

## BHRRC submission on UK-GCC Free Trade Agreement

***This is a submission to the International Trade Committee's inquiry: "UK trade negotiations: Agreement with the Gulf Cooperation Council"***

### About the Business & Human Rights Resource Centre

1. Business & Human Rights Resource Centre is a non-profit that tracks the positive and negative human rights impacts of more than 9,000 companies worldwide and, since 2015, has taken up more than 6,000 allegations of human rights violations with companies. The Resource Centre also produces advice and analysis relating to the business practices and public policies that prevent and mitigate negative corporate human rights impacts. This includes studying the role that international trade agreements play in supporting human rights around the world. The Resource Centre has a global team of around 80 members based in over 20 locations in every region of the world.
2. Owing to our position as a human rights non-profit, this submission will focus on just one part of the Call for Evidence: **"The extent to which a free trade agreement with the GCC could further the UK's foreign policy goals, including regional defence, security, and resilience objectives, and address human rights concerns."**

### Summary

- a. **The prospect of a UK-GCC FTA raises a number of concerns relating to human rights; the safeguards that currently feature within UK FTAs are insufficient to ensure that additional trade will not come at the expense of rights.**
- b. **The UK should require all preferential trading partners to implement key UN and ILO conventions.**
- c. **The UK should ensure trade deals support strong labour and environmental standards across global supply chains.**
- d. **The UK should not sign any trade agreement containing the ISDS mechanism, which is incompatible with human rights and environmental protections.**

### Introduction

3. States have a duty to protect human rights, as established in international human rights law. This includes the duty, elaborated in the [United Nations Guiding Principles on Business and Human Rights](#) to which the United Kingdom is a signatory, to ensure business respect for human rights.
4. All areas of public policy should be in support of this duty, including international trade policy. As the UK government forms its post-Brexit trade policy, it should ensure that any new deals are consistent with the government's broader human rights obligations.
5. According to the [International Trade Union Confederation \(ITUC\) 2021 assessment](#), workers have no guarantee of rights in Bahrain, Kuwait or the UAE, while "systematic violations of rights" are in evidence in Oman and Qatar. Saudi Arabia are not featured in the ITUC report, but [Human Rights Watch reports](#) that "Saudi authorities in 2020 continued to repress dissidents, human

rights activists, and independent clerics”. The Kafala system of labour, linked with the abuse of migrant workers, is widespread across the region.

6. The Business & Human Rights Resource Centre has tracked 538 cases of companies in the GCC countries abusing migrant labour between January 2016 and November 2021. The majority of these were violations of conditions of employment or arbitrary denial of freedoms, with most workers being Indian or Nepali migrants. Investigations have repeatedly linked these violations with UK businesses, with [IHG Hotels and Resorts](#) and [G4S](#) being implicated in multiple cases.
7. The UK government’s stated intention for a trade deal with the Gulf Cooperation Council (GCC) is to increase the volume and value of trade and investment between the two partners. Such a deal may offer greater opportunities for UK businesses to buy from, invest in and sell to the Gulf. Given the rights abuses documented across the region, any trade deal should contain the strongest possible safeguards to ensure that additional trade flows do not come at the expense of rights.
8. The UK’s approach to safeguarding human rights within the aegis of trade policy fits into two broad categories: human rights conditionalities and Trade and Sustainable Development (TSD) chapters. At present, these are inadequate. The human rights conditionalities are inconsistently applied across trading partners, whilst TSD chapters have not proved to be effective mechanisms for monitoring and sanctioning rights abuses.
9. Rather than focusing on signing Free Trade Agreements with weak human rights protections and doubtful economic benefit, the UK should set a trade strategy that is consistent with its broader international obligations to human rights and the environment.

#### Part 1: Human rights conditionalities

10. One approach that the UK has taken to promoting support for human rights through trade policy has been to make market access conditional on trade partners ratifying and effectively implementing key human rights conventions. Conditionalities feature prominently in the UK’s Generalised Scheme of Preferences (GSP), a market access offer to Least Developed Countries (LDCs) and Lower Middle Income Countries (LMICs). To access the GSP, qualifying countries must implement 15 UN and ILO conventions. An ‘enhanced framework’ of further market access is offered to countries that ratify and effectively implement 12 other conventions covering human rights, the environment and good governance. By linking access to the UK market with commitments to uphold labour rights and human rights, the UK provides a guarantee that trading partners aren’t undercutting high labour rights standards, while also using economic incentives to raise the levels of labour rights protections internationally.
11. These conditions are applied only to LDCs and LMICs via the GSP scheme, not to wealthier countries with which the UK may be signing an FTA. At present, none of the GCC countries satisfy all of the 15 conventions required by the core GSP. Indeed, of the six GCC members only Kuwait has signed up to the vital labour rights conventions ILO 87 (on the right to freedom of association) and ILO 98 (on the right to collective bargaining).
12. The UK’s export strategy [announces that](#) “we will continue to ensure our trade supports environments which respect workers’ rights, and will work with our trading partners to uphold labour standards.” To make good on these claims, the UK should take the minimum step of requiring that *all* trading partners being offered any preferential access to the UK market, whether through the GSP or an FTA, satisfy the same 15 human rights conditions that feature in the GSP scheme. Failure to require prospective FTA partners such as the GCC meet the same

standards as LDCs would be a clear demonstration that labour rights are subordinate to economic considerations in the UK's trade policy. This would undermine the UK's commitments to supporting human rights in business and meeting the requirements of the UN Guiding Principles.

## Part 2: Trade and Sustainable Development chapters

13. The other main mechanism through which the UK has attempted to express support for human rights within trade policy has been Trade and Sustainable Development chapters that are now included within FTAs as a matter of course.
14. The inclusion of a TSD chapter in a UK-GCC FTA would be extremely unlikely to provide adequate support for human rights, such that the UK could confidently show that the FTA was consistent with the UN Guiding Principles.
15. The EU has included a Trade and Sustainable Development chapter in each of its FTAs since the EU-South Korea FTA in 2009. These commit the parties of the agreement to upholding various international standards including the Paris Climate Agreement and the ILO core conventions. TSD chapters create a joint committee and a consultative Domestic Advisory Group (DAG) comprising civil society organisations. These are intended to oversee the implementation of the TSD chapters, monitoring adherence and calling for violations to be addressed. Having been party to these agreements as an EU member state, the UK has replicated the EU's TSD chapters in post-Brexit trade deals.
16. The effectiveness of the EU/UK TSD approach has been broadly criticised, including by [social justice organisations](#), [trade unions](#) and [the governments of France and the Netherlands](#). Unlike the other chapters of Free Trade Agreements, there are no penalties or enforceable dispute settlement procedures in the case of non-compliance. The DAGs lack resources, the power to trigger investigations, and the mandate to monitor the broader social and environmental impact of a trade agreement.
17. The UK has displayed no intention to reform TSD chapters to deal with these deficiencies. And the obstacles to the effective functioning of a TSD chapter would be particularly acute in the case of the GCC, since civil society independence and freedoms are severely constrained in the region. Five of the six GCC members are ranked by [Freedom House](#) as "not free", the lowest categorisation. The [Reporters Without Borders Press Freedom Index](#) adds to this picture, ranking Saudi Arabia as 170<sup>th</sup> of 180 countries which it comes to press freedom, with Kuwait 168<sup>th</sup> and Oman 133<sup>rd</sup>. Activists, journalists and human rights defenders have been harassed, suppressed and assaulted across the region, with the 2018 murder of Saudi Arabian journalist Jamal Khashoggi a prominent example. This presents obvious challenges to the institution and functioning of a GCC Domestic Advisory Group composed of free and independent representatives of civil society and academia who are able to effectively scrutinise the human rights performance of governments and businesses. In these conditions, a TSD chapter within an FTA will not offer an effective means of supporting human rights and labour rights.

## Part 3: Human rights due diligence

18. The UN Guiding Principles identify the corporate responsibility to respect human rights and recommend businesses conduct "a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights that businesses should conduct human rights due diligence to identify and mitigate their human rights risks."

19. The conduct of meaningful and effective human rights due diligence processes requires businesses to consult with rightsholders, as well as access a broad range of independent information regarding the labour conditions in different supply chains.
20. The human rights consultancy BSR [has advised that](#) “when a company considers an investment in a high-risk country with a history of imprisoning activists for their speech or political activities, it is very important to engage with rights holders who have been imprisoned or otherwise faced punishment for exercising those same rights.” The Danish Institute for Human Rights [corroborates this](#), writing that “by identifying risks and workers’, communities’ and consumers’ concerns, effective stakeholder engagement can help businesses prevent or mitigate their negative human rights impacts”.
21. It is more difficult to conduct effective due diligence in countries – including those in the Gulf – where independent media, civil society organisations and labour unions are not able to operate. This should be of concern to UK businesses and the UK Department of International Trade, and supports the case for any trade deal to support well-intentioned businesses by containing the strongest possible human rights safeguards.

#### Part 4: ISDS clauses

22. There is a risk that any FTA with the GCC will contain an investor-state dispute settlement (ISDS) clause. The UK should not sign any FTA containing ISDS clauses, which pose particular human rights concerns as they allow corporations to sue states through a private tribunal if public policies threaten their profits - even if those policies have a clear public interest justification. Corporations have already used ISDS to sue governments more than a thousand times, including over laws aimed at raising minimum wages, guaranteeing affordable water to citizens and phasing out the use of fossil fuels.
23. The ISDS system is incompatible with corporate accountability, human rights and the protection of the environment. It constrains the policy space of states to protect rights, and has recently been used to challenge green policies such as [the Netherlands’ phasing out coal power](#).
24. The UK already holds Bilateral Investment Treaties containing ISDS with Bahrain, Oman and the United Arab Emirates. Similar treaties with Kuwait and Qatar have been signed but are not in force. The UK should be terminating these agreements, following the example of countries such as Pakistan, South Africa and Tanzania.

#### Part 4: Alternative approaches to human rights in trade agreements

25. The UK should be exploring how trade policy can be used to strengthen commitments to human rights.
26. This might include more uniform human rights conditionalities and strengthening the enforceability of TSD chapters, as referenced already in this submission.
27. However, it could also include the introduction of import bans for goods suspected of being produced with forced labour, following the example of [Canada](#) and the [United States of America](#). Another approach would be to replicate the [Rapid Response Mechanism within the USMCA trade agreement](#), which allows for preferential market access to be swiftly removed in response to labour rights violations in specific factories, regions or supply chains.
28. Whichever approaches the UK chooses to take, they should be part of an overarching strategy that is set with the input of stakeholders including NGOs and trade unions. The [UN Working Group on Business and Human Rights recently recommended](#) that states “bring together trade

and investment actors to set principles for creating trade and investment frameworks that respect human rights and the environment.” Engaging with this process could be a valuable part of a UK trade strategy fit for the 21<sup>st</sup> century.

## Conclusion

29. [The Trade Secretary has said](#) that “the Government are clear that more trade will not come at the expense of human rights. [The UK](#) will continue to show global leadership in encouraging all states to uphold international rights obligations and to hold to account those who violate those rights”.
30. To realise this, the UK should develop and implement a trade strategy that lays out a clear and consistent standard for how the UK trade policy will support human rights and will guard against human rights safeguards being on the table for negotiation. This strategy should lead to all trade deals being conditional on the fulfilment of human rights conditions, as well as the exclusion of ISDS clauses and the inclusion of strong and enforceable human rights safeguards that represent a major step forward from the discredited TSD chapters.