

International Trade Committee

Oral evidence: [UK trade negotiations: Agreement with the Gulf Cooperation Council](#), HC 79

Wednesday 7 December 2022

Ordered by the House of Commons to be published on 7 December 2022.

[Watch the meeting](#)

Members present: Angus Brendan MacNeil (Chair); Mark Garnier; Anthony Mangnall; Martin Vickers; Mick Whitley.

Questions 225 - 302

Witnesses

[I](#): Professor Raj Bhala, Brenneisen Distinguished Professor, University of Kansas School of Law; Sayed Alwadaei, Director, Bahrain Institute for Rights and Democracy; Yasmine Ahmed, UK Director, Human Rights Watch.

[II](#): Rosie Rowe, Advisor, Pillar Two; Tom Wills, Project Manager, Corporate Accountability and Trade, Business and Human Rights Resource Centre; Professor Clair Gammage, Professor of International Commercial Law, University of Exeter Law School.

Written evidence from witnesses:

- [Bahrain Institute for Rights and Democracy](#)
- [Business and Human Rights Resource Centre](#)

Examination of Witnesses

Witnesses: Professor Raj Bhala, Sayed Alwadaei and Yasmine Ahmed.

Q255 **Chair:** Good morning and welcome to the International Trade Committee's fifth session on the UK's trade negotiations and agreement with the Gulf Cooperation Council. We have two panels this morning, a panel of three and a panel of three. On the first panel we have Professor Raj Bhala, Sayed Alwadaei and Yasmine Ahmed. I will let each of the witnesses introduce themselves by name, rank and serial number.

Sayed Alwadaei: My name is Sayed Ahmed Alwadaei. I am the director and co-founder of the London-based Bahrain Institute for Rights and Democracy. I am also a human rights defender and a torture survivor.

Professor Bhala: Thank you for having me. Good morning. I am Raj Bhala. I am a distinguished professor at the University of Kansas. I am a senior adviser on international trade at Dentons. I am not speaking on behalf of the university, Dentons or any of its associates or affiliates. I have a four-volume textbook, *International Trade Law*; a single-volume book on Islamic law; and I also work in the area of law and literature. I am delighted to be here.

Chair: Thank you for joining us from Kansas. I am not sure what time in the morning it is in Kansas, but I imagine it is something like 4 am.

Professor Bhala: It is 4 am.

Chair: We are more than impressed. Thank you.

Yasmine Ahmed: Hello. My name is Yasmine Ahmed. I am the UK director of Human Rights Watch.

Chair: I assume it is about 10 am where you are.

Yasmine Ahmed: It is about that, yes.

Q256 **Chair:** Just to kick us off, I have a question to all of you. What do you consider to be the most concerning human rights issues across the GCC member states? I might start with Yasmine and give Professor Bhala a bit of a chance to process the question at 4 am.

Yasmine Ahmed: Thank you very much for having me. There are a number of human rights issues, but for us there are three critical human rights issues. The first is the severe crackdown on civic space, both online and offline. That is really unrelenting, and in fact it is getting worse across the Gulf states.

We are also seeing a continuation of the repression of women. We are seeing a continuation of male guardianship laws and other such things, which are severely discriminatory against women, across a number of the Gulf states.



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Finally, we are seeing a very worrying trend in relation to LGBT rights. We are not only seeing a trend whereby their rights continue to be repressed and they continue as a community to be discriminated against; in fact, it is getting worse. There are new laws that have been introduced in Oman, for example, in relation to gender identity. We are seeing that play out across the region.

For us, those three issues are incredibly critical. We are not only seeing them as a matter of law and in relation to the laws that are being introduced. We are also seeing them in the number of activists who continue to be imprisoned, many of whom are subject to mistreatment, and in the severe repression of freedom of expression online and offline.

Q257 Chair: When the Committee was in Riyadh in Saudi Arabia, some people who had been there before remarked on the difference in terms of women driving and not always being veiled now. We certainly saw women with partial veils—it is the niqab, I think—and women without them. Is there a change?

You also said there is a crackdown on civic space. Why? Some things seem to be changing, we are told; some things are not changing. What is your take on that?

Yasmine Ahmed: You are absolutely right that there are some changes in Saudi Arabia, particularly in relation to women. It should be noted that Mohammed bin Salman has specifically used certain agendas to propel the notion that the Kingdom of Saudi Arabia is in fact reforming.

Whilst we see that restrictions are certainly being lifted in relation to women driving and in relation to women's movement in terms of overseas travel when they reach a certain age, we are also seeing, holistically and systemically, that a number of the discriminatory provisions that women face in Saudi Arabia continue to be upheld.

We have, for example, male guardianship laws that still require a male guardian's approval for a woman to marry, to be released from prison or to obtain certain sexual and reproductive healthcare. Men can still file cases against daughters, wives and female relatives for disobedience, which can lead to their forceable return home or imprisonment. Many women are still detained in what they call shelters. When women are expelled from their family and other such things, they are not able to leave these shelters unless a male guardian provides consent.

We have also seen a significant chilling effect. It is quite amazing to think there is no human rights activism and no human rights organisations on the ground in Saudi Arabia because of the chilling effect we are seeing from the prosecution and harassment of women's rights activists in Saudi Arabia. It is having a huge chilling effect.

We have also noted and seen the very prominent recent examples, one of which relates to the United Kingdom, of two women who received substantial sentences for online activity. Salma al-Shehab, a Saudi



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doctoral student at Leeds University in the United Kingdom, received a 34-year prison sentence for very benign activity online, which was really speaking generally about women's rights. On that same day, Nourah bint Saeed al-Qahtani received a 45-year sentence for using the internet to tear the country's social fabric, again speaking about human rights and progressive values.

Although there are some superficial but meaningful reforms in relation to women's rights, what is embedded within the Kingdom of Saudi Arabia is still an incredibly repressive system for women. Their everyday rights, such as marriage, divorce, inheritance and so on and so forth, are subject to male guardianship laws. Women's activists continue to be repressed, imprisoned and mistreated. Online activity, such as we have seen in relation to these women, can lead to severe prison sentences. We need to take it with a pinch of salt, essentially.

Q258 Chair: Sayed Alwadaei, what do you consider to be the most concerning human rights issues across the GCC member states? At the moment, we are talking about six states. Feel free to answer on your terms.

Sayed Alwadaei: Thank you so much for having me. I believe the right to life is the most important right. This is one of the most threatened rights in the Gulf. For instance, this year Saudi Arabia set a record by executing 81 individuals in a single day. We have also seen a spike in the unlawful imprisonment of political dissidents. Anyone who disagrees with the Government will face imprisonment and torture.

As Yasmine pointed out, getting 34 years for tweeting or retweeting really tells you the scale of the repression these people are facing. The lack of freedoms is one of the major things. That is in all respects: it involves freedom of expression, the right to assembly and so on.

The other thing is the corruption within the judiciary. First, there is no difference between the Executive and the judiciary. Decisions can be extremely politically motivated. Sometimes you get cases where individuals do not have the most basic right of representing themselves.

One of the most important things is to look into the context. We are dealing with a dictatorship. The people have no say in how they should be governed. They cannot criticise. If they dare to exercise these rights, they face severe and serious consequences.

One of the issues that has not been spoken about enough is the right to citizenship. I am currently a stateless individual. I am Bahraini by birth. My roots are in the country but, because I dare to criticise the Government and expose human rights abuses, my right to citizenship has been stripped. This is a blatant breach of international law.

Q259 Chair: That means you cannot go back to see family and relatives.

Sayed Alwadaei: I would end up in prison if I went there. One of my family members is currently imprisoned in what the UN would deem to be



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a reprisal either for my activities in the UK or my engagement with the United Nations.

Q260 **Chair:** You said you have been tortured in Bahrain yourself.

Sayed Alwadaei: I have. Back in 2011, the Arab Spring, which was the biggest uprising in Bahrain's recent history, was met by a massive crackdown by the authorities. I was tortured. I was also assaulted by the police. I luckily survived. If you look closer, there is a scar on my forehead. This is the boot of a police officer, who was kicking me while I was on the ground.

I exposed what I experienced personally, and on the same day other individuals were murdered by the police. I ended up in jail myself. I was sentenced by a military court. We were being threatened with torture, even in the corridors before we were presented before a judge. That journey continued when I was placed in Jau prison, which is a notorious prison where most of the political prisoners are currently located. There, again, we would be subjected to physical and psychological torture.

Q261 **Chair:** How did you get out of prison? How did you get out of Bahrain?

Sayed Alwadaei: I left Bahrain following the completion of my sentence. I served six months in prison. Following this, I felt I was still threatened by the authorities and I felt the only thing I could do was to seek safety. I sought refuge in the UK.

Q262 **Chair:** Professor Bhala, can we get your take on the most concerning human rights issues that you see across the GCC member states?

Professor Bhala: I have two points. First, in addition to all of the points my colleagues have made, with which I entirely agree, I would add freedom of conscience. Freedom of conscience is in some ways the most fundamental of human rights and is spelled out in the International Bill of Human Rights. It is so fundamental because without it one cannot lead a flourishing life, whether that is spiritually, physically, emotionally or psychologically. This right is impeded throughout the Gulf. I have seen that first hand.

Secondly, in addition to these rights being intrinsically important, they are also efficient. When the Gulf countries systematically discriminate against women or LGBTQ+ persons, they handicap their own economies and impede their own development. The argument in favour of all these rights, including freedom of conscience, is both an efficiency-based one and, of course, fundamentally an intrinsically good or deontological one.

Chair: The point on freedom of conscience is very well made.

Q263 **Mick Whitley:** Good morning, Professor Bhala. The football World Cup in Qatar has led to scrutiny of the treatment of LGBTQ+ people in the region. Can you give any examples of where the protection of LGBTQ+ rights has featured in an FTA? If so, has it been effective?



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Professor Bhala: In the United States-Mexico-Canada Agreement, sometimes known as NAFTA 2.0, article 23.9 is the first time, to my knowledge, in any free trade agreement that we see a provision on discrimination in the workplace that specifically references sexual orientation and gender identity. In a soft law way, article 23.9 of the USMCA outlaws discrimination on the basis of SOGI, or sexual orientation and gender identity.

The Trans-Pacific Partnership, in article 23.4, does not go quite that far. It covers women, as does USMCA, but it does not go as far as LGBTQ+ persons.

Q264 **Mick Whitley:** Yasmine Ahmed, given it is unlikely that LGBT+ provisions will be secured in a UK-GCC FTA, how might increased trade between the UK and the GCC affect LGBT+ people in the UK and in the Gulf region?

Yasmine Ahmed: Although you are quite right that it is unlikely they will be included, the fundamental point for the community is that we should be pushing the UK Government to include them in these FTAs.

This is absolutely critical because the UK Government have committed to being, as you well know, a force for good. That force for good should use all the levers they have to promote human rights, and trade is a significant lever. Whether the FTA is subject to certain laws being passed and conditions being met, which are properly reviewed and of which there is oversight, or whether it is in the FTA itself, it is absolutely critical.

To answer your question, once the UK enters into this FTA, this very significant political leverage is lost. We have a moment right now, which is a very rare moment, as a result of Brexit, to be able to take a stand on critical issues.

I work on these countries in relation to many different facets. Whether it is the political, the security or the trade, we all know that the levers in relation to these countries are very few, by virtue of the fact our security, political and economic relationships are intertwined. We have a moment where the UK Government can do something. It is critical. If they do not do something, it says very clearly to the Gulf countries that countries will continue to endorse their practices, policies and domestic legislation, which is highly repressive, by virtue of the fact they will continue to enter into agreements that are of benefit to that country and of benefit to us. In doing so, they will set aside the rights of these critical individuals.

Essentially, it will bolster the authority of these regimes to continue to behave in the way they are. It will mean that individuals are further silenced. We know that many remain in jail and many have no voice whatsoever.

We know that Qatar and many other Gulf countries have a very obvious policy of presenting their countries in a favourable light, whether that is



through certain reforms and/or certain sporting events such as the World Cup. By doing this, we normalise our relationships with states that have anything but a normal or proper legal system, policy and practice in relation to some of the vulnerable minorities in civic participation more generally. It is critical, and it will be very significant if we see this.

The UK Government is not unimplicated in some of the abuses, to a certain extent. For example, the UK Government continue to authorise the licensing of military equipment to Saudi Arabia that is then used in Yemen. That equipment has been used in Yemen to commit human rights violations. If we are not going to stop selling or authorising weapons to go to Saudi Arabia, it is critical that we at least take a stand, when we can, in relation to trade agreements.

It will be a very significant moment, if this goes through without some critical human rights provisions and/or benchmarking and requirements prior to any FTA being entered into.

Q265 Mick Whitley: Is a UK-GCC FTA likely to help or hinder progress on LGBT+ issues in the UK and the Gulf?

Yasmine Ahmed: It depends on what is in the FTA and what conditions are placed on any FTA. If we go through with an FTA that does not reference or take account of the impact on certain groups within Qatar, Bahrain, Saudi Arabia and so on, there is certainly potential for it to have an impact. It will have an effect in specific ways, like Professor Raj has noted, such as in relation to work treatment and harassment in the workplace.

There are certain very specific impacts, but there will also be a broader impact. If there is nothing in there on a broader political level, it is a sign that we will have political relationships and economic ties with countries that have severe human rights records.

Professor Bhala: I would just like to underscore that point. The effect of the FTA really depends on how detailed and careful the UK is in negotiating the terms.

Take, for example, market access. Yesterday, the WTO produced a study that showed the tariffs on goods either produced or consumed by women generally tend to be higher than those consumed by men. Similarly, the non-tariff barriers on services women provide tend to be higher. This is where UK negotiators have a marvellous opportunity to identify and root out tariff and non-tariff barriers that discriminate against women.

Moreover, the UK negotiators have an opportunity to identify specific metrics involving business capital or social capital and then write those metrics into the FTA. They can put them—we can talk about this later, if you wish—in hard law obligatory terms, with monitoring and dispute resolution commitments. In sum, the opportunity to do good is in the UK's hands right now.



Q266 **Chair:** That is a good answer. I had not realised that point about tariffs on women's goods. Thank you for highlighting that. Just before we move on, I have a quick question on LGBT+ rights; I am looking for one-word answers here. Generally, would you say those rights are the same, better or worse now than they were 10 years ago? Is any state better than the other five in this area?

Professor Bhala: This might not be a direct answer to your question, but Singapore is better. They have moved a little bit forward. Among the six, I would defer to my colleagues and their expertise.

Yasmine Ahmed: Particularly in relation to LGBT individuals, it has got worse. There is probably no country that I would say has a particularly good record. We know the legislation that provides for these human rights harms has been reinforced and confirmed, or in fact gotten worse.

For example, in 2022 the UAE introduced a law criminalising consensual extramarital sex and sodomy, with vague and over-broad offences like scandalous conduct. They have introduced legislation to reinforce discrimination and problematic conduct.

Oman revised its criminal code in 2018, increasing the penalties for consensual intercourse outside of marriage and punishing any consensual sexual intercourse between men with up to three years' imprisonment. Very concerningly, they now have a new offence that criminalises non-normative gender expression for the first time. That can be up to one year in prison or a fine.

In broader terms, we are seeing a climate of fear not only because of these laws but because of repressive crackdowns. We came out with a report this year, ahead of the Qatar World Cup, in which we documented six cases of LGBT individuals who were arbitrarily detained and mistreated based solely on their gender identity or sexual orientation. Across the Gulf states, it is by no means getting better. In certain places, we are seeing these problematic practices reinforced in law.

Q267 **Mark Garnier:** Yasmine, carrying on from your earlier answer about women's rights and gender rights, in Saudi Arabia in particular. I first visited Saudi Arabia four years ago, and I went again this year. Certainly when I visited four years ago, MBS was very much talking about moving forward and a direction of travel towards gender equality. I was struck at the time that there was a tension between what the royal family wanted to do in terms of gender equality and the wishes of the clerics. That was something that was going to cause problems.

Following on from your very comprehensive answer on gender equality in Saudi Arabia, do you see that there is a direction of travel and a wish by certain people to move forward? If you do, is it being hindered by religious clerics? Has that movement forward faltered at all, or is there still momentum behind that change?



Yasmine Ahmed: There has been movement in some places, as you have noted. In Saudi Arabia and UAE, there have been reforms on women's rights and, more broadly, on freedom of expression. We need to be very careful in relation to what is happening in some of these countries because these reforms are, in some ways, being utilised as a way of presenting these countries as being reformed wholly and presenting them in a new image, in order to benefit from further integration in the international system. Having a better reputation helps with that.

Although there is some wind and there has been some movement, which is important, I would not say it is by any means wholesale or systemic. We can see some movement in relation to some of the laws but not all of them. What we are seeing in practice, which is the key, is a continued crackdown on civil society, LGBT individuals and women's rights activists. It is prolific across the Gulf states.

I defer to the other witnesses, but it is not necessarily rooted in this idea of the clergy somehow pulling back the leaders from doing what they want to do. There will be a certain amount of influence, but what we have seen in a number of countries, including Saudi Arabia, is the use of LGBT rights and other things to enhance their domestic authority. It is certainly not something I am particularly positive about.

At the same time, it has demonstrated that there is some appetite when they feel it is in their interest. We have seen UAE, Saudi, Oman and other countries making some progress. As I have said, though, it is minimal given the severe crackdowns.

That speaks to the fact these are not unmovable regimes. We currently have leverage. As Professor Bhala mentioned, there is leverage to be very clever in how we do this. This is a moment to utilise that. We have certainly seen some opportunities for that to happen and some movement.

Q268 **Mark Garnier:** Professor, perhaps you might like to respond to this point. It sounds like this is what some people would view as quite cynical. It is almost like an oil and gas company greenwashing its credentials to be more attractive to investors. It is a similar type of thing.

Professor Bhala: That is true. Stepping back for a second, there is a conceptual battle among Islamic law scholars. It has been going on since before 9/11. It is a battle over the extent to which independent reasoning, known in Arabic as *ijtihad*, is an acceptable source of Islamic law.

Read literally, the main sources of Islamic law hold that homosexual behaviour is considered unlawful sexual intercourse. It is a crime against God, a *haq Allah* offence known as *zina*. It is punishable by death or by 100 lashes. If that literalist view is continued, they are where they are. On the other hand, if they are more flexible about the use of independent



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reasoning, there is hope for reform. Your question goes perfectly to this conceptual battle and to what can be done to encourage the reformists among the clerics, if you will.

Q269 **Mark Garnier:** Sayed, it would be great to hear your views on this. Also, do you feel there is anywhere in the GCC that is resolutely not moving forward and about which we ought to be slightly cautious?

Sayed Alwadaei: It is extremely important to pay tribute to those female activists, who took the lead in gaining these rights. Loujain al-Hathloul is one of the key activists who led the campaign. They made this a reality within the culture. They challenged so many things. They had so many serious challenges, not only from the state but from so many other things, but they stood up. They also inspired the entire world to see they had this ability.

When this right was given in 2017, if I am not mistaken, the ladies who championed this right were the ones who were punished. Loujain was thrown in prison and tortured. The right later became the law, and Saudi women are able to drive a car. The message here was very clear: if you dare to challenge the state in a way that is perceived not to be respectful to the leadership, you are going to be punished whether you are right or wrong.

There is an extremely important lesson for us to learn here. Thanks to Loujain's courage, the international community stood up with her. This is where we saw significant diplomatic pressure coming from different directions. When Biden came to power, one of the key things is that we have seen Loujain be released from prison. If it is an indication of anything, it is an indication that the international community can protect these individuals. This is how it should be. Those who stand up should be rewarded and protected. If they were, Saudi Arabia, Bahrain and many other states would not make an example of them. If they make that example, there would be complete silence. There has to be a balance. We have to think about who should be credited for these reforms.

Q270 **Mark Garnier:** Yasmine, it would be very helpful if you could point to any particular states that we should be more worried about than others.

Yasmine Ahmed: Following up on what Sayed and Professor Bhala said, and speaking on the opposite side, there are also opportunities.

It is quite striking to note, for example, that in November 2021 the authorities in the UAE issued a new civil marriage law, which essentially provides for civil marriage with improved protections for women and mostly equal rights between spouses relating to marriage, divorce and decisions related to children. However, it applies only to non-Muslim foreign national couples residing in Abu Dhabi.

That creates a problem by virtue of the fact it is discriminatory and applies only to non-Muslims. Human Rights Watch is certainly not expert on Islamic law, but it does speak to the fact that there is movement or



progress in relation to these issues, even if it is in relation to non-Muslims. There are openings. There are opportunities to engage with Islamic law and how some of the clerics are thinking about that. It is certainly worthwhile to think about that.

In terms of the most worrying countries, the two countries that really stand out for us at HRW are Saudi Arabia and UAE. The repression in both countries has been striking. The crackdowns on civil society and the repression of free expression have been unrelenting, and getting worse. Those are the two that stand out the most for us at HRW.

Q271 **Mark Garnier:** That is very interesting. Professor Bhala, there seems to be a sense that international pressure is the way to deal with this. How do you build that into a free trade agreement?

You discussed the technical element of tariffs on the types of businesses and transactions that affect women the most. Trying to define an outcomes-based trade deal is quite tricky. I take your point about that very specific thing, but, if there were to be targets around gender equality within a trade deal, for example, how would you define those? How do you make it work in a practical sense? Is that the only effective way we can do it? This is the argument that money talks.

Professor Bhala: Yes, that is exactly the question. How do we operationalise the values we are trying to put in the FTA? The World Bank has a series of metrics that measure progress for women—it is a World Bank dataset—on education, business capital, social capital and legal protection. They have variables under each of those four big categories. They look at, for example, whether women are permitted to perform the same jobs as men, whether surviving spouses have the same inheritance rights.

You go through each of these metrics and then, hypothetically, set up a monitoring committee that monitors the progress you have agreed with your GCC partners on a particular timetable. Sometimes a lot of the negotiation is about the right time for implementation: is it one year, five years or 10 years? Then you have representatives from civil society on the monitoring committee, and then you have an enforcement mechanism. That could perhaps be something quite advanced like the rapid response mechanism in NAFTA 2.0 so that complaints can be brought quickly and adjudicated.

I believe it is possible to operationalise these values-based outcomes, but, again, there will be very detailed negotiation as to what the metrics are, how quickly you want to see them implemented and then how you want to enforce them.

One other point—I apologise, as it almost sounds pedantic—is that the writing of the grammatical structure of the obligations is very important as to whether it is soft law or hard law. You have to look at how the verbs are constructed. If we say something like, "The GCC should consider



raising the minimum legal age of marriage to 18", it is a lot different from saying, "The GCC shall implement a minimum legal age of marriage of 18 within two years." A lot of the fighting in the negotiating room can be about the construction of those verbs. It is somewhat trench negotiations, but that is what we trade lawyers do.

Q272 Mick Whitley: After the World Cup was awarded to Qatar, the conditions of the workers building the football stadiums were well documented, particularly in relation to the provision of health and safety rights, the absence of trade unions in the country and some aspects of modern slavery, in terms of migrants having the right to go from one employer to another. That is illegal in Qatar. The right to do that has to be given by the employer.

How could we have discussions about workers' rights and health and safety provision in the context of a free trade agreement? How could we implement that in the agreement?

Professor Bhala: This is something in which the US has considerable experience from its negotiations with Mexico dating back to the 1980s. There was serious concern about labour rights in Mexico not only in and of themselves but also the potential for using lower labour standards as a wicked comparative advantage. The note was made about the giant sucking sound that would happen to the south if the US lost businesses because of labour rights violations.

What the US did was, first, to put labour rights in a side agreement under NAFTA 1.0 and then move them into the core text under NAFTA 2.0 with a labour chapter. It identified the International Labour Organisation's top five internationally recognised workers' rights, including worker health and safety conditions. They were to be adhered to. With NAFTA 2.0, there is the Facility-Specific Rapid-Response Labor Mechanism. The negotiators also agreed on a set of aspirational standards, which were not immediately obligatory but which Mexico ought to realise over time.

One of the lessons we can draw is to use the internationally accepted ILO top five. Those are widely used across trade. They are used in the generalised scheme of preferences programme, for example. Again, you need to identify some specific metrics under each of the five, have a good enforcement mechanism and then further add some aspirational standards that you would like to see achieved in, say, five years. You need to build in a negotiating agenda.

The point Yasmine Ahmed made earlier is very true. Your leverage is highest now. You do not want to have to reopen the FTA five years later. You want to have a built-in agenda so you can keep negotiating them. I might add that the EU is putting in these sorts of standards and, indeed, human rights in their new free trade agreements and directives.

I am sorry to go on, but a final way to secure labour rights is in the supply chain. In the customs law provisions of your hypothetical UK-GCC



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FTA, you empower UK customs to bar entry of merchandise that is suspected of containing forced labour inputs or of using labour that violates any of the ILO top five.

That is a very important trend that we are seeing in US law with the Uyghur Forced Labor Prevention Act. US Customs and Border Protection will seize at the border any goods coming from Xinjiang. They are rebuttably presumed to contain forced labour. The bottom line is that you have two chapters you can use—a labour standards chapter and a customs law chapter—to enforce the ILO's top five workers' rights.

Sayed Alwadaei: I believe these are extremely important rights to be guaranteed. The UK Government should seek any opportunity to influence this through the free trade agreement. This is something they should be able to consider.

I have a reservation to start about the term "free trade agreement." There should be a question about whether a free trade agreement is really the right path forward when it comes to the GCC. This is risking the UK setting the bar extremely low when it comes to granting this to the GCC countries.

Q273 **Anthony Mangnall:** Professor Bhala, is it better for us to look to do bilateral agreements first, to see whether we can encourage countries to improve or upgrade their standards and human rights records?

In the briefing notes we were given, there has been a great deal of conversation around the laws that countries have introduced in their constitutions versus in family law. That seems to be one of the problems. Constitutions can be amended and new international agreements can be signed, including with the UN and the ILO, but family law seems to be the block where we might want to see some drastic improvements.

Professor Bhala: The idea of sequencing and doing bilateral FTAs is a very good one. If there are, among the GCC countries, some that are recalcitrant and do not want to match the UK's standards or even incrementally approach them, why not?

Moreover, once the UK secures a bilateral with, say, Oman and the benefits of free trade are enjoyed between the UK and Oman, others are going to want to do that. We have seen that to some extent in the US history of negotiating free trade agreements. In other words, you can use different GCC countries as leverage against one another, to be blunt, in a realist sense.

The family law point is right. Family law and criminal law are the two areas of Islamic law most in need of reform. The US did this, interestingly, in its FTA with Morocco. In the early 2000s, the US negotiating position, if I recall correctly, was that Morocco needed to amend its family rules on divorce to make the grounds for divorce equal. Certain Islamic law provisions disfavoured women, and new provisions were to be written into Morocco's family law.



Q274 **Anthony Mangnall:** Is that the example? We are talking about whether free trade agreements have an ability to upgrade and uplift standards. You used the example of the United States and Mexico in answer to Mr Whitley's question about workers' rights. Do you have confidence that a free trade agreement between the UK and the GCC, or on a bilateral basis, could help to improve the standards and development we would like to see around the world, and especially in this region?

Professor Bhala: What is the alternative—not to try? In the US-Mexico example, most commentators would broadly agree that there has been an improvement in labour rights. We used another technique the UK could use, which is a rule of origin. In the new NAFTA 2.0, in the auto and auto parts sector, 40% of a passenger vehicle or light truck has to be made with labour paid at least \$16 per hour. That is a tremendous increase in the average wage in the Mexican auto sector, which averages \$2 to \$4 per hour.

You ask whether I have confidence. I would say it this way; I would flip it around. I have confidence that, if we do not try to use this very important device of a commercial agreement to advance rights, we will have to fall back on our old public international law leveraging, which has not been as successful.

Sayed Alwadaei: It is better to look at each country on its merits and deal with it on an individual basis. I will give you an important example: a woman's right to drive a car. This right was granted in Bahrain many years before, whereas in Saudi Arabia it happened in 2017. The point here is that each country should be looked at on its own merits.

There is a second risk or threat of which the Committee should be aware. There is sometimes a crisis among the Gulf states themselves. For instance, we have seen the crisis of the blockade against Qatar by the UAE, Bahrain and Saudi Arabia. There is a threat to how united they are and how strong they are.

Q275 **Anthony Mangnall:** Professor Bhala, on how internet freedoms affect trade, the conversation seems to be about network management versus non-discriminatory treatment. If one takes a view of the UNHRC's point about reasonable network management, could you perhaps tell me what "reasonable network management" looks like?

Professor Bhala: Candidly, I am not sure I can. I may have to drop the Committee a note. I apologise.

The basic tension—forgive me if I am not advancing the ball here—is data privacy. On the one hand, we want to protect consumer information, healthcare information and financial records. At the same time, on the other hand, we want to allow the free flow of data. These were negotiations that the US went through with its Trans-Pacific Partnership partners. The US basically agreed on a set of provisions concerning data localisation and where you put servers.



Everyone wants to support e-commerce. That is the big opportunity. Certainly, the Gulf has been interested in e-commerce. Exactly where the sweet spot is in managing data privacy and data localisation versus the free flow of data is something the UK would have to work out with its GCC partners.

Q276 Anthony Mangnall: Would it be safe to say that internet freedoms are becoming increasingly relevant within trade deals? I am sorry if that is a very leading question.

Professor Bhala: Yes, absolutely. You are exactly right. We see that in all goods and services sectors. It supports commerce and wealth-generating transactions to have those internet freedoms.

Q277 Anthony Mangnall: Yasmine, Freedom House has a pretty startling scale of internet freedoms. Let us just say that the Gulf does not come off particularly well. Could you outline how internet freedoms can be effectively addressed through FTA provisions?

Sayed, there have been quite a few reports that GCC states deploy digital tools to control and influence the media across the region. What action could the UK take to address this within its free trade agreements?

Yasmine Ahmed: I am probably going to have to pass on that question because HRW has not worked specifically on free trade agreement and internet freedoms. We have documented the crackdowns on internet freedoms in Saudi Arabia, UAE and other places, but we have not specifically addressed that. I will probably leave that question. I would turn to my colleague Professor Bhala for his expertise. Apologies for that.

Q278 Anthony Mangnall: Should the UK include any red lines around internet regulation and freedoms in its GCC negotiations?

Yasmine Ahmed: Yes, certainly on protecting internet freedoms. Internet suppression and the closing of civic space on the internet is an extreme concern. From HRW's perspective, any condition within a free trade agreement that could ensure freedom of expression on the internet is absolutely critical.

As we have said, we have seen a significant crackdown. We have documented so many cases, including the ones I mentioned of two women being imprisoned for 34 years and 45 years respectively. We have Mohammed al-Rabea, an aid worker, and Abdulrahman al-Sadhan, who are serving six years and 20 years in prison respectively due to charges related to peaceful expression or activism on the internet.

For us, it is anything that the UK can place in the agreement or make subject to the agreement that would ensure freedom of expression on the internet. There are issues around data protection as well, which will be critical to how data is protected on both sides. Those are the two critical issues for us.



Sayed Alwadaei: The key question is when you cannot express yourself online and you get extremely punished for it. The most concerning issue, where the red line should be drawn, is about the use of spyware and hacking. This is not only a threat to individuals in the GCC countries. I want to draw the Committee's attention to my personal experience of Pegasus being used on my phone. Last year, over 50,000 individuals were listed.

The astonishing part is that my number identified in the list is a UK number. When *The Guardian* took my mobile for forensic analysis to find the matching contacts on my phone, there were more than a dozen individuals who matched my list.

The state surveillance of citizens is astonishing. Most activists, dissidents and the family members of prisoners, and even the family members of executed individuals, are under the surveillance of the state. They were on this list. It is not only those who oppose the Government; it is also those who are aligned with them.

Here is where the red line should be drawn. This could be an additional security threat to the UK public. I am not only talking about exiled refugees or dissidents in the UK being under threat. As a matter of fact, UK nationals and UK lawyers were also subject to hacking by Gulf states. There was a report that 10 Downing Street and the Foreign Office were subject to threats of hacking. This is where the red line should be drawn.

The UK High Court has rightly quashed diplomatic immunity when it comes to Saudi Arabia so the case can move forward on spyware and so on. The UK courts have taken the right decisions. On the political side, the Government have been completely muted on this issue and made no real comments.

Q279 **Chair:** Time is against us. We have had an hour, and I am aware it is 5 am in Kansas. This is just a philosophical point. We have touched on a number of rights. How does the battle for rights mirror what happened in the west decades ago, or is there no parallel at all? Does the west being involved or having views help or hinder? When the west was going through changes, there was no lecturing body, if you like.

The best or worst parallel I can think of is that Norway is going to be the first country to have only electric cars. If Norway went around lecturing other countries—the United States, Canada or Europe—and saying, "You all must have electric cars," I wonder what sort of reaction that might provoke in society. The question is about when other countries have views. Is this used internally to say, "This is imperialism", or, "This is just their way"? Does it help or hinder?

Sayed Alwadaei: This is an extremely important question. I think there are some fundamental rights. No state has the right to breach these rights against any citizen. There is the right to life or the basic right to freedom. It is not us who are saying this. It is these countries themselves



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that have obliged themselves to say, "We are committed not to torture individuals." If I make any criticism of the Bahraini Government, accuse them of torturing individuals or expose their horrifying human rights abuses, the first thing they would say is, "No, we did not do it. We deny it. Nothing is wrong here. As a matter of fact, we signed this and we signed this"

What we are doing in this exercise is holding them to account for some of the commitments they made themselves. We just hold them to account for these things. This is the way it should be viewed going forward. I do not think any country can justify committing crimes against humanity or against its own citizens, by imprisoning them and so on, and expect the world to do nothing. If anyone criticises them, they cannot say, "No, we are not going to accept that."

We also need to look into the behaviour of how these states sometimes overreact because they are very sensitive to criticism. This should not be barring states from doing the right thing.

Professor Bhala: We are talking about universal rights that have been agreed for going on for three quarters of a century, since the founding of the United Nations. Substantively, these ought not to be controversial, but, as your question rightly puts it, the question is style, how we export these ideas.

I would make two points. One is a point about humility, as we do not always get it right. We have seen controversies in the United States continue to this day.

The second is about not demonising the other side. President Kennedy said in his 1963 peace speech that no country's Government are so evil that its citizens are without virtue. There are good people on the other side and they want to do the right thing, too. If we approach it in that spirit, our style will reinforce our substance.

Yasmine Ahmed: I would echo that these are universal standards. They are applicable to all states in the world. I appreciate what you are saying about the strategic value of having western states utilise different leverage to push other states. You mentioned how, in the western world, our rights developed organically, without external pressure. The market, the economy, is a pressure that has evolved workers' rights and evolved lots of things.

Within the context of the trade agreement, which is part of the broader international economy, these are the places where we have seen human rights emanate and evolve. Workers' rights were among the first critical rights to be established. These provide critical opportunities—not opportunities, necessarily, viewed from the prism of western countries telling Gulf states what to do, but actually the international economic system saying, "These are things that we think are important and how we think things should evolve."



Secondly, I would point to the fact that there are these trends within western states. We are seeing due diligence laws around supply chains being passed in Europe. That has been important for certain states, such as European states, pushing the UK, which currently does not have any due diligence laws. It is not only about western states pushing it on to non-western states; it is the same within western states. As I said, the economy and finances are an important basis and opportunity to push for rights.

Q280 **Chair:** I have a number of points to tie up before we move on to the next panel. The Gulf Declaration of Human Rights was adopted in 2014. The interpretation of the declaration appears to be dependent on a country's own interpretation of sharia. If that is the case, what implications does it have for the interpretation and implementation of human rights provisions that may be included in a UK-GCC FTA?

Professor Bhala: The implications would be based on the breadth of sources that are used to define and elaborate on sharia. If only a couple of what are known as fundamental sources are used, that is going to restrict the rights of women and LGBT+ persons to very orthodox views. In writing the FTA—you nailed it right on the head—you have to constrain those kinds of reservations and somehow discipline the ability of GCC countries to view a narrow interpretation of sharia as a giant exception to any FTA obligation that they might find unpleasant.

Sayed Alwadaei: It is extremely important to hold them to account on what they say. I would like to quote the first article of the Gulf Declaration of Human Rights: "Every person has the right to life and must be protected from any assault thereon. No one may be killed unlawfully. The bodies of the dead must be respected, buried and protected." Every single thing written in this article has been breached by these countries. Saudi Arabia carried out 81 executions in a single day and did not even return the bodies of those who were murdered.

If we want to hold them to account on what they say themselves, the text is not worth the paper it is written on. It does not mean anything in reality. Also, those states have gone far beyond by staging a war in Yemen, for instance. You could talk about the sacrifices of those civilians and the deaths there. It is extremely important also to note how they are really implementing this.

Chair: It has turned out well that you have the last word. That was well put. Thank you for your courage in coming here. I thank all the panellists for being here. I hope the one in Kansas can get some more sleep before the proper morning. It is much appreciated that you came in the middle of the night. Your contributions, all of you, were invaluable. I am particularly impressed at being that alert at 4 or 5 in the morning, so well done. Thank you, all.

Examination of witnesses

Witnesses: Rosie Rowe, Tom Wills and Professor Clair Gammage.

Q281 **Chair:** I am very grateful for the second panel's patience. We have Rosie Rowe, Tom Wills and Professor Clair Gammage. I ask you all to introduce yourselves: name, rank and serial number, or whatever you want to say by way of introduction.

Rosie Rowe: Hi, everyone. I am an adviser at Pillar Two, a business and human rights advisory firm, and a researcher for the Global Business Initiative on Human Rights. In 2021, I co-authored a paper for Chatham House with Dr Jennifer Zerk focusing on advancing human rights through trade. The paper focuses on monitoring systems and how they can be improved.

Tom Wills: My name is Tom Wills. I work for the Business and Human Rights Resource Centre. We are an international human rights organisation based in the UK, but with staff around the world. We focus on the human rights impacts of business. That has led us to focus on how trade agreements can help to set the terms for how companies operate internationally, and to ask how trade agreements can support more responsible and ethical forms of business. My work focuses somewhat on the UK, as well as on broader global trade policy.

Professor Gammage: Hello. I am Professor Clair Gammage. I am a professor of international commercial law at the University of Exeter. My research focuses entirely on values-based trade, so looking at free trade agreements and how they promote, or not, sustainable development and human rights. I have published extensively in this area, and I continue to do lots of engagement with Governments to try to raise awareness and understanding of how these agreements can be implemented in practice. Like Rosie, I am very interested in the implementation and mechanisms of these agreements and how they work in practice.

Q282 **Chair:** Professor Gammage, can you tell us about an FTA that has used human rights provisions effectively? What institutions and mechanisms were necessary for this success?

Professor Gammage: Values-based trade, as I would call it, or this idea of embedding human rights or sustainability into a trade agreement, was pioneered by the European Union. The difference between the EU and the UK is that the EU has a legal basis for doing this. It is in its treaties. It has to act in a way that externalises its internal values.

One example of the inclusion of these obligations, albeit framed in non-justiciable ways, for example, is in the context of labour standards in the EU-Korea FTA. In that particular case, there were concerns raised through the relevant mechanisms in that FTA about Korea's failure to uphold labour standards. In that case, eventually it went to a panel. The panel was set up as part of the FTA. The panel, which is independent,



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found that it had failed to implement these labour standards. Subsequently, Korea has raised its standards in some respects.

We can see there that, in the context of some parts of the agreement, these clauses can be very effective, even if they are framed in soft ways and are not legally binding. In terms of human rights clauses, they are phrased slightly differently. They are framed as essential elements clauses within a free trade agreement, which means that you can withdraw concessions of the whole or part of the agreement if human rights violations are found to be taking place.

However, the EU has never withdrawn concessions in an FTA context. That shows us that, although they are important to the framing of the agreement, the preference has always been to pursue conciliation and dialogue with the partners of that agreement, rather than a sanctions-based approach like the US. They can work, but it depends on the context in which they are used. The EU has had this within its agreements as a very important part of its external policy, and Canada does as well. It is part of the framing of being an independent trade actor and how you want the world to perceive you within those spaces, as well as being able to leverage good practice around the world with these agreements.

Tom Wills: I would echo a lot of what Clair said. In terms of having what the EU has—trade and sustainable development chapters that have been, as Clair said, a core part of the EU's approach and, at the time, the UK's approach since 2009—they create a shared sense of commitment, but they are not accompanied by what we would see as an adequate type of enforcement mechanism. Therefore, a lot of social partners, CSOs and trade unions have been sceptical as to their value and have seen them as rather empty, symbolic gestures that have some value in their symbolism but, none the less, lack value in their ability to uphold rights.

A stronger approach that contains binding rights mechanisms was mentioned by your previous witness, Professor Bhala. That is the rapid response mechanisms included in the US-Mexico-Canada agreement. That provides that when individual sectors of the Mexico export sector, or individual factories, are found to have been abusing labour rights, there is a mechanism for workers or civil society organisations to make a complaint to the US trade representative.

There is a mechanism for the privileges of that trade agreement to be suspended in the case of a particular sector or factory. That is much more agile than the model the EU has used, in terms of the trade and sustainable development chapter. That is much more targeted and is also quite appealing to us, in that it places the responsibility not on Governments for ensuring rights but on companies for making sure that rights are upheld within their supply chains.

It has been used, at the latest, six times in the auto and agrifood sectors. Nothing has progressed to a formal complaint, but rather the employers



in question have responded to the process by recognising independent unions and allowing rights to be recognised and upheld within their supply chains. We see that as the kind of mechanism that a post-Brexit UK should be looking into, rather than regressing from the EU standards. That is very much the trend we have identified over the last 18 months, in terms of UK trade policy.

Rosie Rowe: I absolutely agree with both Tom and Clair. For some context, there is a growing pressure for sustainable trade to be realised and that, as part of that, trade regimes should incorporate those normative considerations around human rights.

I would like to start by briefly talking about the clauses side. It is fairly crucial that the UK uses its leverage before signing an agreement with the GCC states to ensure there is a human rights clause. That can help to provide a foundation for ongoing engagement in the region. I know Clair has already talked about EU practice, and I would like to echo that the Joint Committee on Human Rights has recommended that such clauses should be contained in future UK trade agreements and that it should be with specific reference to instruments like the Universal Declaration of Human Rights. This has not been realised yet, I do not think, in the agreements with New Zealand or Australia, for example. There is no specific reference to human rights. It is imperative that there is in future agreements, particularly when negotiating with states whose human rights records are poor and there is an opportunity to use leverage to negotiate to include those positions.

In terms of the trade and sustainability chapters, and with labour and gender chapters, there is scope within them for a type of monitoring through these kinds of co-operative dialogue mechanisms that can be set up in the chapters. These are aimed at avoiding a race to the bottom on social and environmental issues, the diminishment of human rights and the undermining of fair competition.

These kinds of chapters provide avenues for stakeholders to voice their concerns about how the implementation of the agreement might affect workers' rights or environmental conditions and various other kinds of impacts. These can take the form of co-operative dialogues, as mentioned, civil society forums or avenues for public submissions that can then be discussed by the parties. There are multiple avenues where, while they do not explicitly say, "These are avenues for human rights," there is real scope for setting a dialogue and engaging with trade partners through those.

Q283 **Mark Garnier:** Are there better mechanisms that we could use for addressing human rights other than free trade agreements? If so, what would they be?

Rosie Rowe: There are some interesting other mechanisms, but there is a place for these kinds of processes through trade to set the foundation. I know the UK has said that it commits to speaking frankly with GCC



partners on human rights. This could be a tool to live up to that commitment and to facilitate a way to establish a dialogue. It could be a useful tool alongside other approaches, which are outside of my expertise, particularly for that region.

Q284 Mark Garnier: Professor Gammage, to what extent would human rights provisions in a hypothetical UK-GCC FTA need to be linked to existing programmes within the region, an example being the Gulf strategy fund, in order to make it effective? Have you any thoughts about that?

Professor Gammage: I stand behind everything that has been said about the need to incorporate these at the negotiation phase, rather than as an add-on or as part of a side co-operation agreement to an FTA. There are other mechanisms for implementing human rights, and those should be upheld alongside the agreement. They could even be embedded within the agreement.

Human rights clauses come in many different shapes and sizes. They may list a more general approach. They could list explicitly the types of human rights that are to be upheld and what might happen if they are not upheld through the non-execution clause. The key thing is to understand what is currently in place, for example in the GCC, to improve human rights, women's empowerment and the rights of those in the LGBTQIA+ communities.

They can be weaved into the work that takes place as the implementation of the FTA rolls out. You do not necessarily need to embed those within the FTA explicitly, but you should at least make reference, and most agreements will, to how you would relate to other mechanisms that are in operation.

Let us be clear about this. The UK, as part of the EU, always maintained that it upholds the highest standards in its external relations. It has always claimed to be a good normative actor. It has always said that it wants to uphold human rights and to lead in that way. Suddenly to regress from that, in an agreement with a region that is known to have human rights violations and to have a poor record of upholding those standards, is going to be a deeply problematic approach for the UK Government in their future trade negotiations and, indeed, in their existing trade agreements that are currently will be under review in future years.

Mark Garnier: That is an incredibly important point. Thank you.

Q285 Martin Vickers: Rosie, could you elaborate on the mechanisms relating specifically to the UK-GCC FTA? What mechanisms can we implement to establish and ensure that human rights provisions are coherent and systematic?

Rosie Rowe: It might be helpful in this context to draw on one of the recent agreements. I am going to draw on the example of the labour chapter in the UK-Australia FTA. That provides for several avenues. There



is the shared commitment to meet international obligations around labour rights. In terms of mechanisms, there are labour contact points that also exist in different agreements, such as the US. That provides an avenue to receive and consider written submissions from the public. This should be accessible and promote the process that is available for stakeholders to make those submissions. This could be providing it online, in various different languages, for example.

It also provides for labour co-operative activities. This could include promoting labour rights in the region and sharing best practice. It is also important to raise here that stakeholders can also include business. They themselves have an obligation to respect human rights and have a responsibility to do so under the UN guiding principles on business and human rights. I feel it is also important to hear from companies, especially those that may be engaging in new activities or expanding their activities in the Gulf states, on the potential implications of this trade agreement for those companies being linked to adverse human rights impacts.

Coming back to the labour chapter, it also includes a consultative or advisory body, or provides for the state parties to set them up. That is another way for members of the public to raise views on the chapter. There is also a consultation and dispute settlement procedure. That includes requesting information from other trade partners and entering into consultations to resolve a dispute.

For example, this could be used specifically in contexts of labour, but it could potentially work for human rights as well. If there was a dispute where the parties have failed to implement or ratify relevant ILO conventions or standards, that can be reviewed by a joint committee. There are different recourses and possibilities in some trade agreements to have recourse to the broader dispute settlement procedures, which include different penalties. There are various strands that could be brought in to provide different avenues for these types of mechanisms.

Q286 Mark Garnier: Rosie, there are concerns about the trade and sustainable development chapters in these FTAs, given they are not usually subject to dispute settlement mechanisms and often lack binding clauses. Can you suggest any mechanisms or conditions that would be needed in country to make TSD chapters more effective in general?

Rosie Rowe: That is an interesting question. These chapters are certainly not without their problems, but the facilities they have should not be dismissed. While there might not be enforcement mechanisms, I reiterate that they set a foundation for these different approaches.

There are different mechanisms. I like the rapid response mechanism that was highlighted by Tom. That has fallen on other interesting examples. There are earlier approaches, and that factory-level side of things is an interesting approach. The TSD chapters have a lot of value. Particularly in this context, it could be important to set up these



dialogues. That is a way to start building and figure out different approaches and improvements over time.

Tom Wills: I am nervous of promoting the TSD model as something that would necessarily work in the context of the UK-GCC. Five of the six members of the GCC are ranked by Freedom House as not free and therefore have substantial limits on the freedom of civil society.

The fundamental structure of the TSD chapter, as it is currently used by the EU, is that you have what is called a domestic advisory group established in both the EU and its trade partner. That domestic advisory group is composed of experts, academics and civil society groups. They are able to highlight potential concerns as they arise. I am not convinced you could have a domestic advisory group that would function in anything like the way it is intended to in any of the GCC countries, given the existing degrees of civic freedoms in those countries.

On the enforceability of social and environmental non-economic factors within trade agreements, the UK has experience, in the EU-UK trade and co-operation agreement, of having a labour chapter that is enforceable via state-to-state dispute settlement.

There is a level playing field clause in the Brexit agreement that provides that neither party, the UK or the EU, should regress from its existing standards of social and worker protection. Should either party do so, there is the possibility within that agreement to suspend part or all of the agreement as a form of sanction. Those kinds of sanctions are far more effective, in our view, than the weaker, consultative, dialogue-based sanctions that have been pursued to very little effect over the last 10 or 15 years.

Professor Gammage: The domestic advisory groups serve a purpose. It is questionable, based on the EU's experience of domestic advisory groups, how useful they can be. Certainly, when domestic advisory groups have identified potential challenges or problems in the implementation of an agreement, that is not necessarily followed up and the agreement continues to be rolled out in spite of the concerns that have been raised. If you go down the domestic advisory group path for this type of arrangement, you would need to be committed to ensuring that, when that group reports back that there are considerable challenges facing the agreement, those concerns will be listened to.

There is a lot of practice from the EU that the UK could learn from to think about alternative models, as Tom has suggested, around what might be appropriate in this specific context. Although the obligations are not legally binding, the EU-Korea case I mentioned at the beginning related to the TSD chapter and was successfully upheld.

Part of the issue we have with the trade and human rights context in FTAs is that the majority of business is not being carried out by state-owned enterprises, from the UK at least. It tends to be businesses and



transnational corporations. In order to establish any kind of breach, you would have to find some way of linking that to the state, which is not always easy. This is a really complex area.

You would need to ensure there are really robust mechanisms that may well have some element of co-operation and consultation, and may have some elements of sanction. The context here is quite unique and it would need to be very carefully managed, because it then dictates what you can do with India, for example, or the US, and indeed then plays into your other relationships.

Q287 Mark Garnier: That is very helpful. I am slightly conscious of time, but this is quite an important question on the nature of the GCC. Is there an inherent advantage for human rights if agreements are done bilaterally with each of the GCC states, rather than doing it as a UK-GCC bloc?

Rosie Rowe: There are different levels within the GCC. Kuwait, for example, has ratified standards on freedom of association and collective bargaining, whereas the other states have not. Overall, as a bloc, there are a few different benefits in terms of leverage and the wider region. Also, each of the states involved would need to approach and improve on their performance in human rights standards or at least ratify them and, hopefully, demonstrate how they are implementing. As a collective, it could potentially be quite beneficial in terms of levelling the playing field in the region, so that they are all working towards similar commitments.

Q288 Mark Garnier: Is it possible that, by doing a UK-GCC bloc, we will be assisting some of those states with better human rights records to persuade other states with worse human rights records to step up to the plate?

Tom Wills: It is certainly possible. I have very little confidence that the UK's negotiating position, as it has currently been laid out, and what exists of the UK's trade strategy—this is pieced together from various comments made by Government Ministers over the last few years—adds up to any kind of guarantee that an agreement with the GCC, whether it is done at bloc level or on an individual, country-by-country level, would adequately protect and uphold human rights and labour rights in the region.

Also, we are focusing, rightly, on the potential for an FTA. We should also consider the potential of not doing an FTA. Ultimately, the Department for International Trade's analysis suggests that a deal would be worth less than 0.1% of our GDP up to 2035. There is no inherent economic reason why we should be pursuing this deal. If there is an inherent reason in terms of the human rights and labour rights impacts that it could have, we would be very open to hearing it, but that is not something we have heard articulated by the Government. I would add to the calls the Committee has made over the last year or so, that we need a trade strategy that includes human rights and labour rights.



Professor Gammage: I echo everything that has been said. It depends on how the UK wants to articulate itself as a trade actor. As an independent trade actor, is it committed to values? Is it committed to upholding human rights? Is it committed to trying to ensure that its own standards do not fall and that it perhaps raises standards around the world? If it does, surely it makes sense to negotiate with the GCC as a bloc. That means you cannot get that agreement in place until all those countries agree to a de minimis standard, whatever that would be, on these issues.

My concern is that it will be quite difficult to reach that threshold within those Gulf states. Will you ever get meaningful engagement with the states on those human rights standards? Throughout time, if we look at the EU, we see that it still signed an agreement with Singapore, even though it has the death penalty. There is hypocrisy writ large across EU trade agreements and human rights standards. We know that, for example, Burundi had trade concessions put in place, despite its human rights violations, and the EU subsequently encouraged it to join an FTA.

We have to learn from the mistakes of the past. That ultimately comes down to what the UK wants to stand for and how it presents that to the rest of the world.

Mark Garnier: That is a very philosophical question to end on.

Chair: Thanks, Tom, for raising the point of the economic gain being small. I think it is about 0.1% of GDP, or something of that order.

Q289 **Mick Whitley:** I have two quick questions for Tom. How can we future-proof our FTA to secure human rights commitments for the years to come?

Tom Wills: We would like to see two parts of this approach. One is pre-ratification conditionality, so we do not rush into low-standards FTAs with countries where human rights and labour rights are not respected. Instead, we would have as a condition of negotiation that each of our trading partners will have ratified the core UN and ILO conventions. I know that was discussed at the end of the last panel, and I would echo that. That pre-ratification conditionality has been used by other trade blocs, not least the US in its relationships with CAFTA, the central American trade bloc, and others, from Colombia to Panama.

The second part is having binding human rights chapters within those FTAs that can be used to hold the trade partners in question and ourselves to high standards of human rights and labour rights protections. I have already spoken about the good practice that is demonstrated in the UK-EU trade and co-operation agreement that provides for some kind of binding sanctions to be introduced.

Ultimately, the reason we are talking about human rights in trade policy is because there is potential for trade agreements to have that kind of



binding nature. That potential is not necessarily seen in a lot of other international agreements. If one party to a trade agreement decides to introduce tariffs or derogate from existing standards, there is a mechanism for resolving that, state to state, and a mechanism for introducing sanctions to stop that kind of behaviour. That level of enforcement has not been extended to the social and environmental chapters within trade agreements, which is what we would like to see. The UK has potential to learn from best practice around the world and to keep pace with the kind of progress being made at EU level.

Rosie Rowe: In promoting the UK's human rights commitments, it is critical that a human rights impact assessment is conducted before the agreement is signed and that there is scope for ongoing monitoring with regular assessments of how a trade agreement impacts human rights in the region.

I know some impact assessments have been done on previous agreements, but these have not been very comprehensive and have not gone into depth on human rights-related concerns. In this context, it is absolutely critical for some kind of assessment such as this to be conducted as soon as possible. It is also an opportunity to gather stakeholder views and engage in consultations with a wide variety of stakeholders.

Q290 **Mick Whitley:** Tom, if the EU cannot agree an FTA with the GCC due to human rights concerns, why should the UK be able to reach an agreement?

Tom Wills: That is a very good question. We could all come up with our own answer, and mine is that, if the UK reaches a lower standards agreement than the EU was able to stomach, that is a reflection on the values we have chosen to apply in our trade policy.

It is worth saying that a low standards agreement with the GCC would not reflect the settled view of the UK public. The Department for International Trade conducts six-monthly polling of the public, which has consistently shown that the highest priority for the UK public when it comes to selecting an FTA partner is that, first, it respects human rights and, secondly, that it has strong workers' rights. The most recent poll was in November, and it said that, when it comes to trade with Saudi Arabia and the UAE—these were the only GCC countries it asked about—human rights and equality were the top priorities of the UK public.

Chair: For clarity, 0.05% to 0.1% of GDP, £1.6 billion, is the estimated GDP gain from a trade deal with the GCC.

Q291 **Martin Vickers:** If the UK-GCC FTA did not address human rights issues, could this affect our trading relationship with other countries and trading blocs?

Professor Gammage: I would expect so. There is a very strong likelihood that the message it sends to the rest of the world, including the



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UK's existing FTA partners, is that the UK no longer cares about standards, particularly social standards. We know the UK is very keen to negotiate the agreement with India that has not been achieved by the EU. A lowering of standards will be very attractive to the Indian Government, because it means they would not have to level up in the same way they would have done if we did not sign, for example, an agreement with the GCC. We need to be mindful of the message this sends elsewhere.

In addition to all the mechanisms we have talked about, there needs to be scrutiny of what the UK Government are doing beyond the implementation of an agreement. The role of Committees such as yours is really important. We should bear in mind that the EU has the ombudsman. The ombudsman is constantly challenging the Commission's approach to trade and human rights. It did it once in the context of the Vietnam agreement and said that the human rights impact assessment fell far short of what it should have done. It yet again issued a statement, back in October, I believe, saying that the Commission now needs to move towards stronger implementation mechanisms to ensure human rights are being upheld.

My concern would be that, if we lower standards here, it sends a strong signal to our main trading partner, which remains the EU, on how we value or do not value rights. There could be scope within the TCA for certain parts of that agreement to be withdrawn. We need to think very carefully about where our big commercial interest lies. It is not in the GCC, Australia or in these parts of the world that we currently celebrate.

It is also important to highlight very quickly that the UK has been celebrating the fact that it has its first ever chapter on women's economic empowerment in its agreement with Australia. If you look at the terms of that chapter, it means nothing. It is all bluster on what women should be able to do. The UK needs to be upholding rights, including women's rights and minority rights, in a way that is binding. If we do not do that, we will see a real decline around the world in how we are viewed as an actor.

Q292 **Martin Vickers:** I can see both your colleagues nodding in agreement. Do either of you want to add anything?

Rosie Rowe: No, thank you. I absolutely agree with Clair, and I do not feel I have anything further to add on that point.

Tom Wills: As Clair hinted, we often see free trade agreement negotiations coming into existence not as a blank slate but, rather, what a country has committed to or given away in previous negotiations is used as the basis for subsequent negotiations. For us to rush into a low standards agreement with the GCC would set the negotiating standard with India, Israel, Mexico, Canada and the CPTPP bloc. That is absolutely something we should be aware of.

Q293 **Chair:** Professor Gammage, you touched on a fascinating point. I do not



think I was aware—I do not know whether other colleagues were—about the implications for the TCA of something such as this. I do not necessarily need this today but, given time, would you be able to write to us, pointing to those parts of the TCA and maybe fleshing it out a wee bit?

Professor Gammage: Yes, sure. It was just a broader point about how the EU would trade with us, or not, and the way it would approach us. I am very happy to put something in writing.

Q294 **Chair:** Clair and Tom, how does the UK's pursuit of an FTA with the GCC fit with its wider approach to human rights in the region?

Professor Gammage: The big question is what the UK is committed to. If the UK is committed to upholding human rights, it needs to be doing that through its trade agreement. I have a problem with the way trade agreements are constructed. We should have a rights-based approach throughout the agreement, not just in one clause or chapter.

The real issue comes in the fact that trade agreements are constructed as chapters and therefore can be treated as standalone issues, rather than as horizontal issues that cut across. We fail to see the intersections, for example, that the UK has been pushing for. From the strategy document, I have seen that we can really push for green technologies and the development of green things in the GCC, but it does not make that connection between the workers who will be doing this in the green industries and how it affects the communities living in those areas that may be affected by the industries that generate the green technologies we are after. We need a much more holistic approach.

Whatever is negotiated as part of an FTA needs to complement and enhance whatever is currently going on in the region around human rights.

Q295 **Chair:** In the first panel, my colleague Mick Whitley raised a point on workers' rights. It was pointed out that, in NAFTA 2.0, there have been changes to the rights and wages that workers enjoy in Mexico. It seems like you are hinting about those kinds of rights as well.

Professor Gammage: Absolutely, yes. We want to see the raising of standards and the raising of employees' standards within the context of an FTA implementation. We do not want to see the degradation of those rights as part of a race to the bottom. I have to be honest: the UK's current strategy looks like that is exactly what it is trying to do.

Q296 **Chair:** That is very useful evidence. Tom Wills, what are your thoughts on this question about the FTA with the GCC and the wider approach to human rights in the region?

Tom Wills: To enlarge on Clair's point about this race to the bottom, the UK professes, in its foreign policy, to support human rights and to be very interested in the upholding of human rights. The UK's strategic



approach document on the GCC, which, as you know, is the only thing we have to go on when it comes to our trade approach to this negotiation, says the UK will maintain its high standard of workers' rights and will reaffirm parties' commitments to international labour standards, including of the ILO.

Given that five of the six GCC countries do not recognise the core ILO conventions around freedom of association and collective bargaining, this is nonsense and an insult to the intelligence of anyone who has been observing this from the labour movement. I feel we have been talking, over the last hour in this Committee, about ways in which FTAs could be used more creatively and progressively at the same time as the UK Government are going in exactly the opposite direction.

Q297 **Chair:** This theme also came from the first panel's witness from Bahrain, who said the Gulf countries sign up to many things and ostensibly honour this, that and the rest of it, but their Governments do not follow through. Is that a theme I am getting from you as well, Mr Wills?

Tom Wills: Yes. I am not an expert on the political situation in the Gulf, but that has been very evident, particularly in discussions around the World Cup. My organisation tracks the various allegations of labour rights abuses that have been made, and we found that, in the GCC countries between 2016 and November 2022, there were 809 cases of labour rights abuses in the Gulf. That is despite the much-publicised reforms to the kafala system in Qatar and elsewhere.

Q298 **Chair:** Do you detect that there are the forces within these societies to bring about change? What is the dynamic? That is basically what I am pushing at here.

Tom Wills: I am pushing up against the boundaries of my ignorance, so I do not have a comment, I am afraid.

Q299 **Mick Whitley:** Tom, is it better to freeze out or engage countries in which we see human rights concerns, with a view to enabling positive change?

Tom Wills: There is a difference between diplomatic engagement and the opening of free trade agreement negotiations. I would imagine that the UK is diplomatically engaged with countries around the world. However, to actively launch and offer market access in an FTA is a big step that sends a message around the world and provides a symbol of what the UK is acting in support of. Therefore, I would repeat what I said earlier: the UK should not be entering FTA negotiations with countries where it has been abundantly documented that human rights and labour rights are not being upheld and where there is, in our view, at least when it comes to the GCC, very little scope for that to change in the immediate future.

Q300 **Mark Garnier:** Clair, what are the risks of including human rights provisions in trade deals and then not enforcing them?



Professor Gammage: We have to be very careful when we talk about their enforceability. There can be different ways of viewing enforcement. It is looking at that outcome. There are different models that you can use, as Rosie, Tom and I have mentioned, in terms of enforcement.

The risk of not including them is that you are saying to your trade partner that standards do not matter. You are saying, "We do not really care about the social effects of trade liberalisation on your communities and, likewise, we do not care about how they may affect our workers who happen to be in your domestic space." There is a policy point here about what we are saying to other communities.

In terms of enforceability and the risk of not including those provisions, the EU's approach has long been said to be almost like an empty political gesture. I do not believe that is true. We have seen standards raised because human rights commitments have been set out in FTAs. Quite frankly, they have been included in FTAs for decades. Suddenly to withdraw from that pattern of behaviour sends such a negative message to the world about where you stand in the context of human rights.

As a country that I would like to view as being progressive, innovative and a world leader in things like human rights, the UK now has, as an independent trade actor, the leverage to say, "We think women should have rights. We think there should be freedom of expression. We think the right to life is really important." Why not use our trade agreements as part of that narrative to say, "We want to be able to enforce these values"?

Rosie Rowe: It is a way of setting expectations. I am drawing on the UN guiding principles again. From a state perspective, the UK is expected to set expectations for UK companies that they will respect human rights abroad. If there are human rights clauses in this agreement, I feel it signifies the UK's expectations for companies in the region in terms of respect for human rights. It could contribute to driving companies themselves to push for change around human rights abuses, whether that is with their suppliers, business partners or their own workers.

Q301 **Mark Garnier:** The conclusion is that we should definitely, without any question, put human rights clauses into these trade deals and, as Clair mentioned, that we should embed them more deeply across a whole trade deal, rather than just have standalone chapters?

Professor Gammage: I would say so, because the other chapters are legally binding. The moment you put a human rights clause within them, you automatically have that provision within the dispute settlement mechanism of the FTA. Most FTAs will have a clause that says, "If you do not pursue FTA dispute settlement, you can pursue it through the WTO." There are different mechanisms in place for all those other chapters, with the exception of the trade and sustainable development chapter. It changes the nature of that obligation. If you want something to be legally binding, put it in one of the other chapters.



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Tom Wills: I agree with what has just been said. It has been notable that, over the past 18 months, there has been steady but quite extreme regression on the part of Government Ministers. Last January, we had Dominic Raab saying that we should not engage in free trade negotiations with countries that abuse human rights. That was a flat-out statement. Then the former Trade Secretary Anne-Marie Trevelyan said that more trade will not come at the expense of human rights. Now we have a situation where Greg Hands said a couple of months ago that free trade agreements are not always the best way to engage on human rights, and that there are other ways.

I have written to the Department for International Trade about this, and it has not provided an example of where a closer trade relationship has led to more open conversations around human rights commitments and has ultimately led to improvements. We need pre-ratification discussions around this stuff, rather than this completely unevidenced idea that, upon the signature of a trade agreement, there will be ongoing opportunities to support further progress.

Q302 **Chair:** As everybody knows, the World Cup is in Qatar. There has been much criticism in and around that. There was less criticism of the cricket World Cup being in, I think, Pakistan. Then there was COP at Sharm El-Sheikh, and there was not much mention of human rights around that. What I am driving at is whether there is a risk of a siege mentality in Gulf states, as they see this coming in from the western media. Is it actually helpful to point these things out in other societies? I am looking for your views, as professionals who have thought of this.

Professor Gammage: For me, it has to be taken with a step of caution in terms of the fact you are externalising your values. You are exporting your values and saying, "This is what we think you should be doing." That comes with risk, but the UK has not shied away from doing that until now. We have been very happy to say, "We think these are the values you should be upholding."

My point is, what is the benefit of doing this trade agreement if we are not going to uphold rights and standards? You can still continue to trade. You can still continue to access the market. You just do it in a slightly different way. I do not think this market is big enough to us strategically to be willing to compromise on core values. In terms of putting profit over people, that is not an approach we should be taking as a country.

Chair: The point you are making is that we can have trade without trade agreements.

Tom Wills: I have very little to add to what Clair has said. We are not talking about anything other than core, internationally recognised human rights that all countries have signed up to. We are not exporting any values that are more complex or more western-centric than that. We are talking about international human rights instruments.



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Chair: That is a fine point to end on. Can I thank the three of you for your time this morning, Rosie Rowe, Tom Wills and Professor Clair Gammage? My colleagues are rushing off to see how well the new SNP leader does at Prime Minister's questions, which are about to start. Thank you all very much and goodbye.