The categories to frame it were already present in his thought structure, which was defined by legal thinking and reasoning, as this is what is decisive when trying to understand if someone has grounds for regularisation.

The law is not compassionate. It is rigid and operates in ways that often do not represent

the realities of everyday life. It quickly became apparent that Felicity will probably have no grounds to regularise her status:,

She sat in front of us and she was crying. Saying that she has been in this country for so many years but no one would listen to her and her story. She felt left out and ignored and it made her incredibly anxious. I was trying to be compassionate and find out the facts, but everything was so emotional and difficult for her. She did not frame her story in a legal framework, which did not fit to her life and what had been going on (Fieldnotes, January 2016)

John kept on asking in a harsh tone why she had overstayed her visa. Why she had not left. Hedid not pay any attention to her emotions. Instead, he seemed annoyed. The way she framed her narrative did not match the way the story needed to be discussed in legal terms. She did not address the narrowly defined legal criteria, and in the course of the conversation tensions arose between Felicity and the immigration advisor. He started speaking louder to make her reframe her story so that he could understand it in legal terms.

There was an obvious a mismatch between the lived experiences of Felicity, her story, her experiences and the legal framework. Overstaying the visa and becoming undocumented is not just a rational decision, it does not fit into the discourse of the law, which leaves no space for emotions. It was hard for her to answer the questions the way John demanded and kept on telling the story in her own way, where she was jumping back and forth in time, adding details here and there. He later told me that he was unhappy with her way of answering his questions, since what she was saying did not fulfil the requirements to get permission to stay in the UK, and she had difficulties to frame her story in a way compatible with the legal framework. It almost seemed as if her life collided with the law, as it was clear she would not be protected by it. Carol, another immigration advisor I worked with described the law as brutal and responsible for making people destitute, yet she reiterated that she has to tell those who try to regularise their status the truth about their legal possibilities. This is how high street lawyers often rip off migrants, namely by telling them that they are able to get LTR and then asking for high sums of money to do so, even if the applicant does not fulfil the requirements of the law.



In a conversation I had with John, he shared some of the difficulties he faces when giving legal advice and supporting migrants without status, both men and women:

[The] biggest issue I have with clients (and this isn't restricted to female clients) is them telling me what they think I want to hear. One of the biggest headaches I face is explaining to clients that they do not need to convince me they should be allowed to stay, we need to convince the Home Office. Endless inconsistencies in your stories is not the way to do that. With female clients, an issue I encounter, especially amongst the lesser educated ones, is a refusal to challenge me when I misunderstand something. I don't know if this is due to them coming from male dominated cultures, or to do with showing deference to people who are better educated or simply because they assume that what I am saying (even though it is incorrect) will help them, but it is very apparent. I frequently find myself having to say to people in this situation that I want them to tell me I am wrong and correct me, although that does not always seem to make a difference. Obviously with sensitive issues it is fully understandable why women (or men for that matter) may not want to disclose things to me, but on points like your entry to the UK or how you've supported yourself without status it is far better I know the truth (Fieldnotes, May 2016).

Within legal thinking, stories need to be linear to fit, and they have to be organised to fulfil certain criteria. However, this is frequently not how life goes, and how people live. This was also a topic Grace, another immigration advisor I interviewed, discussed, as she explained:

They have created these ideas that these migration routes or this big thing, even with asylum and all these things, they have an idea of these things, an idea of a migrant and they create laws around those paper ideas that they have on their paper. When ... in real life we move, we look for our children, we come and go with our children or we marry and we work and life changes all the time, so the law happens from the reality and that adds difficulties. Your case might be, it might be perfectly under x law but then because of different movement or things you have done they might not be relevant (Interview with Immigration Advisor Grace, 2015)

She shows the disparities of the lived life and the law, and that it is a crucial part of her work to bring those together when preparing a rights claim. The law is rigid and static (except when formally challenged or changed), while the life of people is more dynamic and does not always fit into the categories of the law. Due to the power the law has over people's lives, community organisations often cannot support people with legal representation and can only offer emotional support and subsistence.

#### **7.4 Limitations of Community Organisations' Work**

As explained above, rights claims constitute a limited possibility for civil repair as the law is defined in a narrow fashion and thus does not offer protection for many undocumented migrants. Legal advisors can appear to lack sensitivity to deal with certain cases, especially when vulnerable people seek advice. This becomes more difficult with language barriers. Many service users speak English, as they either have been in the UK for many years or have

grown up in a former colony of the British empire in which English is still an official language, such as India, Jamaica, Nigeria or Kenya. In some cases when translation is needed, other service users often help out to translate to get a general overview of what issue the person needs support with. As paying for translators is expensive, community organisations use a translation service via the phone. Those services are extremely helpful, but can also create difficulties in communication.

I used the phone translation services when working with Juliana, an asylum seeker from Albania who has three kids. She did not speak any English and we first talked with the help of another Albanian woman. Juliana stopped receiving NASS (National Asylum Support Service) support a week earlier and got a token to claim an emergency payment. She brought in a letter she received from the Visa and Immigration section in the Home Office. It stated that the payments had been stopped as her case has been resolved after she allegedly withdrew her application. We called the translation service, which did not help in making sense of what has happened. She did not understand why the payments have been stopped and explained that the legal advisor of this community organisation is her solicitor. In my field notes I described the situation as following:

It was not only difficult to communicate with her because of language barriers, it also seemed to me as if none of the senior members of staff cared about her case. John did not have time to – or did not want to – deal with her case. He said to me that he had tried to explain to her how the asylum system works, but that she simply does not understand. I tried to find her file to understand what was going on. My impression was that he lacked the sensitivity to deal with her, he raises his voice when she speaks to her and comes across as quite rude. He does not take time to talk to her, which may also be connected to the high workload he has. As a mother of three children, she simply lacks the capacity to deal with situation and is already busy taking care of her three daughters, which run around the office where we sit and are incredibly loud (Fieldnotes, March 2016)

Juliana was angry and upset about her case not being taken seriously. In the file, it showed that she had never been interviewed by the Home Office, despite having claimed asylum three years earlier. We called the translation service again, but I nevertheless had difficulties understanding her situation. Juliana assured me that she has not withdrawn her case. I called the Home Office to find out what had happened. The person I talked to did not

know either. After talking to the immigration advisor, John, I sent a fax to the visa and immigration section to ask them to continue her NASS payments, as she had not withdrawn her case. A couple of days later it turned out that she had changed her address and that the Home Office sent the invitation to her asylum interview to the old address, even though the address was officially changed. She started receiving NASS support again and was referred to a solicitor to represent her. We then referred her to an organisation that supports victims of trafficking, as she may have been trafficked to the UK, which I could not determine due to my limited knowledge of her case. She initially did not receive the support from the community organisation that she needed, which could be due to the fact that she does not speak English and did not know the way an asylum claim is handled. She fell through the support net the organisation provided. The staff members did not support her and it seemed that they did not deem her being worthy of it. Normally, when a person seeking asylum comes into community organisations and needs legal representation they are referred to a private solicitor, as asylum seekers qualify for legal aid. This did not happen in Juliana's case.

Her case study leads to the question of who is seen as a 'victim' by those working in community organisations and thus deserve support, and how such understanding is tied into the wider discourse which creates hierarchies between 'good' and 'bad', and 'deserving' and 'underserving' migrants (Anderson, 2008). Bridget Anderson argues that "to pass the test of trafficking one must be a true victim: unable to engage, or to make choices. One can only suffer and be rescued. Those who are angry, who are resentful, are not victim enough" (2008:7). This analysis does not only hold true for victims of trafficking, but I would argue, for migrant women in general. Migrant women who are angry, loud, and transgress certain boundaries by behaving in ways that is not typically accepted as female behaviour, do not get the same support as others. They can then be left without support or legal representation. This is also reflected in legal categories, as seen in Olivia's case, for whom it was incredibly

difficult to obtain status because of her being caught shoplifting. Olivia had tensions with the immigration advisor and other volunteers, as she was condemned for being angry. She suffered for a long period of time due to not having status, so it was not surprising that she was angry. Some migrant women who are seen as too pushy and demanding may be looked down on and treated condescendingly by service providers. One woman was a survivor of domestic violence and qualified for the DDC, but was described as too demanding and pushy by a social worker. The woman managed to leave her violent partner, seek legal advice, and was then housed in a shelter. If she had not been proactive in that way, she may have not been able to leave her violent partner. This shows how discourses of who deserves support and is seen as a victim also manifest themselves within community organisations, which generally see themselves as working against discrimination of any sort. A woman who is proactive and demands support is likely not to be seen as worthy of support, which was also the case for Felicity (see previous chapter). Such understanding reinforces stereotypical conceptions of race and gender, as it involves an implicit expectation how a person should act to receive support. Moreover, in order to identify a person who is in need for support, it is necessary to recognise those who are suffering the most, who will then be eligible for support and care (Ticktin, 2011), while excluding others.

## **7.5 Conclusion**

This chapter explored the role of community organisations and grassroots groups play in the lives of undocumented migrant women in London. It showed how crucial the civil sphere is for claiming rights, as community organisations create spaces in which rights can be learned about and actualised. The community organisations are active on different levels to do so, mostly by acting as a mediator between migrants and the state, as well as through campaigning and advocacy. The encounters within community organisations described in this chapter gave an insight into how rights can be accessed by undocumented women and how a community is

necessary for the experience of rights. In that way community organisations perform rights work, and build connections between the private and public sphere.

This ties into the debates around citizenship, which can be understood both as lived experience as well as a legal status. By mediating between the state and migrants, community organisations are working towards a more inclusive form of membership. Encounters between citizens and migrants can also extend the scope of citizenship, when those with higher levels of privilege enable others to claim their rights, and access services that they are excluded from in mainstream service provision. A crucial part is offering free legal representation for migrants who do not qualify for legal aid but are in need of a lawyer to navigate the British legal system and gain access to human rights. With the various activities community organisations provide they play a crucial role in the lives of undocumented migrant women and by performing civil repair aim to rectify the exclusion experienced due to restrictive immigration legislation. This reflects the idea that the civil sphere is characterised by solidarity, and actors within the organisation intervene into non-civil spheres, i.e. the government and its legislation to better conditions within society. However, it is also fragmented, which is seen in the case of governance of control by some community organisations.

The work of community organisations predominantly focuses on everyday issues and struggles to alleviate suffering of destitute migrants. This is mostly done by using existing rights and helping migrant women to claim them. In that way, the wider system of excluding undocumented migrants with restrictive immigration legislation is not challenged. Changing restrictive immigration legislation is possible through campaigning and advocacy. This is more successful when community organisations and NGOs build coalitions to run campaigns, which is a crucial aspect of rights work. However, advocacy is a long process and changing legislation is difficult, as seen in the case of the Immigration Act 2016.

For rights to work, they need an acknowledgment of others (Douzinas, 2000), which civil society organisations provide when helping migrants to claim rights. Their work can also be a step towards claiming not yet existing rights and broadening existing legislation, which is mostly done by campaigning work, as seen in the case study of NELMA. As human rights are a constant negotiation between different actors within the nation-state, community organisations and the legal experts play an important role to uphold rights for migrants. With their vision to create a society without discrimination based on nationality, the work of volunteers and case workers does make a difference in the lives of undocumented migrant women.

This Chapter showed the limitation of rights claiming. Having status does change the situation for a migrant woman and her family, however she will be likely to continue to experience difficulties in her life. This can be due to the NRPF condition attached to her LTR, or not being able to secure employment that provides for her and her family. Even though there is hope attached to receiving status and gaining recognition by the law,

Modern forms of power ... produce and regulate. Law is an important tool by which this is achieved. Law cannot therefore be expected to 'emancipate' in any straightforward way – legal recognition simultaneously involves regulation and normalisation of identity (Menon, 2004:205)

Due to operating within the framework of the law and the state, community organisations are involved in governance and control of migrants. Thus, they have a limited capacity to challenge the state framework and are at points complicit in upholding it. This shows the nation-state's continued power in determining who is granted rights and legal entry into its territory, despite human rights obligations that can offer protection. As the aim of the British government is to curtail access to rights for migrants and cut immigration to the UK, it becomes increasingly difficult for migrants without status to survive. Community organisations are important for their lives and provide material support as well as legal representation. These organisations are affected by funding cuts and constant change in legislation, which makes it more and more difficult for them to provide services for

marginalised communities. Those limitations raise the question of how much actors and organisations within the civil sphere can do with civil repair to change the conditions of undocumented migrant women who are excluded by the law. Using the law to change their situation does work in certain situations, yet does not change the wider situation of those who live at the margins of society without the right to remain, as not everyone qualifies for regularisations or is eligible to claim certain rights.

## **8 CONCLUSION**

The aim of this research was to study the lived experience of law and rights of undocumented migrant women in the UK. Despite the focus on one country, the experiences resemble those of other undocumented migrants who live in liberal nation-states and are excluded from the community of rights. My research included both informal and formal experiences with rights and law. I developed a conceptual framework that allowed me to explore and analyse the multifacetedness of rights. By weaving together various theoretical concepts I offer an analysis which departs from viewing undocumented migration solely through a legalistic and policy framework and centres the way women without status interact with and experience the legal system in their everyday lives, without neglecting structural factors.

I demonstrated numerous functions that rights play: they can exclude, protect, govern, control, and assert belonging. As the access to rights is difficult and entitlements are mostly absent, the lives of undocumented migrant women are precarious and they are often exposed to high levels of violence and exploitation. Even though the law excludes them, it still influences their lives to a vast extent, as they are not living outside of its reach, as people still need to live and survive, and continue to eat, breathe, and exist. It is thus not possible to escape or hide from the law, despite living in a space of legal non-existence (Coutin, 2003:34), as it is a system which is all-encompassing, it has no outside. Due to their position, most undocumented migrant women have a negative association with the law and do not believe in its promise of justice as they are acutely aware that being excluded from protection through it causes suffering and hardship in their lives.

Undocumented migrant women mostly perform jobs located in the domestic sphere. Their confinement to this sphere leads to safety from immigration raids but also to experiences of high levels of violence and exploitation. The absence of legal protection enables the perpetration of violence towards women without status, such as sexual and domestic violence, forced labour, and human trafficking. These crimes go mostly unreported, as doing such may



lead to detention or deportation, or the victim is too isolated to seek out for help. Here the intersection between patriarchal and legal violence those women experience becomes visible. Law, therefore, structures the domestic sphere with its absence, an argument reflected in the feminist critique of citizenship. This shows how undocumented migrant women experience living without status in another way than men and have a differential relationship to the law and rights.

The status of being undocumented is performatively inscribed into the women's identity, both through their families and employers, as well as in interactions with state institutions, such as social services and health services. In those moments, the understanding of not having rights is developed, which often precludes women from seeking out legal advice on their status and rights. Furthermore, partners or families use the lack of status against the woman to control her, which creates high levels of anxiety and fear.

The analysis showed how the lives of undocumented migrant women became more precarious due to restrictive immigration law and the introduction of punitive measures for those who break it. The nation-state with its legal regulations produces insecurity and vulnerability on a structural level (Spade, 2011). Despite the hardship they are enduring, most women are incredibly resilient and actively struggle against their position of relative powerlessness and exclusion. They go to great lengths to build a better life for themselves, which they feel entitled to, regardless of the formal lack of rights. They do this by building communities, earning money for themselves and their families and making sure their children are receiving a good education. In that way, their lived experience defies the legal category of being 'illegal' which is imposed by the law.

Rights come to play a more important role in the lives of undocumented migrant women in moments of crises, such as when they experience extreme violence, pregnancy, have health issues, or face eviction from their homes. Due to the absence of rights and thus being excluded

from mainstream service provision, the women receive support from their networks in those situations – if they are existent.

When deciding to flee from a violent home, undocumented migrant women are most vulnerable to further abuse. This can be either if the perpetrator realises that the woman wants to leave him or if someone who claims to want to help her, takes advantage of her situation, and continues to exploit or abuse her. The lack of rights in such moments has tangible bodily effects on the lives of women, as they are crucial for accessing state protection in liberal democracies.

Harsh immigration legislation is not able to solve the issue at stake (de Haas, 2008; Bloch and McKay, 2016), namely the existence of a group of people within a nation-state who have no rights. Due to restrictions on access to rights and basic services such as healthcare or the ability to rent an apartment, it is the state which creates vulnerability. This shows hierarchies built within the legal system, as certain rights are readily accessible for citizens, especially for those who are privileged, such as white, middle-class people, but incredibly challenging to access and claim for those without status. With new legislation documents and proof of one's legal status become more important in daily life, which can be seen in the recent case of denying Commonwealth migrants who arrived in the 1950s and 60s immigration status and citizenship due to lack of documentation (Nason, 2018).

In that sense, the question arises what the aim of immigration policies and laws such as the hostile environment provisions are. Those laws are designed to exclude undocumented migrant women from the community of rightsholders. This is not accidental, but a feature central to the legal system of liberal nation-states which are built around citizenship as the main vehicle to access rights. Citizenship as a status is in its very existence exclusionary as it relies on the 'other' as its constitutive outside that upholds it (Tambakaki, 2015). In the context of the UK the 'other' consists of black and brown people from the Global South, often coming

from countries which were formerly colonised by Britain. Even though the colonies are now independent, the historical legacy influences migratory movements to the present day. This can be seen in the fact that most of the women who took part in this research come from former British colonies – Nigeria, Ghana, Jamaica, Uganda, Trinidad and Tobago, Myanmar, Guyana, and compare their situation as being similar to slavery (see Chapter 5). Being undocumented in the UK is therefore a marker of racial inequality.

Despite the exclusion of women without status, a few rights exist that they can claim, due to human rights legislation being part of British domestic law. This sounds promising, yet when claiming rights, it becomes apparent that there is a gap between ‘the law in the books’ and ‘the law in action’ (Hertough, 2004), as I demonstrated with several case studies of undocumented migrant women’s rights claims analyzing them through the lens of civic stratification. Various mechanisms are built into the law to exclude undocumented migrants from claiming rights, starting from the requirements one needs to fulfil to claim rights. Financial costs of human rights applications deter women without status from claiming then, as they are mostly unable to pay the amount needed. Another mechanism is the requirement not to have any criminal record, which is contradictory, as low-level subsistence crime is mostly the result of internal borders (Engbersen, 2009). Immigration policy itself creates ‘criminal’ migrants, as undocumented migrants are pushed towards the margins of society and often have no other means of survival other than resorting to low-level crime.

My research showed that rights claims are a constant negotiation, and claiming rights such as regularising one’s status is a lengthy and difficult process. In the literature, human rights are often treated as an abstract concept, which are discussed in relation to their aspirational character and their inclusionary force. By showing how human rights function, I offer an analysis which takes into consideration the effect the power of the nation-state has on limiting human rights. In case of the UK, there is a shift to even further restricting access to

human rights for non-citizens, as reflected in the political rhetoric of ‘regaining control’ over immigration in the UK, the harsh hostile environment provisions, and the decision of the UK to leave the EU.

Women living without status experience high levels of discrimination when interacting with government institutions – even when rights are present. Government institutions go to great lengths not to grant rights to undocumented migrant women and their families, and by this often violate their own policies and regulations, with detrimental effects on the lives of the claimant. This is possible to the intersection of several identities, in this case, legal status, nationality, gender and race, as well as the stratification of rights. In line with Choo (2013) and Menon (2004), my findings challenge implicit ideas of rights claiming that frame it as an exclusively positive and cost-free process. Claiming rights involves higher levels of control and the possibility of surveillance through the state, as the identity of the rights claimant is then known to the authorities, which makes deportation easier. Those women who perform traditional gender roles, for example by being mothers, more easily become morally deserving subjects in the eyes of the state and recognised by the law, opposed to women without children. They remain in spaces of legal non-existence for much longer periods of times before they are eligible for fuller protection through rights. This shows the gendered construction of citizenship.

In order for rights to function and for women without status to learn about rights and claim them, a community is needed, in which rights work can happen. This work is performed within community organisations offering services to those who are excluded from mainstream service provision. Those organisations fill a gap the state has left, and they support people who the state excludes with its policies. Due to legal aid reforms in 2013, more migrants now have to pay for their immigration cases, which is especially difficult for women without status who have low or no income, making them dependent on free legal representation.

When undocumented migrant women claim rights, two different subjectivities meet: on the one hand the lived experiences of being an undocumented migrant woman and on the other hand the legal ‘objectivity’ of the law. Legal advisors and solicitors mediate between those subjectivities. The law is neat and rigid, everyday life is messy and does not follow the linear logic of the law. It, therefore defies its logic. The work of solicitors is to fit the lived experience into the categories of the law, which for women without status make them appear as if acting on behalf of the state and its institutions. Law and legal thinking in that sense are not empathetic and this shows itself on a daily basis in community organisations. Additionally, the law is created in a way that it is nearly impenetrable for those who are not legally trained, which in turn gives a great deal of power to legal professionals.

Community organisations reproduce power differences between citizens and non-citizens, which are inherent within the nation-state, even when aiming to support marginalising groups. Those working in community organisations and doing migrant solidarity work decide who is deserving and worthy of support and by this reproduce ideas of who is a ‘good’ victim or a ‘good’ migrant. They also police gendered behaviour. When a migrant woman is demanding, loud, or angry, she is likely to not get the support as those who show behaviour more typically accepted for women. This points towards the limitations of rights claims and the work of community organisations. Despite their work being well-intentioned, it is not able to address the core of the problem, namely way that the law is structured to enforce an exclusionary sense of liberal community. Neither will individual rights claims fundamentally change the situation of undocumented migrants as a group, as they rely on an individualised understanding and are narrowly fashioned. The law cannot change the exclusion it created in the first place, rights thus do not address structural inequalities.

With their work, community organisations take responsibility from the state to act and address injustices created by the law. In that way, only the causes of restrictive legislation are

dealt with by reducing suffering, but the issue in itself and its roots are not tackled sufficiently, as undocumented migration continues to exist. Human rights do not have the purchase to challenge this system of inequality undocumented migrant women experience. I argue that the inequalities are built within human rights, which were crafted in a system of nation-states at a time when colonial domination was still existent. Human rights are contradictory and contain an inherent paradox, namely promising universal rights, which are then in turn only accessible to those who have citizenship rights (Douzinas, 2000). If they were universal, migrant without status would be the beneficiaries of those rights.

The research I presented in this thesis is limited in several ways. Firstly, I was not able to develop an analysis of how legal consciousness develops over a long period of time and how factors prior to migrating may influence the women's relationship to the law. I focused on their lives in the UK and was thus not able to capture how the legal culture of their host country or the potential impact of the length of education they received in their country of origin. I was only able to communicate to the women I interviewed in English, as I had limited funds and could thus not employ a translator. The research is influenced by my own social position and privilege, as I was an outsider to the women's lives which had an impact on we communicated with each other. As a white, university-educated woman, our lives were different in many aspects and some of these gaps could not be overcome. Over time, I was able to gain more trust from some of the participants, who I worked with in the community organisations, which meant that I knew more about some of the women's lives as opposed to others. My position in those community organisations as a volunteer and legal advisor meant that my understanding of the lives of undocumented migrant women is limited, as I was part of the team of staff. At points, it was difficult for me to be critical towards the organisations' work as they helped me to conduct my research in the first place. Another limitation of my study is presented through the sample of participants. It is not possible to draw any

representative conclusions from the sample, as the composition of the whole population is unknown. The aim of this research was to study the status of being undocumented, and the relevance of the country of origin of participants (other than EEA/non-EEA) is therefore secondary. However, this still presents a limitation, not only of my own research but in general as it is a problem within this field of inquiry. Furthermore, the research was only conducted in London, which means that there are some specific factors that differ from those living in London without status, compared to smaller cities in the UK. As I worked together with community organisations I was only able to reach women who sought support and legal advice. Those women who did not use those services were not part of my sample.

The theoretical framework I developed to analyse and understand the situation of undocumented migrant women was not always sufficient to fully capture their position and experiences. This first became obvious when analyzing the legal consciousness of undocumented migrant women, which was not fully captured by the initial framework. I thus expanded the concept of legal consciousness in order to present a more thorough analysis of the effect that not having status has on everyday life. Furthermore, the concept of “civic stratification” was not always able to capture the experience of law in everyday life. The question therefore arises whether another theoretical approach would have enabled me to develop a better and more thorough analysis. The concept of “the right to have rights” (Arendt, 1976) or the theory of the “state of exception” (Agamben, 1998) could have offered a historicised analysis of the condition of living without rights and legal protection, embedding the issue at stake into a wider history of rightlessness.

Despite its limitations, I decided to not change the initial theoretical framework I had developed prior to my fieldwork. I choose the concepts and theories since they are operationalised thoroughly which then in turn enables specific and detailed analyses of case

studies as well as comparison between cases. The idea of the “right to have rights” is for example reflected in the concept of civic stratification, yet in comparison remains abstract and can take many different forms. In contrast, civic stratification offers a framework that allows for a structured analysis due to the way the concept is organized in four sub categories. The ideas of Arendt (1976) and Agamben (1998) still did inform my theoretical thinking, yet were not in the centre of the inquiry. The fact that the theories I used still posed limitations in understanding the situation of undocumented migrant women and their lives shows how sociology and the theories it uses to make sense of the world are always a construction, which cannot perfectly represent the messiness of life.

Further research could investigate how the colonial legacy and history of the UK influences contemporary immigration legislation, as migratory movements are embedded in historical connections between different countries. Theoretically anyone who is not a EU citizen can be undocumented in the UK. During my research however, I did not encounter anyone from countries such as the United States, New Zealand, or Australia, who was exposed to the same level of state violence as women from Nigeria, Jamaica, and Ghana. More research on the experience of white undocumented migrants could shed light on how the category of being undocumented functions and is embedded within a longer history of the race and Empire. Furthermore, EU citizens again can become undocumented migrants after the UK leaves the EU in 2019, which will change the population of undocumented migrants and investigating that can shed light on the intersection of race and irregular migration.



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<sup>17</sup> The references of material cited by Organisation A and Organisation B are incomplete due to reasons of anonymity outlined in Chapter 2

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## **10 APPENDIX**

### **10.1. Profiles of the women included in the study**

#### **1) Ajike, 32 years old, Nigeria**

Ajike came to the UK in 1998 at the age of fifteen. She believed that she was going to go to school in London, but she the family she was staying with forced her to do domestic work for them. They locked up in their house when they were away. She had to take care of the two daughters, cook and clean. Ajike experienced severe domestic violence at the hands of her employer, who forced her to her injuries are caused by falling down the stairs, in case other people asked..

After seven years Ajike decided to run away from the family. While they were attending church, she slipped out from the service, ran back home and collected her belongings, that she had put outside the house before leaving to church. Ajike did not know where to go, she slept in a park next to a supermarket, in the daytime she was begging. She met a man who invited her to come and stay at his house, which she first refused. He kept coming back and after two weeks she agreed to stay with him. They commenced a relationship and a year later their first child was born. The father was a British citizen but did not help Ajike to regularise her status. Four years later they had another child.

Ajike's relationship broke down in 2012 and she started to live with her children in one room of the house while her ex-partner lived in the other ones. He was claiming benefits for the children, money which he gave Ajike. A friend from her church advised her to seek legal advice in regard to her legal status and she attended a drop-in session at a community organisation in 2014. Half a year later received LTR on the basis of being the sole carer of two British children. She was undocumented for fifteen years.

#### **2) Alejandra, 67 years old, Columbia**

Alejandra arrived in the UK on a student visa in 1992, which she then overstayed. She worked in London as a nanny and mostly lived with her employers, being paid for room and board. Alejandra also worked as a cleaner.

She was homeless from 2014 on, as she had lost her job and was not able to find new work. At the time of the interview, she had been undocumented for 23 years. Shortly after I met her she submitted an application for LTR, which was granted under the long residence concession.

### **3) Ariana, 38 years old, Albania**

Ariana came to London in 2007 on a visitor visa. She left Albania to escape an engagement with a violent man her family did not allow her to break up with. She did not plan to stay in England but had no other choice, as she explained that she would be killed by her fiancé.

Her brother also lived in the UK and she stayed with him upon arrival. Ariana then commenced a relationship and got pregnant in 2008. She lived with the father of her child for a while. Before their second child was born she applied with her partner for LTR, but he abandoned her before she gave birth. A friend gave her shelter for a while, after that she lived with her brother again. He eventually asked her to leave. She rented a room with her two children, which she paid with the benefits the father of her children claimed for them (he does have status). At the time of the interview, she had been undocumented for eight years.

### **4) Aysa, 38 years old, Myanmar**

Aysa is Rohingya and fled to Bangladesh in her early twenties. She worked for a family there who eventually brought her to the UK with a fake passport to look after their children here. After she arrived in 2006 the cousin of employer sexually assaulted her and threatened to kill her when she fought back. She then left the house she was staying in, getting help from a man on the street who also spoke Bengali. She worked for him as a maid for room and board but never got paid any salary. He moved her to different houses, exploited and threatened her with violence if she was ever going to report him to the police.

In 2013 she started to befriend one of her neighbours who helped her find a solicitor and subsequently claimed asylum. The claim was rejected as the Home Office was convinced she was Bengali, as she had a Bangladeshi passport. Aysa was traumatised due to her experiences in Myanmar as a Rohingya and the exploitation and violence she experienced in the UK, which made the process of claiming asylum incredibly difficult for her. She got help from a community organisation who managed to get her asylum claim granted in the upper tier tribunal in 2016.

### **5) Bridget, 30 years old, Nigeria**

Bridget arrived in the UK in 2010 on a visiting visa to reunite with her husband, that she had married in Nigeria the year before. She overstayed the visitor visa and started to work as a caregiver for a disabled child. The job was arranged by her husband's family who for most of the time kept her salary.

She got pregnant in 2012 and stopped working due to health issues. Her sister in law threatened her to report her to the police if she would not start working again. Bridget commenced her old job but was able to this time keep the salary for herself. She experienced both domestic and sexual violence at the hands of her husband. In 2015 she was approached by her priest at the church she was attending as he was noticing that she was not well. Her in-laws reported her to the Home Office and claimed she was not the mother of her son. Bridget and her son were taken out of the family house by social services. She was referred to an organisation that deals with victims of trafficking, but she did not meet the criteria of the NRM. At the time of the interview, she had been undocumented for six years.

#### **6) Cathy, 33 years old, Nigeria**

Cathy came to the UK in 1999. She had a visitor visa and claimed asylum upon arrival. She was expecting to go to school in the UK and lived with a distant relative in the beginning. Shortly after she started working as a cleaner. Her relative asked her to leave the house and she stayed with a friend whom she knew from her workplace.

After a few months, the partner of her friend raped her and she had to leave that house. Cathy then stayed with a friend from church. She worked in the hospitality sector cash in hand. After a while, she contacted a lawyer to follow up on her asylum claim, but as she lost all paperwork due to moving frequently the lawyer told her not that he was not able to help her and advised her to drop the case.

Cathy worked in many different jobs and also paid taxes as she forged her own National Insurance Number. She fell ill in 2012 and as she was not able to pay for her rent anymore was threatened with eviction from her landlord. A year later she approached a community organisation that housed her in their programme for women with NRPF. She had been undocumented for fifteen years at the time of the interview.

#### **7) Christine, 40 years old, Uganda**

Christine arrived in London in 2015 on a visitor visa. Upon arrival, she stayed with friends of friends who were living in South London. She fled Uganda due to her sexuality. Christine is HIV positive and when she tried to go to see a doctor she was turned away due to lack of proof of address.

With the support of a friend, she found a community organisation that supports HIV positive migrants. They advised her on claiming asylum. She was undocumented for six months and then applied for asylum. After claiming asylum she started to have problems with

the family she was staying with. They did not give her the mail she was receiving regarding her asylum claim.

#### **9) Esi, 38 years old, Ghana**

Esi came to the UK in 2000 to attend her father's funeral. She was then asked by an elderly friend of the family if she could stay in London to be her caretaker. She worked for that woman as an in-house carer and overstayed her visa. In 2012 she left the woman's house to live with her partner, whom she was expecting a child with. She submitted an application as the partner of a settled person, which was rejected as they did not fulfil the requirement of having lived together for two years. Their son was born in October 2012. Her partner had leave to remain at that point, he received British citizenship in 2013.

Shortly after the birth, Esi's partner became verbally abusive towards her and threatened her to take their baby, using her lack of legal status against her. She then left the house with her baby and was homeless for three weeks before social services housed her. In 2013 she submitted a new application for leave on the basis of being the sole carer of a British child. This application was first refused. Esi appealed against the decision, yet the claim was rejected again. She submitted a fresh application in 2015 with the support of a legal advisor at a community organisation, which was successful.

#### **10) Felicity, 32 years old, Nigeria**

Felicity came to the UK in 2005 as a student to study Finance and Business at a College in London. As a student, she had the right to work for twelve hours a week. After two years of studying she ran out of money and was thus not able to extend her visa. Her then partner promised to marry her in order for her to be able to stay – he was a European national. She earned money with hairdressing services. The relationship with her partner broke apart in 2008. She met another man shortly after and they had their first child in 2012. He was also undocumented. Their second child was born in 2014.

Felicity stopped working after their first child was born, her partner had occasional jobs. In 2015 they were not able to pay for their rent any longer and were eventually evicted from their home. Social services took the couple's children away against their will and housed them with foster parents. After involving a lawyer, they got their children back and then lived in social services accommodation. When I met Felicity, she had been undocumented for ten years.



### **11) Hope, 43 years old, Nigeria**

Hope arrived in the UK in 2003 with her daughter to join her then husband. She had a visitor visa, which she then overstayed. Her husband had leave to remain but did not help her to regularise her status. Her son was born in 2005. Shortly after she began living in the UK her husband became violent towards her.

She experienced a prolonged situation of domestic violence, but was afraid that she would be deported if she called the police or asked for help from others. She eventually called the police in 2011 as she feared for her life due to the extreme violence she was experiencing. Hope and her children left her husband in 2011 and stayed with her sister. They struggled to survive as they could not stay with her sister for a long time. Even though social services knew about the situation of the family, they did not receive any support until 2014, when they got housed by their council.

### **12) Joan, 27 years old, Nigeria**

Joan arrived in the UK in 2004 at the age of sixteen. She lived with a close family friend, who had helped her apply for a visitor visa. Joan worked for the family friend as a housekeeper and a nanny. In 2006, her employers/friends' partner made unwanted sexual advances to Joan and was violent to her. When she complained to her employer, she was fired and kicked out of the house. Joan then met a man whom she commenced a relationship and also moved in with. This man systematically abused her, he threatened her to use her lack of immigration status against her.

In 2007 he acted upon his threats and called the police to get her deported. When the police arrived she lied, saying that she was pregnant with his child in order not to be taken by the cops. She did not know that she was actually pregnant at that time, but from another man. She received temporary admission with reporting restrictions, but stopped reporting when she was eight months pregnant. Her pregnancy was incredibly complicated and she suffers long-term health issues due to it.

Her son was born in 2008. She was living with different friends for a prolonged period of time, until she was able to convince her child's father to pay rent for her and her son, until she was able to get work herself. In 2011 she sought legal advice to regularise her legal status. She only received LTR in 2017, however got the permission to work in 2013. Due to her health problems she had to stop working in 2015 and then had to live in social services accommodation with her son.



### **13) Martha, 28 years old, Eritrea**

Martha came to the UK in 2013 and claimed asylum upon arrival. She entered the country from Calais (France) on the back of a lorry. The group she came with was arrested upon arrival and spent a few days in a detention centre. Martha was then sent to Glasgow to wait for the outcome of her asylum claim.

Her asylum claim was rejected after nine months as the Home Office did not believe she was from Eritrea, they claimed she was Ethiopian. After she was forced to leave her accommodation she stayed at the bus station in Glasgow for a while and then went to London. She was street homeless for a couple of weeks, sleeping in busses and at the central bus terminal. A friend of hers told her about a charity which supports homeless migrant women. Martha received financial support from this organisation and got housed with a family in North London. At the time of the interview she had been undocumented for two years.

### **14) Mercy, 42 years old, Cameroon**

Mercy first came to the UK in the 1990s. She arrived on a visitor visa that she then overstayed. She worked as a carer for elderly people, until 2004 when she left the country. She returned in 2009 with her husband and their two children. After her return, she worked as a cleaner for a major cleaning company. She fell pregnant but her baby died shortly after birth, which led to her developing serious mental health issues and she was thus unable to work. With the help of her MP she submitted an application for LTR under exceptional circumstances. The family was evicted from their house and has been living in social services accommodation since 2010. The application was rejected and the family appealed it twice. At the time of the interview she was waiting for the outcome of the judicial review. She had been undocumented for seven years.

### **15) Olivia, 56 years old, Jamaica**

Olivia arrived in the UK in 2002 to visit her aunt, who was ill at the time. She had a visitor visa and did not intend to stay for long, as she had a green card in the U.S., where she was living at that time with her three children and working as a councillor for drug abusers. During her stay in London she fell in love and decided to apply for limited leave to remain, which was granted. She got pregnant and in order for her child to have a European passport she gave birth in another country, where at that time every new-born received citizenship.

Her son was born in late 2003, she returned to London in 2004. Her then partner and her applied for residency together, which was rejected by the Home Office. The couple split

up during that period and Olivia could not afford the costs of appealing the Home Office's decision. Olivia then had to regularly sign on at the Home Office. She began to shoplift and do sex work to be able to survive with her son. They moved around a lot until Olivia met a man whom they moved in with. He was paying the rent for Olivia and her son. Her new partner turned out to be verbally and physically abusive, Olivia left him after he tried to strangle her.

She was arrested numerous times for shoplifting, the third time she was arrested in 2011 the police kept her in prison for three days. After that Olivia went to the Citizens Advice Bureaux for legal advice to regularise her status. A solicitor made an application for LTR on the basis of her being the sole carer of a child who is a European citizen. The family received support from social services. The application was rejected, Olivia appealed it but was unsuccessful.

She developed mental health issues and began to take antidepressants. In 2014 she sought legal advice from another solicitor who lodged an application based on family and private life rights. The application was refused in March 2015 stating that she had no right to remain in the UK, as her son was not officially settled in the UK. Despite the application being resubmitted as the Home Office mismanaged the case, Olivia was asked to leave the UK in July 2015. With the help of her legal advisor she was finally granted LTR in December 2015. She was undocumented for ten years.

#### **16) Precious, 41 years old, Guyana**

Precious came to the UK in 2001 on a six months visitor visa. During her visit she commenced a relationship with a British man who convinced her to stay in the UK. She lived with her partner in London, he also financially supported her. Precious fell pregnant in 2007 and was left by her partner when he found out about it. Her child was born in 2008. They were living with friends who also financially supported the family, who lost all contact to the father of her child. Precious began a relationship with another man, who cared for her daughter. The couple had a baby in 2012 and another one in 2014. After the birth of their second daughter, Precious and her partner split up. She moved into social services accommodation with her three daughters. In 2015 she lodged an application for LTR with the help of an immigration solicitor, on the basis of being the sole carer for three British children. The visa was granted in 2016. She had been undocumented for fifteen years.

### **17) Rose, 40 years old, Ghana**

Rose first came to the UK in the mid-1990s on a visitor visa, which she then overstayed. She worked as caregiver in residential care for elderly people under her real name. She returned to Ghana in 2005. In 2008 she again came to the UK to reunite with her husband and their three children, who had come to live in London in 2007. Shortly after her arrival two-year-old child died. Rose applied for LTR, the application was supported by her local MP.

She started to work for a cleaning company doing office cleaning during weekends. Her application was rejected. The family was evicted from their house and were housed with social services. Rose and her family lived in appalling conditions in social services accommodation, in places with cockroaches and rats. The family appealed against the decision of the Home Office, but without success. Her solicitor lodged a judicial review in 2016. At the time of the interview she had been undocumented for nine years.

### **18) Tamara, 43 years old, Trinidad and Tobago**

Tamara arrived in the UK in 2006 on a six months visitor visa with her son, who is a U.S. citizen. She overstayed her visa and continued living in London. In 2010 she began a relationship with a British citizen and moved into his house. Her partner was physically abusive towards her. She suffered from domestic violence for many years and refrained from reporting it to the police due to her lack of status.

In 2013, Tamara was no longer able to endure the violence she was experiencing at the hands of her partner and reported him to the police. Tamara and her son then lived in a refuge for women. In 2014 she approached a migrant rights organisation to regularise her status. A solicitor submitted an application on her behalf, based on her being the sole carer for a child who had lived in the UK for seven years. She received LTR shortly after. She was undocumented for eight years.

### **19) Tulaho, 31 years old, Ghana**

Tulaho came to the UK in 2005. She grew up as an orphan and a friend of hers brought her to help her. She stayed with them for five years working in their house as a housekeeper. The family she stayed with abused her and did not pay her any wages.

In 2010 she met a man at her church, whom she fell in love with. He helped her leave the family she was living with. They moved to London together and she fell pregnant. Their first child was born in 2012 with severe disabilities. During the birth the hospital staff were telling her that she had to pay for the hospital costs, as she had no status. Her daughter fell sick

after being born and had to be treated in an intensive care until. The new-born baby had to have surgery when she was six days old. At the same time, the Home Office invited Tulaho and her partner for interviews for their immigration application. The application was rejected and they appealed, which then meant going through a lengthy court procedure.

Tulaho was not able to breastfeed her child due to the stress she experienced and developed a post-natal depression. The family was housed in social services and could only survive with the help of charities. Tulaho said that her daughter would not be able to live in Ghana due to her disabilities. They had another child in 2014. At the time of the interview she had been undocumented for eleven years, waiting to hear the outcome of the judicial review for her immigration application.