

Mandate of the Special Rapporteur on trafficking in persons, especially women and children

Statement by the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally on United Kingdom Supreme Court judgment: *Basfar v Wong* and the law on diplomatic immunity

Geneva, 7 July 2022

On July 6, the Supreme Court of the United Kingdom, issued a landmark judgment on diplomatic immunity and human trafficking, in the case of [Basfar v Wong](#) [2022] UKSC 20. The judgment of the Court, delivered by a majority of 3-2, limits diplomatic immunity in cases involving human trafficking, servitude or other forms of modern slavery.

The Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, was given permission to intervene in the Supreme Court to address two key points: (1) the scope of the commercial activity exception to diplomatic immunity under the Vienna Convention on Diplomatic Relations and (2) the international human rights law arguments in favour of a restrictive interpretation of diplomatic immunity. The full text of her intervention is published at: <https://www.ohchr.org/en/special-procedures/sr-trafficking-in-persons/submissions-courts-and-other-bodies>

Commenting on the Supreme Court's judgment, Mullally stated "This is a hugely important judgment, and is likely to influence state practice and international law developments on diplomatic immunities and the protection of migrant domestic workers world-wide. Until now, the dominant interpretation of international law tilted the balance of power in favour of a serving diplomat, even in the face of egregious human rights violations. This has now changed.

Embassies and consulates play important roles in assisting and supporting migrant workers. Too often diplomatic agents have abused diplomatic immunity to escape accountability for the serious human rights violation of trafficking in persons. Diplomatic immunity has been an obstacle to securing access to justice for domestic workers in diplomatic households, and has led to grossly unjust applications of international law. Comity and friendly relations between states should be premised on respect for human rights, not on their abuse.

The bravery and persistence of Ms Wong in bringing this claim, has brought about important legal change, and will be of great benefit to the struggle for justice for all migrant domestic workers worldwide."

The Supreme Court concluded that the extent of control over Ms Wong's person and over her labour exercised by Mr Basfar, on the assumed facts, was so extensive as to place her in a position of domestic servitude. The Court also concluded that, on the assumed facts, the respondent diplomat, Mr Basfar, gained a substantial financial benefit by exploiting Ms Wong's labour for almost two years.

The Intervention by the Special Rapporteur highlighted that such conduct should be properly described as a commercial activity practised for personal profit, and therefore coming within the commercial activity exception to diplomatic immunity. As highlighted in the Intervention to the Supreme Court, the International Labour Organisation (ILO) estimates that there are 11.5 million

migrant domestic workers around the world, approximately 8.5 millions of whom are female (73.4%). The ILO has also estimated that nearly US\$8 billion are literally stolen annually from the 3.4 million domestic workers in forced labour worldwide.

The Special Rapporteur's intervention highlighted developments in the jurisprudence of international bodies, including of the European Court of Human Rights and the Inter-American Commission of Human Rights. Importantly, the intervention highlighted the distinction to be made between this case and the leading case-law in the U.S. Specifically it was argued that given developments in international law, including in case-law arising under the European Convention on Human Rights, the decision of the US Fourth Circuit Court of Appeals in *Tabion v Mufti*, that the impugned activity did not come within the 'commercial activity' exception, was not authoritative and should not be followed by the Supreme Court

The Special Rapporteur was represented by Raja Rajeswaran Uruthiravinayagan, Duncan Lewis Solicitors, and by Professor Parosha Chandran, a leading human rights barrister at One Pump Court, and Professor of Practice of Modern Slavery Law at Dickson Poon School of Law, King's College London.

"I am grateful for the expert legal representation provided by Professor Chandran and Raja Rajeswaran Uruthiravinayagan, and for the significant contribution that they have made to securing another major development in international law, strengthening the protection of human rights for victims and survivors of human trafficking and domestic servitude. Their tireless work has ensured that diplomatic immunity is no longer an obstacle to access to justice for victims of trafficking", the expert said.

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Ms. Siobhán Mullally (Ireland) was appointed as Special Rapporteur on trafficking in persons, especially women and children by the UN Human Rights Council in July 2020, to promote the prevention of trafficking in persons in all its forms, and to encourage measures to uphold and protect the human rights of victims. She is also the Established Professor of Human Rights Law and Director of the Irish Centre for Human Rights at the School of Law, National University of Ireland, Galway. Prior to her appointment as Special Rapporteur, she was a member of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), elected as President of GRETA from 2016-2018 and as 1st Vice-President from 2014-2018.

The Special Rapporteurs are part of what is known as the [Special Procedures](#) of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the Council's independent fact-finding and monitoring mechanisms that address either specific country situations or thematic issues in all parts of the world. Special Procedures' experts work on a voluntary basis; they are not UN staff and do not receive a salary for their work. They are independent from any government or organization and serve in their individual capacity.

*For more information and **media requests**, please contact Vanessa Asensio Pérez (vasensiopez@ohchr.org) or Clara Pascual de Vargas (cpascualdevargas@ohchr.org)*