

Joint Committee on Human Rights

Oral evidence: [Human Rights and Business](#)

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Members present: Ms Harriet Harman (Chair); Fiona Bruce; Karen Buck; Jeremy Lefroy; Amanda Solloway; Lord Henley; Baroness Hamwee; Baroness Lawrence; Baroness Prosser; Lord Trimble; and Lord Woolf.

Questions 1-10

Examination of Witnesses

John Morrison, Chief Executive, Institute for Human Rights and Business, **Marilyn Croser**, Executive Director, Corporate Responsibility Coalition, and **Peter Frankental**, Economic Relations Programme Director, Amnesty International UK

Q1 Harriet Harman MP, The Chair: Thank you very much indeed for joining us. Thanks to John, Marilyn and Peter. This is the Joint Committee on Human Rights, which as you know is half Members of the House of Lords and half Members of the House of Commons, and is of course cross-party. You are the first people good enough to come to give us evidence as we embark on an inquiry into human rights and business. We are grateful to you for joining us. Can we crack on and ask you some questions? I apologise for the heat. Do take your jackets off if you need to. It is very hot.

Q2 Fiona Bruce: Good afternoon, and thank you for coming to meet the Committee. You acknowledged in your submissions that the UK in 2013 led the way for the business and human rights agenda, being the first country to publish a national action plan. Would you in 2016 still describe the UK as leading on this agenda? How does its updated national action plan compare to those of other, comparable countries?

Marilyn Croser: Thank you very much for the invitation to give evidence. From a civil society perspective we would say that, yes, the 2013 plan demonstrated that leadership. I think the UK was the first to come out with a plan. On the revised version, publication is not now the same as leadership. We see in the revision a plan that is very similar to the original version. A lot of it is identical. There is fairly significant duplication. Much of it is descriptive of actions that have been taken. There are a few notable commitments to supporting human rights defenders, for instance, but generally there is a lack of strategic overarching vision. That, for us, is a fundamental weakness in the plan, and we felt that it was difficult to see how the plan is much more than window dressing. While it is good to have the reiteration of the Government's expectation that businesses respect human rights, the plan should set out how the Government can use their unique position to leverage businesses to take action where they are not doing so.

Peter Frankental: Thank you to the Committee for taking on this very important subject. Perhaps if we take the plan overall, one of the key weaknesses is that it does not push the key drivers of change in the behaviour of companies. The UN's special representative on business and human rights drew attention to the governance gaps that meant that companies could get away with causing or contributing to gross human rights violations without adequate sanctioning or reparations to the victims. Neither the original national action plan nor the revised plan addresses these governance gaps. Compliance issues are largely outside the remit of the original and revised action plans. Many of us in civil society believe that the key drivers of change are compliance, with regard to criminal liability and civil liability in particular. We see that with the banking sector with regard to anti-money laundering regulations and the financing of terrorism, with massive investments made in de-risking and compliance, because it is a compliance issue and businesses face huge regulatory fines, particularly in the US. Over the past two years in the UK, we have seen significant changes in the corporate culture of BP following Deepwater Horizon, and over the past four years in relationships between the parent company and subsidiaries. We therefore feel that the action plan, by putting hardly any emphasis at all on compliance, is fundamentally weak.

I draw attention to one area in particular, because it has a rising profile internationally: the integration of human rights into procurement policy. The revised action plan in

this respect is actually poorer than the original plan. The revised plan says that there is a commitment to: “Continue to ensure that UK Government procurement rules allow for human rights-related matters to be reflected in the procurement of public goods, works and services, taking into account the 2014 EU Public Procurement Directives”. However, in February this year the Cabinet Office issued a policy note on public procurement in which it took a completely different view. It said that, “Public procurement should never be used as a tool to boycott tenders from suppliers based in other countries, except where formal legal sanctions, embargoes and restrictions have been put in place by the UK Government”. We seem to have incoherence between a fairly weak commitment in the action plan, but a commitment nevertheless, and a note issued just a few months earlier by the Cabinet Office. I imagine that any public authorities wanting to use human rights, among other criteria, with regard to tendering processes would feel very reluctant to do so on the basis of instructions from the Cabinet Office.

John Morrison: Thank you for the opportunity to give evidence to the Committee. I agree with a lot of what my colleagues have said. My organisation works internationally on these issues. One of the biggest achievements of the original national action plan was that it was the first. Now there are several others out there. I agree that it lacks ambition and strategy. It is tactical. It reports on things that are within the interests of particular government departments. There are people, particularly in the Foreign Office, who put a lot of energy and time into this. There has been leadership and the UK still leads on some particular areas and issues. We could take two of those that have gone through this House in the past year or two as legislation—the Modern Day Slavery Act or even the Investigatory Powers Bill. I would say that the Modern Day Slavery Act was the test of the national action plan. It is interesting that when that legislation was first tabled there was no reference to business supply chains at all as one would have assumed there would have been if, when the Home Office drafted the legislation, the national action plan had really been front of mind. The Dutch and some other Governments are perhaps now ahead of us across the board in being clear about the questions they are trying to answer. National action plans are more than policy coherence; they have to be clear about the incentives and disincentives.

My final point is that the biggest opportunity we are missing here is that, with the financial crisis and the referendum, many people are angry or feel disenfranchised by globalisation. Business and human rights should provide some clarity on these very important issues. We are all, not just the national action plan, failing in our duties to do that.

Q3 Fiona Bruce: Thank you. You all gave answers that anticipate my next question. Bearing in mind that you all expressed disappointment with the updated plan, is there anything in addition that you would like to see included in a future update to the plan? If there is something that you have not already referred to, please contribute.

John Morrison: We suggest in our submission to you the possibility of a baseline study. That has been attempted in Germany. The issue of the baseline study is that it would set in place objectively what some of the priorities for the British Government could or should be, where the greatest leverage is, where the greatest impact of British business at home and abroad is, both positive and negative, and how the UK can lead globally in particular areas but also learn more effectively from other Governments and intergovernmental organisations—not just from the UN but from the OECD and, at least for the next two years, from the European Union. The absence of a baseline study means that, although for the first national action plan there were stakeholder discussions—I had the privilege of chairing a lot of those—it then went into a black box for a year and a half. This revision was almost entirely a black-box process. Other countries and other Governments have been able to develop processes with much wider consensus and buy in from different stakeholder groups, and then to tackle some issues that are politically more difficult but perhaps more interesting to society at large.

Marilyn Croser: For us, there are a number of issues. One is DfID's approach to international development. This Government's approach has been that it is driven by the private sector, which has a central role in development. There is a key opportunity there for government to work with business to incentivise and require companies to carry out human rights due diligence as a precondition for involvement in those programmes and for government support. We know that DfID has its RATE programme for responsible, accountable and transparent enterprises. That is

comprehensive. But we are not clear how that fits within the business and human rights agenda, so there is a real space and opportunity there.

Secondly, we would highlight trade agreements. John mentioned the referendum and the fallout from that. Obviously, one of the top topics of discussion is how we renegotiate the new trade agreements. We would like to see investor protections dependent on compliance with international human rights standards, and we would like companies not to be able to take host Governments to international arbitration over measures that seek to improve the human rights of their citizens. Committee members might be familiar with hearing of companies suing a state for, for example, trying to put public health measures in place. As we move forward and think about trade arrangements, we would like to see human rights front and centre in a new business and human rights action plan. The guiding principles, proposed by John Ruggie, talk about a “smart mix” of voluntary approaches and regulatory measures. The concept of human rights due diligence is central to the guiding principles. Anyone who has worked in business will be familiar with due diligence: how do you look ahead and identify possible risks to the business? Human rights due diligence is the same process, but you are thinking about risks to the different people whom the company’s operations affect. In some instances, it might be necessary to make that due diligence mandatory if companies are not doing it voluntarily, which at the minute very few of them are.

We talked in our submission to you about the need for the action plan to think about how business has an impact on specific groups of people, particularly women and children. There are 160 million child labourers around the world, 85 million of whom are in dangerous work. Millions of very poor women work in garment factories, making clothing that ends up on the UK high street. How does our action plan address the issues that those people face? That is what it should be about: people at the sharp end. If it is not, it is not really doing its job. Government already has policy objectives on addressing gender inequality through international development goals, so there is a space there.

Finally, there are a couple of procedural issues. We would like civil society in country to be involved in developing the plans. Civil society here was involved—

The Chair: Could you just say what you mean by “in country”?

Marilyn Croser: I mean in other countries. There is a very good consultation process here with a range of stakeholders. We would like the UK Government as they support other Governments to develop their own plans to encourage them to replicate that. How are NGOs and human rights defenders involved in developing a plan in, let us say, Colombia? Finally, we would like a clear commitment to review the current plan and any future plans so that we can see whether and how progress has been made.

Peter Frankental: I have just a couple of process issues to raise. We feel that it would be useful as part of the action plan if there was mapping of all the government departments and functions that interface with business and human rights. It would be useful also to address conflicts between the business and human rights agenda and other policy objectives such as growth and prosperity, eliminating red tape and bureaucracy. There should also be a role for the Cabinet Office—somebody in the Cabinet Office to champion business and human rights—so that when there is a conflict of objectives, the business and human rights agenda is not automatically relegated. Success criteria should also be attached to every element of the action plan so that what the Government are intending to achieve through the individual elements and the plan as a whole is much clearer.

The Chair: I should imagine that when the UK national action plan was drawn up and reviewed, there was no expectation that we would explode out of the European Union, but now we have Brexit meaning Brexit. Obviously, there is an issue with human rights protection being written into EU regulations as they currently are and future EU regulations on the effect on business, as well as in trade agreements between the EU and other countries which we are currently part of but in due course will not be. Then there is the fact that we are going to negotiate new agreements with every country in the world. Are you concerned about the undermining of us being part of an EU-wide thrust to improve human rights globally and protect people from exploitation? Is there a downside there? What is the downside and how should we mitigate it?

Secondly, if we are going to negotiate new trade agreements with the rest of the world, will there be an opportunity to put into them the compliance and processes that we would like to see as gold standards? Is now the time, as we embark on a fresh set of negotiations, for us to set a gold standard in human rights as part of our trade agreements with the rest of the world?

John Morrison: I think you are right. The EU sustainability chapters are not consistent anyway. The sustainability requirements for Vietnam or Colombia, for example, in the context of EU agreements, are not the same. There are scrutiny mechanisms for the European Parliament. There are national civil society chapters and trade union chapters that also scrutinise in both countries. We will lose all that.

The Chair: Can you just remind us what a chapter is?

John Morrison: It is what the EU calls the non-financial, non-trade, environmental and social conditionality of agreements. They are commonly called sustainability chapters. We can mirror those, of course. Whatever trade agreement we have with the European Union will undoubtedly have to have the European Convention of Human Rights—plus, plus, plus—in it. There are examples. The US bilateral trade agreement with Jordan was perhaps, for its time, one of the strongest on labour rights. Canada's bilateral agreement with Colombia has human rights in it, but Australia's trade agreements with China perhaps less so. We could set a standard, but we would have to apply it consistently in the various agreements. The European Union itself is not wholly consistent in how it does it at the moment.

The Chair: So you think that we should look around at other bilateral agreements around the world, such as US-Jordan and Canada-Colombia, take the highest standards and write them into our new agreements on which we have thousands negotiators working for hundreds of thousands hours? Would you like to see that? I do not want to put words into your mouth, but you can say it back to me. Should we from the outset have that as a key objective of these negotiations?

John Morrison: We need to be serious about human rights being not a constraint on trade but an enabler of trade. We have centres in Kenya, Myanmar and Colombia. We observe, and British business tells us the whole time in Qatar and elsewhere, that business wants certainty on this. Business is not against human rights; it is not even against mandatory due diligence in some contexts. What it wants is certainty and a level playing field. By all means, let us put it in our bilateral trade agreements, but we should also try to influence the trade agreements that other Governments are developing with those same countries, such as Myanmar. It is harder for us to do that

outside the European Union, because we lose leverage, but in some countries such as Qatar and elsewhere, we have particular leverage. It is not just the trade agreement; it is the leverage and the level-playing-field arguments that need to go with it.

Q4 Lord Henley: Can we move on to the machinery of government and how the Government react in these matters? Peter Frankental talked earlier about the incoherence of the Cabinet Office statement made in February on these matters. Later, you talked about conflicts between different agendas. The original statement back in 2013 came from the then Foreign Secretary, William Hague, and Vince Cable from BIS. They took the lead. Obviously, it is very important, first, to get all other government departments signed up—hence what you said about the undesirability of incoherent remarks coming in particular from the Cabinet Office, but that would be true of any other department. What can be done to get better engagement across all departments? To that, I would also add that over the past few weeks quite a lot of things have happened and we have seen quite a lot of departments broken up and renamed. We now have a Department for International Trade and one for coming out of Europe. The Foreign Office is still the Foreign Office, but we have a whole host of others. On top of that, we have different Ministers. We will not comment on that because it is the actual machinery we want to hear your views on. Peter, perhaps it would be best if you started off, as you were the one who talked about incoherence.

Peter Frankental: I think, as John said, that civil servants are doing the best they can, but how much cover are they getting from Ministers when push comes to shove? That issue concerns us. It came out around three years ago when CORE put in a freedom of information request about the UK's intervention in a US Supreme Court case under the alien tort statute, *Kiobel v Shell*. *Kiobel* represented relatives of the Ogoni people who were victims executed during the mid-1990s. The UK's intervention called for the Alien Tort Claims Act no longer to be used against foreign companies for impacts abroad. CORE found through the freedom of information request that the commercial and economic diplomacy department of the Foreign Office had said that it was in the UK's interests to submit this amicus brief to stop the alien tort Act being used against foreign companies in the way that it had been. The human rights and democracy department of the Foreign Office said that this was in conflict with the UK's commitment to the UN guiding principles on business and human rights. In the end, it was the commercial and economic diplomacy department of the Foreign Office that

won out. So there needs to be some mechanism for addressing these kinds of difference. There is a cross-departmental working group on business and human rights. This consists of people we believe to be very committed. But certain government departments appear to have kept a low if not non-existent profile in this area, particularly the Ministry of Justice. It is a difficult issue to resolve without ministerial cover.

Lord Henley: You mentioned a cross-departmental group. That is a cross-departmental group of officials. Are you saying that it might be better if it were a cross-departmental group of Ministers? You rightly distinguished between Ministers and officials, and individual personalities of Ministers make a difference to what sort of shove you get to get things going. Also, as I remember, there is the seniority of the ministerial group, should you have one, in terms of who is involved. It might be a junior Minister from each department or it might be the Secretary of State. Are you saying that that might be appropriate?

Peter Frankental: Absolutely. It would send very strong signals to officials and give them leeway that they would not have otherwise.

Lord Henley: To have a ministerial group chaired by, presumably, the Foreign Secretary.

Peter Frankental: If there was the political will to do that, that would be tremendous.

Lord Henley: But failing the Foreign Secretary, one of the other big beasts? For the sake of the record, I would like a “yes” rather than a nod.

Peter Frankental: Yes. It had not occurred to me, but it is a way of getting high-level commitment. The fact that two Secretaries of State launched the original action plan sent very strong signals not just across government departments in the UK but to other countries that the UK was taking this seriously. In the revised action plan, there is no foreword at all, let alone one by a Minister or Secretary of State. So there is a very different level of political commitment.

Lord Henley: Right, so you feel that the new action plan that came out in May this year is missing something because it lacks that ministerial imprimatur.

Marilyn Croser: Yes.

Peter Frankental: Yes.

Marilyn Croser: Another option would be a lead post in the Cabinet Office to co-ordinate across government. The other thing I would say about the ministerial involvement is that, of course, it sends a very important signal to business, too. It is not just officials, it is the way that the importance of the agenda is projected externally and internationally. If, as the Foreign Secretary said, he wants Britain to continue to play a role on the world stage, that ministerial engagement in these types of agenda is vital.

The Chair: So would you like to see the chief Brexit negotiator, David Davis, give a commitment that he will take responsibility to lead on and put into all these negotiations the issue of human rights? Or are we talking about the Minister who would be responsible for negotiating external things?

John Morrison: That is just one bit of it. The new Prime Minister, to her credit, had a big role in the Modern Day Slavery Act and the supply chain provision in it. On the question of political will, if you want a comparison, one of the best examples is Chancellor Merkel's role with the G7 supply chain agreement last year. That was her Chancellery, with the German foreign ministry and the German ministry of labour, but it was also her personal leadership. The analogy would be 10 Downing Street playing a role on either a particular issue or a broader range of them.

Lord Henley: So it might not be a Cabinet Office Minister taking a lead on this. The way you would like to see it is that the more you could ratchet it up, the better.

Marilyn Croser: Yes, absolutely.

Lord Henley: Right, but certainly ministerial involvement. Would you like to comment on the change in structure of the ministries themselves? I appreciate that we are all probably a bit vague at this stage as to who is doing what and where in all the different departments as we

now see them. It will not necessarily be just David Davis in the department for leaving. It would also be the Minister for International Trade, the Foreign Office, and so on.

John Morrison: There was always a worry under the old structure about the relationship between trade and the foreign ministry, despite the fact that they were linked. Four years ago, I think I was the first ever human rights person to go on a trade mission to Burma. What I hear from British companies is that when they go on trade missions they still do not get briefed on these issues. Companies come to us and say, “Why is nobody briefing us?” I worry that if there is now a separate ministry for trade it is even less likely that when trade missions go abroad they will be briefed on these due diligence issues. Take Iran, for example. I have had no signal at all from the British Government that explanations of the human rights risks of trading and investing in Iran are part of trade mission briefings in the way they were for Burma four years ago. There is no commitment or sign of that. I worry that under the new structure that might be less likely.

The Chair: Should there be somebody on all future trade missions with a human rights focus?

John Morrison: Yes, and mandatory briefing before, because actually most businesses want it.

Marilyn Croser: There is a set of documents called *Doing Business In* followed by the name of the country. There is some basic information in it on human rights concerns, but again it is not clear to us if and how that is reaching companies. Based on what John just said, it does not seem to be getting through. That needs to be dealt with.

Lord Henley: The last question is: where do you think this ought to lie? Would you like to see the Prime Minister take the lead in some cross-departmental group, or the Foreign Secretary? I get the impression that you do not think it should be the Department for International Trade.

John Morrison: Given the new structure, if it sat with the Foreign Secretary, would that have enough leverage over trade or development? My concern is that if it does not

sit with the Prime Minister, or very close to the Prime Minister, there will not be enough leverage. That is my view.

Marilyn Croser: I think I would agree with that, especially as there is essentially a competition between agendas. How does the prosperity agenda interlink with international protection of human rights? If it sat within trade, you could imagine that it would be a battle that human rights might lose on numerous occasions. If it was at the very top and there was an express commitment, we would hope to see that play out more strategically.

Q5 Baroness Lawrence of Clarendon: Would NGOs be of any use in highlighting these issues when businesses go abroad?

Peter Frankental: Is the question: how can NGOs do more to put these issues on the political map? There are different types of NGO. On the one hand, you have international think tanks, such as the Institute for Human Rights and Business, which does high-level policy work—John’s organisation—and there are international NGOs such as Amnesty International. A very small part of that overall research into human rights violations relates to violations and abuses by businesses; most of it relates to state actors. But it is a growing area of work, as it is for quite a number of other human rights NGOs. There is one organisation, called the Business & Human Rights Resource Centre, which acts as a repository for all reports on human rights allegations by companies internationally—media reports, civil society reports, NGO reports, academic reports—and it has a company response mechanism where it asks the company to respond to the allegations. It publishes the response on its website. As a result of the activities of this organisation, there is much greater visibility of what companies are doing across the world. This organisation has researchers in perhaps 20 different countries covering all regions. It has very good relationships with civil society organisations within those regions, so it has greatly amplified what is happening on the ground. It also amplifies the positive things that companies are doing to address human rights issues. There are many different types of NGO and civil society organisation. We can all work together more effectively if we try to reinforce rather than duplicate each other’s work. This is why we are certainly very grateful that in the UK we have CORE, which has many member organisations across human

rights, environmental and development issues and plays a co-ordinating role in relationships with the FCO, BIS and other government departments on the broader corporate responsibility and corporate accountability agenda. Because of that, the Government know—certainly BIS and the FCO know—that they have a one-stop shop that they can go to. That enables the individual brands of organisations such as Amnesty to be used more effectively alongside those of other big NGOs.

Q6 Baroness Hamwee: That links in quite neatly with the Modern Slavery Act and its supply chain provisions, given the Government's insistence in debate on the role of NGOs in the monitoring. It is relevant also to the Private Member's Bill, which has just had its Second Reading and which it is clear will not go anywhere if the Government can help it; they are very much setting their face against that Bill. What ideas can you give us on other steps to help to ensure transparency in supply chains and monitoring compliance? I guess that begs the question: compliance with what?

John Morrison: I think you are right. The Modern Slavery Act and similar legislation in California rely on civil society. They assume that civil society has the capacity to read thousands of reports on modern slavery and make some sense of them despite the fact that a lot of them have been written by corporate lawyers, and then reward well-behaving companies and somehow penalise those that are not. That is a huge burden on civil society at a time when around the world the space for civil society is being closed in many countries, as I am sure this Committee is well aware.

On the positive side, even in countries such as China, with the baby milk scandal et cetera, people mobilise. Public unrest is a reality in virtually every country, which can stop business operations in their tracks. This idea of a social licence to operate is something that businesses understand the world over. That requires a social contract with civil society of some kind. There are many reasons why that is happening, such as internet technology and global media, and that is a positive trend. However, we should not therefore assume that that will create the right level of incentives for businesses to be rewarded if they behave well. One initiative which the previous Government backed that we are involved in is a corporate human rights benchmark that will rank the 500 largest publicly listed companies in the world on their performance, gathering information from civil society around the world but also allowing companies to share their own. Therefore, investors will have the right kind of

information to reward well-behaving companies in terms of the price of capital. Eventually one would hope that consumers would also be able to start making choices. Those kinds of incentives in the medium to long term are essential. Marilyn referred to discussions on mandatory due diligence. The US has gone further there, and there are discussions in France and other countries. We must not assume that business is always against mandatory due diligence. Think about Gangmasters Licensing Authority in this country and the work that it has done. Now its remit is being extended. Often government itself has to take on the role.

Marilyn Croser: Following discussions with Kevin Hyland OBE, the Anti-Slavery Commissioner, a statement on the repository was issued yesterday by CORE, Anti-Slavery International, the Ethical Trading Initiative, Freedom Fund and FLEX. In it we said that since the Government appear determined to maintain their resistance to producing anything themselves, as much as we have tried to press them to do so, civil society organisations are discussing some kind of solution or database that would be transparent and accessible to anyone who wanted to access it. There would also be accountability. It is a mammoth task. Ultimately, it is not really one for us, but the feeling is that we have to do it because otherwise the legislation will continue to be undermined. I read the debate on Baroness Young's Private Member's Bill. We are hopeful that there might be some room to press the Government on the list of companies required to report, because without that it is a stab in the dark. As you know, 12,000 companies are covered.

Baroness Hamwee: For the rest of the Committee, I should explain that you are referring to the financial threshold.

Marilyn Croser: That is right. It is an annual turnover of £36 million. If you are over that line, you are covered by this supply chain reporting requirement. The estimate is 12,000 companies. Let us say that I am a consumer who is about to buy something and wants to know whether the NGO is covered. There is no way of knowing that. If I am an NGO, again there is no way of knowing. If we can make some progress at least on that list, it would be a fairly significant step forward, although ultimately we still feel that government risks undermining legislation if it does not monitor and enforce compliance itself.

Baroness Hamwee: So are you suggesting—again, I do not want to put words into your mouth—that the things that you have been talking about should find their way into the national action plan?

Marilyn Croser: Yes, certainly. As the Modern Slavery Act beds in, it should be kept under review and government should be aware of where the gaps are. The Anti-Slavery Commissioner has supply chains in his own strategic plan, which is great; it is a very clear commitment. He has bought into these issues. Again, how does his role fit within the delivery of the business and human rights commitments? That is something that the action plan could pull together.

Q7 Baroness Hamwee: Can I go on to enforcement mechanisms and ideas for strengthening compliance? I will throw something else in, if you like, while you are thinking about that. In the debate on the Private Member's Bill, we talked about public procurement. We have been mixing up public and private in this discussion, and we were pointed to the procurement regulations from last year, which, as I read them, provide discretion—to have regard to; it is nothing stronger than that. Is there anything you would like to say about public authorities' leadership role—following the Chair's example of not putting words into our witnesses' mouths?

The Chair: Is that not the point: that unless there is a trade embargo, they are not allowed to—

Baroness Hamwee: I would like to try to pull the strands together.

The Chair: Did I misunderstand that? Public procurement can use human rights only if there is a government trade embargo?

John Morrison: No.

The Chair: Sorry, I misunderstood that point.

John Morrison: The EU directive of two years ago allows member states' public authorities to include human rights if they want to. As I understand it, the UK

Government have incorporated that into British law very loosely. What is interesting is that in Scotland and Northern Ireland a lot more work is being done on what elements of human rights can be integrated into public procurement. This is separate from the issue of trade embargos; this is about positive criteria that you would look for in your suppliers. It is so important, because why should business listen to a Government if a Government as a powerful economic actor, representing 20% of GDP, are not modelling the behaviour that they want to see in the private sector? There are so many benefits for government itself beginning to move on this, not least because business sits in its supply chain, but also modelling and showing intent. Peter and Marilyn have flagged this already. It is very disappointing that the updated national action plan loosens the language. It goes backwards, it seems, while some parts of the UK and Europe have moved forward considerably in the past three or four years.

The Chair: Could you give us an example of a public authority that might be procuring something that, further down the supply chain, is engaged in exploiting people who are contributing to that supply chain?

John Morrison: The classic example that everyone talks about, and we should talk about it, is the role of labour agencies, because, whether it is in hotels, catering or construction, malpractice goes on. It went on in agriculture, which is why we have the Gangmasters Licensing Authority. There might be a positive requirement on suppliers. If third-party agencies were delivering labour to fulfil a contract to a local authority, which is very often the case, it would have to have inspected those labour providers and done its due diligence on whether those workers were being exploited or maltreated in any way.

The Chair: Are you talking about public authorities procuring workers?

John Morrison: Public authorities tendering for anything.

The Chair: Can you give us an example of a public authority procuring something where human rights abuse might be in that process?

John Morrison: Construction: building a school, building something somewhere. Are we sure, if we look two, three or four steps down any supply chain, that such abuse is not going on?

The Chair: I know, but I am asking you where you think it is going on. Give us an example of a public authority that might be procuring something where that procurement is violating human rights and where, if they had a proper procurement standard, it would protect against that.

Marilyn Croser: Do you mean where something is being produced in a supply chain? Are you thinking about labour rights abuses in production?

The Chair: I am asking what you think. If we are talking about a problem that procurement rules and standards can address, I am asking for an example of the problem, otherwise it is all theoretical. You talked about child and female labour exploitation and we have talked about public authorities here procuring. What are some public authorities doing that is causing human rights abuse elsewhere?

John Morrison: Causing human rights abuse? That is a high standard.

The Chair: Or is actually engaged through their supply chain.

John Morrison: Is linked to.

The Chair: There is a supply chain that includes people who are exploited.

John Morrison: That is different from causality. If there is causality, there is contribution and there is linkage in the OECD and UN standards. In supply chain terms, we are often talking about linkage. Let us take modern-day slavery. Some 21 million people are in forced labour around the world. I have not met a single global UK company that does not think that it has forced labour somewhere in its supply chain. I have not met a FTSE 100 company that has come up to me and said that there is not a theoretical risk, if not a real risk, that it is there somewhere. I would imagine that, given the very complex supply chains of many public authorities, if you also look

hard enough, the risk of forced labour, because it is omnipresent in certain parts of the world, would be there in the public sector as it is in the private.

The Chair: So for example—I am probably asking a question that is too simple for you to answer—if a public authority is buying food, might procurement rules ensure that the food that it is procuring is not violating human rights standards for the workers who are producing that food? I am just trying to get to the practical and away from the theoretical.

Marilyn Croser: It would not necessarily ensure—

The Chair: Yes, but what are we talking about? I am not talking about the process here; I am talking about the problem that procurement is creating at the moment, where it needs some higher standards, some monitoring or some addressing of it.

Marilyn Croser: If you think about all the product that government buys, let us take one that would not necessarily spring to mind immediately: medical gloves. The production of medical gloves is a huge industry, and there is a very good report from the British Medical Association about the types of abuse that go on in the production of this particular item.

The Chair: Which are?

Marilyn Croser: Which are very serious labour rights violations.

The Chair: Which are?

Marilyn Croser: People working in very dangerous conditions. It is about acknowledging that that is happening and then thinking about the steps that you can take through engaging with the people who are supplying you to stamp that out. So we are not saying, “Okay, you find out that that is going on and you immediately end the contract”. It is not about that, because in lots of these sectors there is a systemic problem with the production of a particular item. Garments and clothing are another classic example. It is about how people who are purchasing those items—

The Chair: Public authorities.

Marilyn Croser: —public authorities—can come together, use their purchasing power to engage with the people who produce those particular products and say to them, “What are you doing? Do you know who is supplying you? Where is the stuff coming from? Do people have freedom of association? Can they organise in the workplace? Can they raise issues with you? If there are abuses or problems, what is done to remediate them? How much are these people earning, et cetera?” It is complicated, there is no quick fix, and we accept that, but it is about everybody in the supply chain acknowledging that there are really serious issues here, and here is what we are doing to try and address that. In the procurement process and in guidance that you provide to procurement officers, you can guide them on how to start to think about that.

The Chair: You mentioned medical rubber gloves. Could you pick a big issue that you think public procurement should put at the top of its agenda because of the volume involved, or the nearness of being able to sort it out?

John Morrison: I would say that labour itself is the commodity: how labour is dealt with, either in this country through temporary agencies or in the supply chain. Temporary workers, whether it is in the Gulf where they do just about every job, or with internal migration in China, are involved in almost all complex global supply chains. A lot of public service procurement is labour intensive procurement, so labour itself would be the highest-risk commodity. You are asking us very sensible questions, but very few global supply chains are fully transparent. We know how conflict minerals work. We know how some areas of agriculture work. We are beginning to understand forced labour and trafficking, and the complexity of that. But a lot of other global supply chains are still opaque because there has not been enough incentive to become more transparent. There is bad practice in many places.

Q8 Lord Woolf: My question overlaps, but I shall try to keep within my allotted area. I am interested in remedy. It is all very well having aspirations, but in the end what really makes the most immediate difference is if you can enforce remedies. A model that I had in mind as we heard the evidence is the steps that have been taken with regard to corruption. How far one goes is a matter for government to decide, but you can at least put in your contracts for

procurement, which the Chair talked about, provisions that set standards for that down the chain. Am I right? The next thing is: if you have those standards, how will they be enforced?

The Chair: There will be a vote quite soon. Sorry for the very long questions that I asked, but could everybody speed up their answers and questions? If we have a vote, we will have to abandon ship.

Lord Woolf: I take the message. Would you like to see a provision of a general nature like the one we now have in the Bribery Act? I am thinking of the onus of proof because of enforcement.

Peter Frankental: By better enforcement, are you talking about enforcement by companies in their own contracts with their suppliers, or enforcement in terms of criminal and civil liability?

Lord Woolf: Both.

Peter Frankental: Yes, there is definitely a need for much tougher criminal laws when companies cause or contribute to human rights violations. One of the key barriers at the moment is that the legal principle is the identification principle. You have to attribute the actions of individuals within a company to the company itself. That is extremely difficult, which is why the CPS was unable to prosecute a single company for phone hacking. Identifying the actions of the operatives involved and linking that with the directors of the company proved impossible. One way round this is to lower the legal threshold, to change the legal principle to one of a failure to prevent. That means that if a company does not have adequate procedures in place and has not conducted human rights due diligence it can be found to be culpable. We know that both the CPS and the SFO are in favour of lowering the threshold for just that reason: that it is practically impossible to prosecute companies. The larger the companies and the more complex their structures, the more difficult it is to identify the actions of individual operators within the company itself. A failure-to-prevent model, which is an element of Section 7 of the Bribery Act, would make it much easier.

Lord Woolf: So you would be in favour and say that you need that?

Peter Frankental: Absolutely. A lowering of the threshold for prosecution.

Ms Karen Buck: Would a failure-to-prevent model work for UK-based companies' operations overseas as well?

Peter Frankental: Yes, absolutely, as it does with the Bribery Act, which has extraterritorial application. The controlling mind of a company headquartered in the UK means that the company has responsibility for all its global operations and for ensuring that the processes are in place.

Ms Karen Buck: So what do you see as the main barriers to achieving that? Why has that not been done if it is obviously a parallel to the Bribery Act and would allow us to pick up so many of these concerns?

Peter Frankental: The Government actually announced that they are considering a consultation on economic crimes, particularly tax evasion and money laundering. I understand that the failure-to-prevent model might be an aspect of that consultation. Clearly within government, presumably because the SFO is lobbying for this, there is a willingness to consider the failure-to-prevent model. I think it is a question of establishing the legal feasibility. Even under the Bribery Act, very few large companies have been prosecuted.

Ms Karen Buck: Just to be clear, would the responsibility for failure to prevent lie with the directors of the company? There would be no need to prove individual culpability.

Peter Frankental: No, the company would be culpable. Individual liability on the part of directors is a separate issue, which may or may not be a good thing. But that is not what we are particularly arguing for.

John Morrison: May I squeeze in a last comment before we run away? What is preventing this are the same facilitation-payment and other arguments that were used against the Bribery Act: "Oh, we will lose business". The same arguments are used against this, yet there are the same arguments for. But the global trend is definitely going this way, and we should be ahead of that.

My final comment is that we have focused a lot on the negatives in the past hour, which is right, but the national action plan also misses some chances to celebrate real achievement. As just one example, with all the problems at FIFA and the IOC, the Commonwealth Games Federation is the first global sports body to fully incorporate human rights into its public procurement. Why are we not celebrating that? The Youth Games is coming up in Belfast and there are the Gold Coast Games. It is a missed opportunity that that is not in the national action, because like London 2012 it is a way of testing out some of the public procurement ideas. I would encourage this Committee to engage with the Commonwealth Games Federation and look at what it is doing.

Lord Woolf: Having failure to prevent is at one level. Another is requiring companies to obtain proper information just so that people like you can ask them what they have found out. That would be of huge value, would it not?

John Morrison: It would. I do not think that most legal counsels still believe that the threshold between “known” and “should have known” is the same when it comes to knowledge. Actively acquiring knowledge about risky human rights things that sit outside your direct control is not what many companies are doing at the moment.

Lord Woolf: And if you had that material, they would suffer reputational damage if they did not do the things that they should.

John Morrison: Correct.

Lord Woolf: And that would be a sanction.

John Morrison: It would, but I think there should be legal sanctions, too.

Lord Woolf: I am not saying that these are alternatives. It is another level.

John Morrison: Yes. On health and safety, and corruption, companies are required to acquire knowledge of risk to mitigate and prevent. They are not required to do that on most other human rights issues.

The Chair: Is that what they call strict liability, or is that something else?

John Morrison: I am not the lawyer here.

The Chair: Harry, is this strict liability?

Lord Woolf: I believe so.

The Chair: So we have the paradox that, the bigger the company, the less likely it is to be held to account for human rights abuses because the complexity of its structures means that everybody can say, “It is not my fault”. Therefore it is the inverse of what we should actually have.

Marilyn Croser: Yes, essentially, and of course the bigger the company, the more powerful it is and the harder it will fight the attempts of communities and workers to hold it to account in the courts. The changes that were introduced under the Legal Aid, Sentencing and Punishment of Offenders Act—in the way that the civil costs regime operates and the proportionality test meaning that costs incurred in bringing the claim should not outweigh the value of the claim, even when the value of the claim is judged by, say, South African, Nigerian or Tanzanian levels—have made it harder to bring civil claims against UK multinationals relating to harm overseas.

The Chair: The high level of our costs and the low-level cost of their labour, so the low level of potential damage, works against enforcement.

John Morrison: Definitely.

Marilyn Croser: Yes, it does.

Peter Frankental: May I add one point? It is from an Amnesty dossier of evidence that was presenting to the CPS, the Environment Agency and the Metropolitan Police, relating to the dumping of a large quantity of toxic waste in the Ivory Coast by a company called Trafigura. The Metropolitan Police refused to respond after repeated

requests. The CPS said that we had to submit our dossier to the Metropolitan Police and the Environment Agency. After considerable toing and froing, the Environment Agency said to us, and I think this encapsulates the problem, that, “[I]nvestigating the events properly and from the beginning would be a highly onerous, lengthy, labour intensive and expensive task ... Trafigura will take any and every available procedural opportunity to challenge steps taken in a further investigation, thus contributing to the anticipated expensive costs ... The Agency”—that is, the Environment Agency—“has limited experience in conducting complex significant investigations ... [It] would not have the appropriately skilled and experienced staff to undertake such an investigation”. So you have the UK regulatory body that cannot investigate the dumping of huge quantities of toxic waste in the Ivory Coast which led to 100,000 people seeking medical assistance and 15 deaths. The evidence we presented was that the conspiracy took place in the UK. We presented the CPS with email traffic from operatives in the UK, including the CEO of Trafigura. The Environment Agency is effectively saying, “We do not have the competence or the resources. Trafigura is too powerful to investigate and we just cannot do it”. So there needs to be clear direction from the Government to investigatory, regulatory and prosecuting bodies that they need to view this issue more seriously, and to view it as in the public interest to prosecute companies, not just small ones. They need to ensure that the expertise, knowledge and track record are there. It is a question not just of money but of getting together a team of experts with the confidence and track record to investigate and mount a prosecution against a large company, knowing the legal forces that will be weighed against them.

The Chair: It is lucky that we had Leigh Day to be able to step in and do that. More power to its elbow. Jeremy, do you want to ask your questions about redress for access to remedies for individuals, and about the contact point?

Q9 Jeremy Lefroy: What about the Alien Tort Statute in the US? Should the UK consider introducing similar legislation? What would be the practical effects of doing so?

Marilyn Croser: We could look at that; it would be an option. It is a unique piece of legislation. Until recently, it required no significant connection between the defendant and the jurisdiction so it was very open. That is one path we could go down; it would

be a radical measure and there would be various implications of that. There are already pieces of legislation in place that we could use, for instance the Criminal Law Act. That was the piece of legislation to which Amnesty alerted the CPS and the Environment Agency, saying that an offence had been committed under it. As you heard from Peter, the agencies were reluctant to look into that. So there is law already there.

We talked about the failure-to-prevent model as another potential option. Legislation establishing civil compensation for modern slavery and enabling victims of modern slavery to seek compensation from companies that benefit from that would be of huge value. In the UK, claimants affected by supply-chain exploitation in a British company would need to rely on untested arguments based on emerging areas of law. That is very difficult. By contrast, victims of modern slavery have been able to commence litigation under the Trafficking Victims Protection Act in the US, which gives much greater access to justice than is currently available in the UK.

So there are a number of options on remedy. One would be clarifying that the controlling company in a corporate group is responsible for harms caused by subsidiaries in that group. If that were established, some of these cases would have been much less complicated. The Office of the High Commissioner for Human Rights recently issued some guidance to Governments on remedy and accountability. The UK Government backed those in a Human Rights Council resolution recently. The Council of Europe recently concluded a new, non-binding instrument on business and human rights that makes a number of helpful recommendations to member states. Again, the UK was round that table and supported those recommendations. So we would like to see action now to implement those recommendations and that guidance.

John Morrison: It is an excellent piece of work done by the Office of the High Commissioner for Human Rights, drawing together different jurisdictions.

Q10 Jeremy Lefroy: This is a question to Peter about the national contact point. I believe you suggested that this could be improved by changing its structure. Clearly, it is a bit in limbo at the moment, being formerly part of BIS, so we do not know quite where it will be in future. Could you explain how this would deal with some of the issues that you raised in your report?

Peter Frankental: Certainly. For the benefit of anyone not familiar with the UK national contact point, it has been a non-judicial process located within the Department for Business to receive complaints about breaches of the OECD guidelines for multinational corporations. Amnesty did a report of 25 complaints received by the UK national contact point over the past five years and found that 60% of all complaints were rejected at the initial assessment stage. They did not even pass for examination. This is a non-judicial process, where there are no enforcement powers on the part of the national contact point and no powers of awarding compensation or remedy. That does not mean that it is not significant for the complainants, because the fact that the UK Government should declare that a UK company is in breach of an international standard that the UK subscribes to is significant. It is a very tiny form of remedy for the victims. But we feel that this team within BIS is not in a very strong position to find UK companies to be in breach of the guidelines, partly because of its lack of business and human rights expertise. Our recommendation is that it should be an independent panel of experts who would assess, examine and determine whether companies are in breach of the OECD guidelines. We also feel that there should be consequences for companies found to be in breach of the guidelines, for example, relating to public procurement, to export credits or to other forms of government support. This is a fundamental international standard on human rights, intended to reflect the UN Guiding Principles on Business and Human Rights. We fear that this team needs to be restructured. As you say, it is very unclear what will happen to it now. I do not know at the moment which department it will be based in. We hope that the national contact point will continue its role in receiving complaints but we would like to see that structure improved.

Jeremy Lefroy: Are there examples that you have come across from any other countries of a mechanism that might be more effective and with better remedies?

Peter Frankental: I know that the Institute for Human Rights and Business regularly organises meetings of national contact points. There are different models. For instance, the Netherlands has a national contact point that is independent of government but I cannot say to what extent that results in better outcomes for complainants. There are other models.

John Morrison: There is a tension between an independent panel of experts model and the economic consequences model. The more you move the NCP away from the Government, the less likely the Government are to be bound by or to listen to the findings.

The Chair: Do you think that, at the moment, when things are moving around and we do not know who is going to be the national contact point, the Government should pause and think about the model of the contact point, rather than rushing to completely reinstitute it in the same form as before but possibly in some new department? Would that be a good thing?

John Morrison: That would be good. In defence of the UK national contact point, it is one of the better-functioning ones—it depends what you compare it with, but it is one of the better ones. The economic consequences that Peter mentioned are critical. The Canadians—and we could easily do this—have said that, if a company is unwilling to come to a national contact point or even respond, Canada will not provide consular services to that company anywhere in the world.

The Chair: The Netherlands does not do that.

John Morrison: It does not, as far as I know, but it is a strange thing to give export credit to a company that has not incorporated in the national contact point. Otherwise, if you give export credit, companies will use that as mitigation and say, “Another bit of government is covering us for our non-financial risk. They have done due diligence and we’re fine”. There is a lack of joined-upness. If we could join it up to public procurement and export credits, the NCP would be a lot more effective.

Jeremy Lefroy: Would it be worth, Chair, you writing to the Government and suggesting that this is an opportunity for them to have a look at this? It may end up in the Department for International Trade, which will be dealing with export credit, for example. It might be an opportunity to write and say—

The Chair: Look at function of the roles and international best practice before you reconstitute it in exactly the same form as it is. I have already asked what department it is, but I think that you are raising the point about what it should be able to do and the sorts of people who are being brought in.

Jeremy Lefroy: Maybe suggest the Canadian model as an example of some sort of remedy that is used elsewhere.

The Chair: The idea that a company can refuse to engage with the national contact point while enjoying consular support, export credit guarantees and procurement is a contradiction in terms.

Jeremy Lefroy: Absolutely, but are we sure that there is no mischievous referral going on that would then mean that, for instance, agents of competitors could refer a company, resulting in it not being able to access services to which it is entitled? Is the national contact point sufficiently robust to say, “No, this is a mischievous referral”?

John Morrison: I think that the UK one is quite good on the frivolous test, but as to refusing to engage at all, I think that everyone should engage.

The Chair: The Division Bell is ringing for the Commons, so we have to go, as it takes a while and there might be more than one vote. Can I thank you very much indeed for what I think we all agree has been a really helpful evidence session? I hope that you will continue to engage with us as we prepare our report on what is undoubtedly a very important issue, on which the Government could be making a lot of progress with your and our help. Thank you very much indeed.