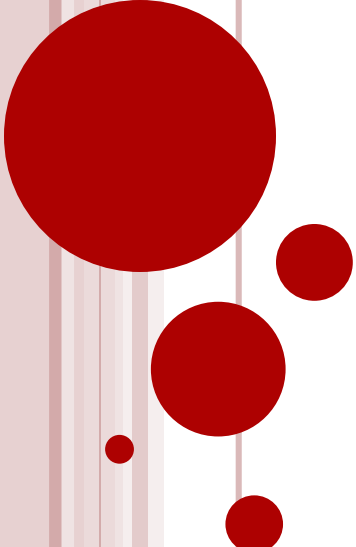




VULNERABILITY TO LABOUR EXPLOITATION: MIGRATION LAW, EMPLOYMENT LAW AND THE PUZZLE OF EFFECTIVE REGULATION

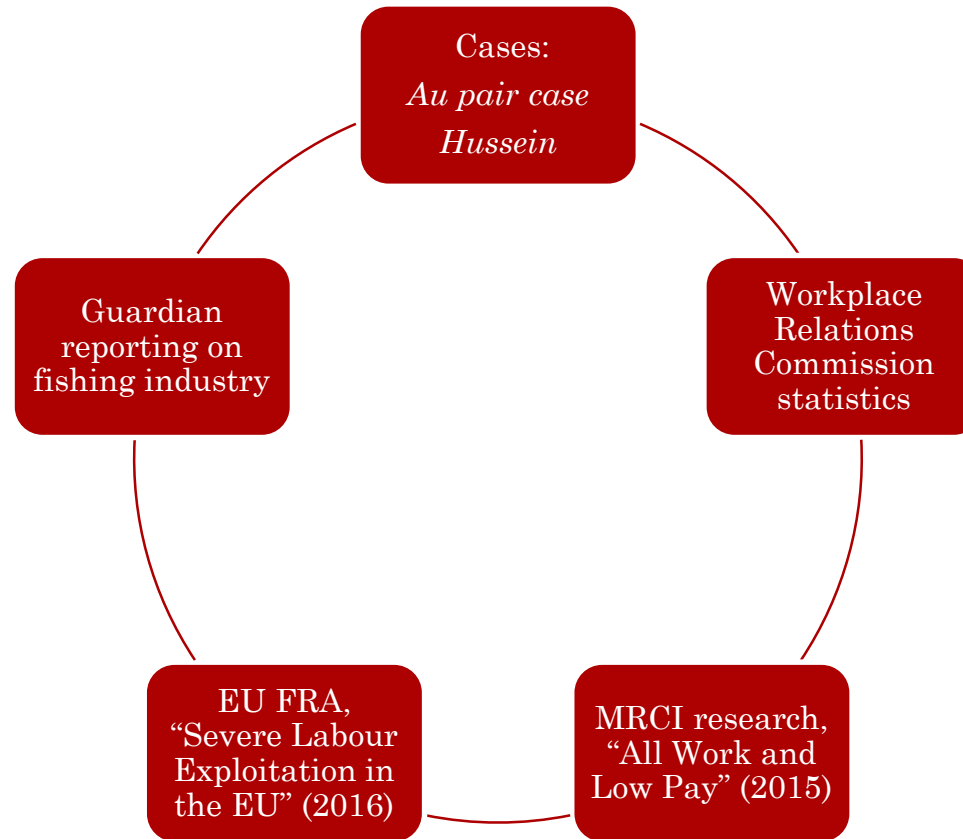
**Dr Clíodhna Murphy, Maynooth University
NERI Conference, 12 May**

OUTLINE

1. Meaning of ‘vulnerability’ in this context
2. Creating vulnerability to labour exploitation v. regulating against vulnerability:
 - migrant domestic workers
 - fishermen
3. Addressing vulnerability through litigation?
Taiwo v Olaigbe & anor [2016] UKSC 31



MIGRANT WORKERS AND LABOUR EXPLOITATION



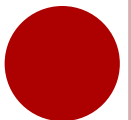
STATE RESPONSES

- Criminal Law (Human Trafficking) Act 2013
- Employment Permits (Amendment) Act 2014
- Labour inspection of private homes by WRC
- Atypical working scheme: Non-EEA crew in Irish Fishing Fleet



INTERROGATING 'VULNERABILITY'

- Fineman: vulnerability is universal and constant
- Problems with categorising migrant workers as 'vulnerable': disempowering and disregards agency?
- Constructed vulnerability and law's complicity in this process



MIGRANT DOMESTIC WORKERS

Creating vulnerability

- No legal avenue of migration to Ireland for domestic workers
- No specific employment regulation of domestic work
- Blurry employment status of *au pairs*

Addressing vulnerability

- Labour inspection of private homes as workplaces



THE FISHING SECTOR

Creating vulnerability

- “Share fishermen”: self-employed status
- Previously no legal avenue for migration: undocumented workers
- Confusing and complex regulations

Addressing vulnerability

- Atypical scheme for non-EEA fishermen: regularise and admit new workers
- Must be ‘employees’
- WRC can board fishing vessels (1 Oct 2015)
- Inspections



FAILURE OF ATYPICAL SCHEME?

- Only 187 permits granted as of end March (originally thought 2000 might be needed)
- 2016 WRC inspections of 110 vessels

157 contraventions

28 instances of illegal workers

58 records contraventions

12 contraventions of Atypical Scheme

59 other employment rights contraventions

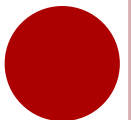


FIGHTING VULNERABILITY THROUGH LITIGATION: *TAIWO V OLAIGBE*

- Two claimants on migrant domestic workers visas
- “[Ms Taiwo] was slapped and spat at; she was mocked for her tribal scars and her poverty, and called a “crazy woman”. She was not allowed her own personal space and shared a room with the employers’ two children. The Employment Appeal Tribunal characterised her situation as ‘systematic and callous exploitation’.”



- Claim of race discrimination on grounds of nationality rejected
- <https://www.supremecourt.uk/watch/uksc-2014-0105/judgment.html>



CONCLUSION

- Reconsideration of immigration law: widening immigration channels; enhancing statuses on offer
- More comprehensive approach to enhancing employment regulation:
 - De-couple immigration control and employment enforcement
 - Legalise contract of employment for undoc workers
 - ILO standards in specific sectors
 - Regulation of recruitment agencies

