Restrictive Visa Schemes and Global Labour Justice

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The treatment of migrant workers is central in discussions on global labour justice.[1] These workers are in a position of disadvantage in comparison to other workers for several reasons, such as their race or gender, language barriers, lack of support networks, and limited knowledge of their legal rights and avenues to claim them in the host country. In addition to these factors, restrictive migration schemes increase existing vulnerabilities, and are connected to widespread structures of exploitation at work. Employers take advantage of workers' vulnerability by offering to them exploitative conditions, with patterns of exploitation affecting primarily those in low paid sectors, such as domestic work or agriculture.

In her seminal work on structural injustice, Iris Marion Young placed her attention on political responsibility of consumers for the treatment of workers on the basis of a 'social connection model' of responsibility.[2] Building on scholarship on the concept of structural injustice, in this contribution I focus on migrant workers and argue that receiving states have both political and legal responsibility for workers' exploitation because of their role in enacting restrictive visa schemes that constitute 'state-mediated structures of exploitation'.[3]

In order to develop my argument, I focus on an especially vulnerable work sector, domestic work. I first discuss temporary labour migration, before turning to the UK Overseas Domestic Worker (ODW) visa in more detail, and argue that schemes with particularly restrictive terms increase the vulnerability of these workers while both employers and whole economies benefit from this situation. I also explain that states that have such schemes may have responsibility under human rights law to change the rules connected to the unjust structures in question.

Temporary Labour Migration

Temporary labour migration programmes are schemes whereby migrant workers arrive in a country to work, and this often does not come with a route to permanent residence or citizenship. The schemes typically contain a number of restrictions, creating in this way special vulnerability to the workers who are affected. They may impose limitations in terms of the length of time that the migrant worker can stay in a country, but also other restrictions, such as binding the worker to a particular work sector or a particular employer, to the right to be accompanied by family members or form relations with locals.[4] Temporary migrant workers also have no political rights.[5] Such regimes are used in many legal orders and there is no single legal definition of them.

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[1] For an overview of debates on global justice and workers' rights, including the treatment of migrant workers, see Y. Dahan, H. Lerner and F. Milman-Sivan (eds), *Global Justice and International Labour Rights*, CUP 2016.
[2] I.M. Young, 'Responsibility and Global Labor Justice' (2004) 12 *Journal of Political Philosophy* 365.
[3] See V. Mantouvalou, 'Structural Injustice and the Human Rights of Workers', (2020) 73 *Current Legal Problems* 59.

[4] See, for instance, D. Rajkumar, L. Berkowitz, L.F. Vosko, V. Preston and R. Latham, 'At the Temporary–Permanent Divide: How Canada Produces Temporariness and Makes Citizens Through its Security, Work, and Settlement Policies', (2012) 16 *Citizenship Studies* 483.

[5] See the discussion in M. Walzer, *Spheres of Justice*, Basic Books, 1984, p 56 ff and particularly p 59.

This type of controlled migration is not new. In the 20th century what are known also as guestworker programmes were used in many countries, including Germany, South Africa, and the US. It is often said that the schemes constitute a 'triple-win': they are beneficial for the country of nationality of the worker, the country of destination and the workers themselves. However, the history of temporary labour migration schemes shows that in reality they create 'perfect immigrants'. Host states do not have to plan their integration and social support as they are only there temporarily.[6] Employers view them as 'an unqualified good' because it is a 'fully flexible and temporary workforce'.[7] The workers, in turn, accept jobs in sectors with substandard working conditions that others find back-breaking or repellent because they need to send remittances to their dependents in their home country where the incomes are much lower.[8] The winners are only two: the host state (the national economy and the employers) and the workers' country of origin. The host state's national economy benefits from temporary migrant workers because they contribute to the economy through their work and even through being taxed without the state having to be concerned with their integration. The employers benefit from the fact that the migrant workers are temporary, and can be discarded as soon as they are no longer able or needed to do the work.[9] The workers' country of origin benefits from the remittances that they send.

The migrant workers, on the other hand, are regularly exploited and trapped in a situation from which they cannot escape for they will become undocumented and even more precariously employed. In fact, it has been argued that the schemes are structurally exploitative not only for the workers who migrate to work but also for the local workers, because their conditions keep wages and working conditions low for all workers.[10] When it comes to the legal regulation of the schemes, scholars have observed that it has tended to privilege the interests of capital rather than the interests and rights of migrant workers.[11] In designing the schemes, states focus on the needs of businesses, and attempt to develop rules that respond to those primarily, rather than the protection of workers' rights.

As states have a right to control entry of non-nationals, they generally put forward special justifications so as to allow migrant workers to be admitted. A typical justification that governments use in order to introduce temporary labour visas involves alleged labour shortages.[12] The argument is that there are sectors where there are not enough people willing to do the necessary work, so there is a need for migrant workers in order to fulfil the tasks for which no local workers are available in the host country. The concept of labour shortages has been questioned both conceptually and empirically.[13]

The particular concern for me here, though, is that restrictive schemes that tie a worker to a work sector or an employer are linked to widespread patterns of exploitation. Immigration rules create special relations of dependency on the employer, in addition to the standard inequality of power

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[6] C. Hahamovitch, 'Creating Perfect Immigrants: Guestworkers of the World in Historical Perspective', (2003) 44 *Labor History* 69 at 73.
[7] R. Chin, *The Guest Worker Question in Postwar Germany*, CUP, 2007, p 45.
[8] Piore.
[9] Chin, pp 45-46.
[10] L. Ypi, 'Taking Workers as a Class – The Moral Dilemmas of Guestworker Programs', in Sarah Fine and Lea Ypi (eds), *Migration in Political Theory – The Ethics of Movement and Membership*, OUP, 2016, p 151.
[11] J. Howe and R. Owens, 'Temporary Labour Migration in a Global Era: The Regulatory Challenges', in Howe and Owens (eds), *Temporary Labour Migration in the Global Era: The Regulatory Challenges*, Hart, 2016, p 3 at 4.
[12] 'Temporary Labor Migration Programs: Governance, Migrant Worker Rights and Recommendations for the UN Global Compact for Migration', (2018) Economic Policy Institute, available at https://www.epi.org/publication/temporary-labor-migration-programs-governance-migrant-worker-rights-and-recommendations-for-the-u-n-global-compact-for-migration/
[13] B. Anderson and M. Ruhs (eds), *Who Needs Migrant Workers*, OUP, 2010.

that characterises the employment relation, and hence precarious work. This is because a worker under a restrictive visa who loses their job may also lose their accommodation, if they are staying at the employers' premises, as well as the right to reside in the country, which may result in immigration detention and deportation. Not only that, but if they have been victims of trafficking, they may be vulnerable to be re-trafficked and exploited all over again.

Temporary labour migration schemes contain a number of restrictive rules, which differ across the world.[14] One of the most well known systems for its negative effects on workers' rights is *kafala* in Gulf countries. There are different variations of *kafala* in different Gulf countries. The main characteristics of *kafala* are that a migrant needs a visa in order to enter a country and there has to be a sponsor for the visa; a visa is necessary to exit the country or change employer whereby the sponsor declares that they do not object to the worker leaving the country or changing sponsor; and sometimes there is also a requirement for a deposit, a sum of money paid by the sponsor for costs that involve the worker.[15] Another well-known temporary workers' scheme was the German scheme of guestworkers which was initiated in the 1950s in order to support the country's economic growth after the war.[16]

Israel also used to have very restrictive immigration rules for migrant workers.[17] In order to work in Israel, migrant workers used to require a visa that regulated the length of their stay and the name of the employer for whom they would work. The visa bound the worker to the specific employer, who was also responsible for the departure of the worker at the expiration of the visa. It also determined the length of stay. This visa was said to be linked to patterns of exploitation and abuse of migrant workers, facilitating employers who took advantage of the visa restrictions, as well as other legal exclusions from protective laws,[18] and was eventually abolished after a ruling of the Supreme Court of Israel to which I return below.

In what follows, I focus on domestic work to show the effects of a restrictive visa on this group of workers, and explain what responsibilities arise in this context.

Domestic Work

An example of a very restrictive visa scheme for domestic workers in Europe is the UK ODW visa. Domestic workers are workers undertaking various household tasks, such as cleaning, cooking, caring for children or the elderly. They are sometimes employed part-time, working for a few hours a day for different employers or full-time working for one employer. Some domestic workers live in the employers' household. These live-in domestic workers are mostly migrants, both in the Western world and elsewhere.[19] They migrate to work as domestic workers and send income generated through their work back to their families.[20] An important particularity of the sector is that domestic workers have extremely few opportunities to develop social relations at work: they are isolated and do not have a circle of co-workers with whom they regularly interact.

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[14] For a discussion of a few different examples, see P.T. Lenard and C. Straehle, 'Temporary Labour Migration: Exploitation, Tool of Development, or Both?', (2010) 29 *Policy and Society* 283.
[15] See O.H. AlShehabi, 'Policing Labour in Empire: The Modern Origins of the Kafala Sponsorship System in the Gulf Arab States', (2019) *British Journal of Middle-Eastern Studies*.
[16] On this, see Chin, as above xx.
[17] Discussed in E. Albin, 'The Sectoral Regulatory Regime: When Work Migration Controls and the Sectorally Differentiated Labour Market Meet' in Costello and Freedland (eds) *Migrants at Work*, OUP, 2016, p 134 at 141.
[18] Albin, 142.
[19] Some data are available in the 2010 ILO Report 'Promoting Decent Work for Domestic Workers', para 20. For analysis, see B. Anderson, *Doing the Dirty Work? The Global Politics of Domestic Labour* (2000).
[20] See generally eds. B. Anderson and I. Shutes, *Migration and Care Labour: Theory, Policy and Politics* (2014).

This also creates challenges for attempts to unionise. It is hard for trade unions to reach out to workers who work in private households.

The great majority of domestic workers are women.[21] Paid domestic work is on the rise for many reasons, such as wealth inequality, the increased participation of women in the labour market outside home in many developed countries and the marketisation of care provision.[22] Without paid domestic workers, the labour force would look different today because the women who have historically been in charge of household tasks, such as care work and cleaning, would not be able to work outside the home. Domestic work sets challenges to feminist thought. Women participate in the labour market outside the home in many countries and achieve in this way greater equality to men. But to do this they have to employ other, migrant women often, to perform cleaning and caring duties at home.[23] This is why it has been suggested that the feminist project is unfinished.[24]

Aragon and Jaggar examined migrant domestic labour as an instance of structural injustice at global level.[25] Looking at the combination of structural factors that lead to the development of the industry, they developed a powerful argument that the overall system is unjust, that everyone who benefits from it participates in the injustice and has a responsibility to resist on the basis of structural complicity: 'Because people are tainted by their participation, they have a political responsibility to work toward remedying this structurally unjust industry', they maintained.[26] What I want to highlight further here is that the law also creates special vulnerability that is linked to structures of exploitation.[27] This work sector is excluded from protective rules or treated differently to other workers in fields, such as working time regulation,[28] regulation of night work,[29] occupational health and safety protection.[30] A 2016 study of the ILO found that 60 million of the world's 67 million domestic workers have no access to social security.[31]

In addition, immigration rules are particularly problematic.[32] Temporary migration schemes for this kind of work that does not depend on seasonal factors create the sense that workers work for a family rather than being part of the labour market.[33] The UK ODW visa, which is a particularly restrictive scheme, effectively ties domestic workers to the employer with whom they arrived in

[21] ILO Report, as above, n. xx, para. 21. For analysis, see eds. B. Ehrenreich and A. Russell Hochschild, *Global Woman* (2002); H. Lutz, *The New Maids: Transnational Women and the Care Economy* (2011) 18.
[22] See P. Hondagneu-Sotelo, *Doméstica* (2001) chapter 1; B. Ehrenreich and A. Russell Hochschild, 'Introduction', in *Global Woman*, eds. B. Ehrenereich and A. Russell Hochschild (2002); I. Shutes and C. Chiatti, 'Migrant Labour and the Marketisation of Care for Older People: The Employment of Migrant Care Workers by Families and Service Providers' (2012) 22 *Journal of European Social Policy* 392.
[23] Bridget Anderson shows how the employer of the domestic worker is the woman of the household. See B. Anderson, *Doing the Dirty Work: The Global Politics of Domestic Labour*, (2000); B. Anderson, 'Why Madam Has so Many Bathrobes: Demand for Migrant Domestic Workers in the EU', (2001) 92 *J. of Economic and Social Geography* 18-26.
[24] B. Ehrenreich, 'Maid to Order', in *Global Woman* (2002) 103. See also Anderson, as above, (2001).
[25] C. Aragon and A.M. Jaggar, 'Agency, Complicity, and the Responsibility to Resist Structural Injustice', (2018) 49 *Journal of Social Philosophy* 439.
[26] As above, p 453.
[27] V. Mantouvalou, 'Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Labor', (2012) 34 *Comparative Labor Law and Policy Journal* 133. On the role of the law in the regulation of domestic work, see A. Blackett, *Everyday Transgressions – Domestic Workers' Challenge to International Labor Law*, Cornell University Press, 2019.
[28] ILO Report, pp 48-50.
[29] As above.
[30] ILO Report, p 61 ff.
[31] ILO, 'Social Protection for Domestic Workers: Key Policy Trends and Statistics', 2016.
[32] On domestic work and migration, see Maria Galliotti, 'Making Domestic Work a Reality for Migrant Domestic Workers', ILO Domestic Work Policy Brief No 9, 2015.
[33] ILO Report, p 10.

the country. The recent history of the scheme shows how it was developed and maintained despite evidence of abuse and exploitation, as well as persistent calls for reform.

Since 1998 immigration rules allowed domestic workers to change employers but not work sector. After five years, the worker could apply for settlement. The Draft ILO Multilateral Framework on Labour Migration of 2005[34] and the UN Special Rapporteur on the Human Rights of Migrants cited the 1998 ODW visa as best practice,[35] while the impact of this route of immigration on net migration was negligible.[36] However, in 2012 the UK Government introduced a visa regime that did not permit domestic workers to change employer. This occurred against the backdrop of an outcry by domestic workers' organisations that emphasised that the rules would trap domestic workers in serious exploitation and abuse.

Two years after the new visa was put in place briefings of Kalayaan, the main UK-based NGO on the rights of domestic workers, showed that workers registered with them who entered the UK on the 2012 visa reported significantly worse treatment than those who were not tied to their employer during the same period of time but under the previous regime. This was confirmed in subsequent years.[37] In an empirical study that I conducted, a series of interviews of migrant domestic workers who came to the UK after 2012, the pattern was clear.[38] Domestic workers under the UK ODW visa are exploited, living and working in appalling conditions, and abused. Perhaps even more importantly, the workers whom I interviewed became undocumented because they escaped abusive employers. They became trapped in this way in ongoing cycles of exploitation by employers who were aware of their legal status as undocumented workers.

A further well-documented example of a restrictive visa scheme in the domestic work sector is the Live-in-Caregiver Programme in Canada. The key feature of this that was described as problematic was the requirement that the workers live in the employer's home.[39] Scholars argued that the scheme exacerbates the vulnerability of this group of workers to exploitation.[40] It was particularly emphasised that domestic workers have a clear preference to live out, because when they live in the employer's household, there is an expectation of constant availability by the employer and significant restrictions on workers' autonomy, for reasons such as the fact that they cannot have a private or family life.[41] In recent years the requirement to live in the employers' household was removed.

Temporary labour migration schemes increase and compound workers' vulnerability to exploitation. States have political responsibility for this situation because they have adopted

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[34] Draft ILO Multilateral Framework on Labour Migration, available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb295/pdf/tmmflm-1.pdf> para. 82.

[35] See <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4c0623e92>, paras. 60-61.

[36] M. Lalani, *Ending the Abuse – Policies that Work to Protect Migrant Domestic Workers* (2011).

[37] See the briefings of the NGO Kalayaan at http://www.kalayaan.org.uk/. See also Human Rights Watch, 'Hidden Away', March 2014. See also Centre for Social Justice Report, 'It Happens Here', March 2013; A. Boff, 'Shadow City, Exposing Human Trafficking in Everyday London', GLA Conservatives, October 2013; F. Field MP, 'Report of the Modern Slavery Evidence Review', December 2013; UN Special Rapporteur on Violence Against Women, 15 April 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14514&LangID=E>.

[38] See V. Mantouvalou, "'Am I Free Now?" Overseas Domestic Workers in Slavery', (2015) 42 *Journal of Law and Society* 329.

[39] E. Galerand, M. Gallié and J. Ollivier Gobeil in collaboration with PINAY and the Service aux collectivités of UQAM, 'Domestic Labour and Exploitation: The Case of the Live-In Caregiver Program in Canada', 2015, available at http://socialtravail.uqam.ca/files/2015/06/15.01.09_rapport_en_vu1.1.131.pdf

[40] C. Straehle, 'Global Justice, Temporary Migration and Vulnerability', (2012) 5 *Global Justice: Theory, Practice, Rhetoric* 71.

[41] A. Blackett, *Everyday Transgressions – Domestic Workers' Challenge to International Labor Law*, Cornell University Press, 2019, pp 65-68.

restrictive immigration rules that create this situation. Can it also be said that they have legal responsibility for the rules in question?

Responsibility under Human Rights Law

In what follows I argue that receiving states may have legal responsibility under human rights law to change the visas in question. To support this, I focus primarily on European human rights law. I begin by looking at the prohibition of slavery, servitude, forced and compulsory labour. The ECtHR requires a strong element of coercion when examining whether there is a violation of article 4 that contains this prohibition but has ruled on several occasions that migrant workers face such coercion.[42]

The first judgment that examined the treatment of a migrant worker under article 4 was *Siliadin v France*[43] that involved a migrant domestic worker who was brought to France from Togo at the age of 15 years and 7 months and was even more vulnerable because of her age. She had been promised that she would work, be sent to school and that her immigration status would be regularised, but was instead kept as a domestic worker for many years and was never sent to school. She worked for 15 hours a day with no pay and no day off, she slept on the floor in the children's room, and her passport was withheld. Her immigration status was never regularized. In this case, the Court recognised the vulnerability of the applicant that was partly due to her immigration status[44] and imposed a duty on the authorities to legislate in order to criminalise this treatment by the employers. Many European countries have complied with this obligation following *Siliadin*.[45]

The case has been followed by a line of applications which involved serious abuse and exploitation of migrant domestic workers. In *CN v UK*,[46] for instance, the Court explained specifically that 'domestic servitude […] involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance', which requires 'an understanding of the many subtle ways an individual can fall under the control of another'.[47] These cases recognised that serious labour exploitation falls in the scope of article 4 of the ECHR and that migrant workers are prone to it, led to an assessment of the legal framework in many legal orders and also, crucially, increased the visibility of a group of workers whose work is traditionally undervalued and invisible.

The legal obligation on which the Court was asked to focus in this case law was the obligation to criminalise employers' conduct and enforce criminal law, rather than immigration or labour laws that increase vulnerability to exploitation. Monitoring of workers' living and working conditions can be important in the context of a well-functioning labour inspection system. The imposition of an obligation on states to criminalise and prosecute alone, though, centres on individual responsibility of unscrupulous employers, and not on structural factors that create vulnerability of workers to such treatment. If investigations are solely tied to the criminal justice system, it is hard to see how they can lead to structural change or address systemic problems, such as those that are due to restrictive visas.

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[42] For a detailed account of the development of the case law under article 4, see Stoyanova. For a thorough analysis of the concept of exploitation in the context of article 4, M. Jovanovic, 'The Essence of Slavery: Exploitation in Human Rights Law', (2020) 20 *Human Rights Law Review* 674.

[43] *Siliadin v France*, App No. 73316/01, Judgment of 26 July 2005.

[44] As above, para 126.

[45] See for instance the UK Modern Slavery Act 2015. For a critical account, see V. Mantouvalou, 'The UK Modern Slavery Act Three Years On', (2018) 81 *Modern Law Review* 1017.

[46] *CN v UK*, App No 4239/08, Judgment of 13 November 2012.

[47] As above, para 80.

However, the ECtHR recognised that very restrictive visa schemes create vulnerability to exploitation in contravention of the Convention in *Rantsev v Cyprus and Russia*.[48] This involved a woman from Russia who arrived to Cyprus under an 'artiste visa'. An 'artiste' was defined in the legislation as 'any alien who wishes to enter Cyprus in order to work in a cabaret, musical-dancing place or other night entertainment place and has attained the age of 18 years'.[49] Under this scheme, Ms Rantseva received a temporary work and residence permit. Having worked at a cabaret for three days, she escaped, only to be captured soon after and taken to the police. Since her immigration status was not irregular, the police returned her to her employer. Later that night she was found dead on the street below the flat where she was staying. The case was taken to the ECtHR by the victim's father, who claimed that Russia and Cyprus had breached article 4 of the Convention (among other provisions). Cyprus produced a unilateral declaration requesting that the case be not further examined, but the Court rejected it because of the seriousness of the issues raised.

In relation to the immigration rules, of particular concern was the fact that cabaret managers made an application for an entry permit for the artiste in a way that rendered the worker dependent on the employer or agent and in this way vulnerable to human trafficking.[50] The Court found that the obligation of the employers to inform the authorities if an artiste leaves her employment is a legitimate means to the end of monitoring compliance with immigration law. However, it is only the authorities that should take steps for non-compliance. Monitoring compliance cannot be the duty of the manager. This is why the Court was particularly troubled by the practice of asking cabaret owners and managers to lodge a bank guarantee covering artistes that they employed. This gave cabaret owners and managers a significant power to control cabaret dancers by encouraging them to track down artistes who are missing or otherwise take personal responsibility for them.

Relying on comments of the Council of Europe Commissioner for Human Rights, the Court emphasised that the authorities knew or ought to have known that the visa was problematic. The Commissioner had criticised the aspect of the scheme, whereby cabaret managers had to apply for the artiste, for making the artiste dependent on her employer or agent and increasing the risk of exploitation. The Commissioner also criticised the visa for making it very challenging for law enforcement authorities to tackle trafficking, and explained that it could be viewed as contradicting anti-trafficking measures.[51] In light of this, the Court ruled that Cyprus violated the Convention.[52]

We can also find an example from a national legal order, Israel, where a court has assessed the compatibility of very restrictive visa rules with human rights law. Under the Israeli scheme in question, the visa stated the worker's length of stay and the name of the employer. The worker only had the right to work for the specific employer and for the period stated on the visa, while the employer was also in charge of the worker's departure from Israel upon expiry of the visa. The Government claimed that the aim of the scheme was legitimate, as its purpose was the control of immigration. However, it was challenged before the Israeli Constitutional Court. The Court ruled that the visa scheme violates human dignity and breaches the Constitution by creating a situation that was described as foreign to labour law principles and to the contract of employment.[53] Vice-

[48] *Rantsev v Cyprus and Russia,* App. No. 25965/04, Judgment of 7 January 2010.
[49] As above, para. 113.
[50] As above, paras. 89, 91, 94, 100.
[51] As above, para 291.
[52] The Court also ruled that Russia violated the ECHR with respect to its procedural obligations under article 4. Other case law that followed paid further attention to obligations of member states to investigate effectively cases of human trafficking. See the Grand Chamber case *S.M. v Croatia*, App No 60561/14, Judgment of 25 June 2020.
[53] *Kav-Laoved v Government of Israel*, HCJ 4542/02, 2006, [2006] (1) IsrLR 260. See the discussion in Einat Albin, 'The Sectoral Regulatory Regime: Where Work Migration Controls and the Sectorally Differentiated Labour Market Meet', in C. Costello and M. Freedland (eds), *Migrants at Work*, OUP 2014.

President of the Court said that 'we cannot avoid the conclusion — a painful and shameful conclusion — that the foreign worker has become his employer's serf, that the restrictive arrangement with all its implications has hedged the foreign worker in from every side and that the restrictive arrangement has created a modern form of slavery'.[54]

The UK Overseas Domestic Worker visa was specifically discussed in a Report of the Group of Experts on Action against Trafficking in Human Beings (GRETA), which is the specialist body of the Council of Europe monitoring the implementation of the Convention on Action Against Trafficking in Human Beings.[55] The GRETA Report explained that the UK Overseas Domestic Worker visa is problematic and underlined the necessity for labour inspections in private households, which is a topic that the European Committee of Social Rights has also examined in this context. It also asked the authorities to implement the recommendations of an independent report on the visa commissioned by the UK Government, which proposed that domestic workers should have an unconditional right to change employer.[56]

If we compare the UK visa to the Cypriot visa scheme in *Rantsev*, the latter was more restrictive. However, the vulnerability created by this visa to the workers is very significant. It traps them in employment relations that violate their rights, both while employed by the employer to whom the visa ties them and if they escape, as they become. The GRETA Report and materials of other human rights organisations that have criticised the ODW scheme,[57] together with evidence on the working conditions of these workers, can provide a basis for the ECtHR to rule that the visa violates principles of the ECHR under article 4 as well as other provisions of the Convention.[58]

Bringing About Change

There is no question that the reasons why migrant workers are vulnerable to exploitation are many and not exclusively created by law, as mentioned earlier in this piece. Global inequality and poverty are key structural features of the world order, constituting a central reason why many people migrate. These features cannot change with decisions of human rights bodies. Structural change is a complex process. Many different actors need to mobilise and a variety of avenues need to be pursued to achieve this. Aragon and Jaggar argued that we all have political responsibility to act against the exploitation of workers in the domestic labour sector, for instance, because of structural complicity. They proposed a number of ways in which we can act so as to deliver these responsibilities and support domestic workers.[59] Political mobilisation of workers and other citizens, and activism are undoubtedly crucial. Organising precarious workers, and particularly those under seasonal visas or undocumented workers, is challenging but is also of fundamental importance both at national and at global level.[60]

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[54] At pp 313-314.
[55] GRETA (2021)12, Evaluation Report – United Kingdom, 20 October 2021, available at https://rm.coe.int/greta-third-evalution-report-on-the-united-kingdom/1680a43b36
[56] Ewins Report.
[57] V. Mantouvalou, 'Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation' (2012) 12 *Human Rights Law Review* 529; K.D. Ewing and J. Hendy, 'The Dramatic Implications of *Demir and Baykara*' (2010) 39 *Industrial Law Journal* 2.
[58] See N. Sedacca, 'Migrant Domestic Workers and the Right to a Private and Family Life', (2019) 37 *Netherlands Quarterly of Human Rights*.
[59] Aragon and Jaggar, as above n xx, p 453-455.
[60] See, for instance, the International Domestic Workers Federation at https://idwfed.org/en.

Moreover, legal avenues can provide opportunities for change. Legal rules should not tie migrant workers to a specific employer nor should they require them to live in the employer's premises. Seasonal workers or other workers under temporary visas should have a right to permanent settlement. In this chapter, I examined human rights law as a tool that has potential to challenge aspects of unjust structures built by immigration rules. I discussed case law of the ECtHR and some national legal orders which have found that particularly restrictive visa schemes are incompatible with human rights duties. State authorities tend to comply with these rulings, and change the laws under consideration. Strategic litigation can play in important role in identifying the right cases and the fora where the cases should be pursued.[61]

Non-judicial bodies, such as GRETA, the ECSR and the ILO, have further highlighted the problems faced by precarious migrant workers under restrictive visas and by undocumented workers. Even though levels of compliance with their findings may not be as high as levels of compliance with judicial decisions, they are still influential: for instance, their reports are used by civil society groups, trade unions and other actors that pursue change, and also feed into the case law of national and supranational courts.[62] Synergies between the various actors – individuals, trade unions and other civil society organisations – will be crucial when pushing for this change to occur. All these actors and avenues can help hold states accountable for their contribution to workers' exploitation, and dismantle the unjust structures in question.

[61] On the effects of strategic human rights litigation, see H. Duffy, *Strategic Human Rights Litigation – Understanding and Maximising Impact*, Hart 2018, Chapter 4.
[62] As above, n xx.