FORCED LABOR
AT NYU ABU DHABI
COMPLIANCE AND THE COSMOPOLITAN UNIVERSITY
Coalition for Fair Labor
May 2018
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0.1 OVERVIEW

The Abu Dhabi campus of New York University (NYU) – NYU Abu Dhabi (NYUAD) – has been central to how the NYU administration has envisioned and advanced its educational mission for a global world. Consistent with this vision, NYU and the Government of Abu Dhabi enacted labor standards for contractors providing services in the operations and construction of its campus. NYUAD leadership has called the standards “innovative,” an “exceptional model,” and “successful,” even after an independent investigation in 2015 corroborated alleged noncompliance with the labor standards. NYUAD Vice Chancellor Al Bloom stated after the 2015 investigation that “ours is an example that others can follow and then come to expect. I think the NYU community and the government should be extremely proud of what has been accomplished.”

This following report, Forced Labor at New York University Abu Dhabi: Compliance and the Cosmopolitan University, suggests different conclusions are appropriate. In this report, we show that NYUAD likely permitted forced labor conditions for thousands of workers in construction of its campus; in its operations from 2010 through present day, it has run and continues to run an unacceptable risk of forced labor. Forced labor legally describes several types of circumstances in which a person does not voluntarily offer themselves for work and then is faced with a threat of serious harm if they leave work. Such conditions undermine the promise of a University community dedicated to cosmopolitanism, which involves the twin ideals of respect for equality and respect for difference. We call on the University to undertake steps that would embody a renewed commitment to ensure that workers on all its campus sites can be ensured a dignified working life in NYU’s global world.

The central concern of this report is NYUAD procurement and supply chain policies that fail to ensure fair, humane, and legal working conditions for contracted employees of NYUAD. As this report documents, the construction of the NYUAD Saadiyat Island campus likely entailed forced labor. Misinterpretations of its own labor standards, including laws and standards for the monitoring of labor conditions has meant that NYU has run an unreasonable risk of employing forced labor in its operations; despite a new set of public labor standards, policies fail to reasonably eliminate the risk of forced labor in NYUAD operations through the present day.

NYU has not provided redress for the thirty thousand plus individuals who have likely been harmed as a result of NYUAD allowing significant errors in implementation of its labor standards, nor has it implemented best practices to reasonably guarantee non-repetition moving forward.

NYU has failed the standards of excellence that one would expect from a university with a global architecture, whether by its own standards and or by standards of prevailing practices by other global institutions. Moreover, to the extent that there is or has been forced labor, NYUAD may be in violation of UAE law, international law, and in under certain circumstances, US law.

NYU has never had to confront the analysis provided here publicly. Though this report is primarily based on publicly available documents, it reaches the question of compliance with laws. No public report has addressed this question before. The public Nardello Report did not reach the question because it was outside the mandate that the Government of Abu Dhabi gave it for the investigation. Nevertheless, we would have expected that the findings presented in this report, while not public, would have been reached by relevant NYU personnel. The fact that NYUAD has described its compliance program in highly positive terms despite the findings presented here raises concerns.

HISTORY

In the eleven years since NYUAD was first announced, the risk of forced labor from operating in the UAE has always been clear and known. In 2007, when NYU first announced its partnership with the Government of Abu Dhabi, it was known that forced labor conditions were typical in the UAE, and by 2009 such conditions had been documented on Saadiyat Island where the campus was to be built. Both the UAE and the US prohibit forced labor. On September 11, 2007, Human Rights Watch wrote
to then NYU President John Sexton about the need to address labor abuses in constructing the NYUAD campus, and repeatedly attempted to contact NYU leadership until NYU responded February 11, 2009 with an offer to meet, which they did April 10, 2009 with the then Dean of NYUAD, the then Campus Public Relations Director, and an NYU Associate General Counsel. Under pressure from NYU’s chapter of the American Association of University Professors (AAUP), and the Coalition for Fair Labor, a faculty-student group and author of this report, NYU instituted a set of labor standards for all contractors engaged in construction, and appointed a third party to monitor labor conditions on the project.

In 2013 and 2014, NGO and media reports began to document apparent violations of NYU’s own labor policy. Responding to concern from the Board of Trustees and University community, the Government of Abu Dhabi commissioned Nardello & Co., a law firm, to investigate the published allegations. Nardello & Co. found that workers were not paid owed wages, had their passports held by their employers, paid high recruitment costs and fees, and in certain cases, were threatened with deportation for lodging complaints with their employers. It also found that because NYUAD defined its goal as “benefiting” workers, it had been “successful.” Nardello & Co. was not tasked with evaluating whether the work conditions on the NYUAD project violated relevant UAE or US laws, including those prohibiting forced labor. Where Nardello & Co. raised concerns about structural problems with NYU conduct, NYU promised to reform. This report offers a legal analysis of these institutional responses and their consequences.

**MAIN FINDINGS**

1. **The Record:** This report provides evidence to suggest NYU and the Government of Abu Dhabi did not take reasonable steps to eliminate the risk of forced labor in Abu Dhabi through May 2014. There is evidence that thirty thousand migrant workers likely faced forced labor conditions while constructing the $1 billion NYUAD campus on Saadiyat Island, Abu Dhabi. Two hundred drivers, cafeteria workers, security guards, landscaping and janitorial staff may also have experienced forced labor conditions.

2. **Prevention:** Adequate steps for prevention include ongoing monitoring of the supply chain and practices involved with all links in that chain. In May 2014, NYU announced that its appointed monitor would issue public reports, only to abandon this policy by October 2016, and then reinstate it after students and faculty called attention to the reversal. The anticipated report is now two years late. Adequate steps for prevention also includes post recruitment measures. For instance, recruitment costs and fees constitute workers’ routine debt burden and are central to exacerbating vulnerability to forced labor. Reimbursement of such costs and fees is the single best practice among multinationals addressing forced labor risks in their supply chains, and while NYU publicly committed to reimbursing such costs and fees, it privately reversed its position, which Nardello & Co. found to be a significant error. NYU has not undertaken reimbursement for these costs and fees for workers employed in construction of its campus and for many workers involved in its operations, even through present. As a result, for many of the eight hundred workers that NYU currently employs, there remains significant risk that they continue to face forced labor conditions.

3. **Legal Obligations:** Forced labor is not only a grave ethical violation, it is a violation of international law, UAE law and US law. NYU undermines its own fundamental norm of compliance with laws when it fails to publicly acknowledge and remedy apparent gross violations of law in connection with NYUAD. The counsel currently leading the Office of Compliance at NYUAD are the same counsel who failed to address or remedy glaring errors of law regarding forced labor through May 2014.

4. **Acknowledgment and Redress:** In the four years since NYU pledged to reform its conduct, NYU has not publicly evaluated or acknowledged the likely presence of and risk of forced labor in its supply chains. The promised reports assessing conditions have not been issued in a timely manner. In December 2016, NYU publicly stated the Nardello Report raised no concerns about treatment of operational workers – which this report suggests is incorrect. Further, NYU has reversed its public commitment to reimburse recruitment costs and fees for workers employed in construction of its campus and for many workers involved in its operations, leaving
hundreds of workers out of the reimbursement program and tens of millions of dollars owed to workers left unpaid.

5. **Best Practices:** NYU has not followed best practices for international institutions in such contexts. The approach undertaken by Apple offers an instructive contrast. Since 2008, in realizing that 35,000 workers in its supply chain were found to have been treated in a comparable fashion, the company paid workers $30 million in compensation for comparable recruitment costs and fees. It is US law that employers must pay all recruitment costs and fees for guestworkers, a rule that is enforceable in federal court, and multinationals like Walmart, HP, IKEA, and Patagonia, and even general contractors of GCC projects like the 2022 FIFA World Cup Qatar have all committed to fully reimbursing recruitment costs and fees for all workers.

6. **Recommendations:** This report recommends that NYU comply with laws and that it implement due diligence with regard to the risk of forced labor, consistent with prevailing practices. This includes remedies for past NYU conduct, including reimbursement for recruitment costs and fees consistent with dominant practice among comparable organizations, which is an independent NYU obligation consistent with its commitment to compliance with laws and ethical conduct. Due diligence also requires a genuine commitment to non-repetition in the future in ongoing labor conditions, which includes accurately assessing risk, implementing a policy that eliminates risk to the greatest degree possible consistent with prevailing practice, accurately tracking compliance, communicating adequately with internal and external parties, and having an ongoing commitment to remedy harms. If NYUAD persists in failing to take due diligence with regard to forced labor it will fundamentally undermine its ability to “model ethical leadership” as an institution that prepares students “for the challenges and opportunities of our interconnected world.”

### 0.2 PURPOSE

This report is written to make a productive intervention in the polarized discourse on the issue of labor at NYUAD. Complying with and taking due diligence to avoid violating the prohibition on forced labor should be a starting point, not a point of contention: the prohibition on forced labor, which has been part of international law since 1930, is one that both the UAE and the US have incorporated into their laws, and is arguably required by the NYU Code of Ethical Conduct. Yet the effort to establish basic standards for labor has been implied at times to be an exercise in US heavy-handedness and culturally insensitive orientalism. Clearly, media discourses have at times disappointing exhibited these tendencies, which we reject in the writing of this report.

However, defenders of NYUAD policies have themselves exhibited arguably inconsistent positions on the issue of labor in Abu Dhabi. On the one hand, certain members of the NYUAD community have aimed to describe labor in the UAE as being part of global phenomena. Again, we strongly agree with this. We note that many states and multinationals confront forced labor in their jurisdictions and supply chains, respectively. Conditions for persons on limited-term work visas, known as guestworker visas in the US, can be precarious for similar reasons worldwide. It is in response to these risks of forced labor that the US federal government has put in certain entitlements for workers on such visas for plaintiffs to be able to enforce in federal court or why major corporations have invested in due diligence consistent with dominant practices on the issue. Yet on the other hand, NYUAD leadership has described its labor standards over the past nine years as “innovative,” “groundbreaking,” and “unprecedented” as a means of praise. Regardless of whether policies that largely implemented UAE law plus better wages and housing were reasonably described this way when they were enacted, by 2013 NYUAD labor policies had fallen behind what are now clear best practices on this issue, practices that have been implemented in garment and electronic supply chains in East Asia, but even in construction in the GCC. In our view, some segments of NYUAD reject exceptionalism, while others adopt it; the only common thread is a shared attempt to deflect criticism of its policies.

NYU cannot have it both ways. We think that an institution that aims to be a Global Network University should be able to support a 21st century global architecture of compliance that can permit difference across its jurisdictions but guarantee certain minimums of treatment that eliminate the risk of serious harms to contracted employees consistent with prevailing practices,
especially when doing so is required to comply with law in the local jurisdiction.

It is with these concerns in mind that we have structured this report.

Parts 1 and 2 provide relevant background on noncitizens and labor in Abu Dhabi.

In Part 1, we introduce the history of noncitizen labor in the UAE in order to describe the extent to which noncitizen labor in the UAE, including forced labor, is part of a global history that affects us all. In Part 1, we also introduce the relevant laws in the UAE to highlight the existing framework into which NYUAD labor standards fit (on which the most recent NYUAD standards are based in part). Finally, in Part 1, we conclude by describing labor practices common among certain at-risk segments of the working noncitizen population where violations of UAE law are common, sometimes amounting to forced labor. Throughout Part 1, we provide context by briefly explaining certain guestworker programs in the US, their link to forced labor and access to remedy, and federal policy on recruitment costs and fees (a critical determinant of forced labor), to contextualize noncitizen labor governance in the UAE.

In Part 2, we describe NYUAD as a legal entity to make transparent to the extent possible the relationship between NYU and the Government of Abu Dhabi with regard to labor at NYUAD. In Part 2, we highlight NYU’s preexisting commitments to compliance with laws and due diligence. We also provide information about prevailing practices regarding due diligence, especially for forced labor, among multinationals. Due diligence standards highlight that the entity’s obligation to comply with law is independent of whether the government complies with law, even if that government is involved in operations as a partner, as is the Government of Abu Dhabi in the conduct of NYUAD.

Parts 3 and 4 actually explain NYUAD conduct. Part 3 covers 2009 through May 2014, when NYU first publicly recognized a string of media reports alleging violations of its labor standards, and Part 4 covers from May 2014 to May 2018, a period in which NYUAD changed elements of its program in response to perceived concern and the Nardello Report. We explain findings beyond the so-called “headline” violation – that NYUAD had excluded from its compliance program a third of the workforce involved in building the Saadiyat Island campus. Even workers
covered by the compliance program likely experienced forced labor in many cases.

Part 5 has our recommendations. We have value for the diversity of Abu Dhabi and for NYUAD. It is in the spirit of NYUAD’s mission to “advanc[e] NYU as a model university for the 21st century” that we believe NYU can commit to implementing best practices and reasonably eliminating the risk of forced labor from its operations.7

0.3 METHODOLOGY

Research for this report began in August 2017 with an attempt to build a factual record regarding labor at NYUAD. Public records reviewed were:

- NGO and media reports about NYUAD;
- Nardello & Co., Report of the Independent Investigation into Allegations of Labor and Compliance Issues During the Construction of the NYU Abu Dhabi Campus on Saadiyat Island, United Arab Emirates, April 15, 2015;
- NYU Abu Dhabi, Supplier Code of Conduct, Updated December 2016;
- Public statements made by New York University, New York University Abu Dhabi and Tamkeen, LLC;
- Public professional profiles for persons at NYU, NYUAD and Tamkeen, LLC;
- Books and papers on labor in the GCC.

Also included in this report is information provided from NYU to Coalition for Fair Labor via email. The information was provided to them as members of the University in order to update other interested members of the University, including through a public website the Coalition has maintained for that purpose. We have not quoted those emails and their text remains private but are able to provide access to the text on an as needed basis upon request.

After a factual record had been assembled, authors researched relevant laws and prevailing practices and analyzed NYU conduct and standards in light of these laws and standards. Authors have relied on English translations of relevant law available publicly online. Such translations are treated as the text of the law. Where only an English summary of the law was available, authors sought independent verification of the contents of the law from a reader of Arabic.

Upon completing this report, authors provided its final draft text to NYU Office of General Counsel to provide them notice and an opportunity to respond to this report. Authors have relied on public statements to be true unless there is clear evidence to the contrary, in which case we have presented that evidence in this report. In public statements in which a statement was attributed to a person using quotes or where an interview was reproduced, we consider the statement to be the direct quote of the speaker. In all instances where a statement was attributed to a person without quotes, such as in meeting minutes, we consider that representation to be a true paraphrase or summary, but do not consider it to be a quote of the person. Where appropriate, statements made by members of the NYU or NYUAD administration are referred to as the statements of NYU or of NYUAD.

Online sources were printed to PDF file at time of access and are on file with the authors. Authors do not have any basis
for believing that there are nonpublic communications or documents that would substantially alter the analysis presented here. However, the authors do not have access to nonpublic communications of NYU, NYU Abu Dhabi, Tamkeen, the Abu Dhabi Executive Affairs Authority, or of their relevant officials and employees.

It is the good faith intent of this report that the University address the compliance concerns raised in this report and that publication of a public report be fully consistent with the University's own investigation into and reform in response to the conduct described here.

The report does not aim to call into question any other policy questions related to the Global Network University or NYU Abu Dhabi.
NONCITIZEN LABOR IN ABU DHABI: HISTORY, LAWS, PRACTICES
1. NONCITIZEN LABOR IN ABU DHABI: HISTORY, LAWS, PRACTICES

OUTLINE


In Part 1.1 History, we briefly outline the history of labor in the UAE from the eighteenth century through the present, highlighting features of contemporary society in the UAE that observers in the media often miss.

In Part 1.2 Laws, we outline the laws related to noncitizen labor in the UAE, with a focus on immigration law, labor law, constitutional law and international law regarding forced labor. We provide context about United States law on forced labor as well.

In Part 1.3 Practices, we explain the contemporary state and business practices with regard to labor in the UAE in different sectors and demonstrate how these can lead to forced labor conditions. We provide context about forced labor conditions in the United States.

1.1 HISTORY

Contemporary labor conditions in the UAE are most often publicly discussed in the context of legal violations and abusive conditions. However, understanding contemporary labor conditions in the UAE requires valuing the broader historical, societal and legal contexts.

This report takes the position that Abu Dhabi is part of a global history of empire, resource extraction, urbanization and migration, which is a history that affects us all. This report does not adopt the framing of “Gulf exceptionalism,” which argues that Abu Dhabi and its neighboring small Gulf states are characterized by primordial cultural or political differences that render them essentially unlike other parts of the world. Politically, Gulf exceptionalism relies on assumptions that can be described as essentialist or Orientalist. During the Arab Spring, for instance, exceptionalist narratives often presumed that political turmoil would never come to the GCC — even though the UAE was repressing domestic citizen dissent and facing major noncitizen protests in the streets of Dubai. Economically, western visitors sometimes describe Dubai and Abu Dhabi as being “fake,” “artificial,” or characterized by “mad opulence” because of the urban megaprojects and futurist aesthetic — even though contemporary urbanization commonly shares these features, including in New York.

Gulf exceptionalism has defined much of the existing discourse on noncitizens in the UAE. The system of governance through limited-term work visas referred to as kefala has been called a “tradition” that is part of Gulf culture. In reality, the kefala system is similar to limited-term visa programs in other states, including that in the US; it is the position of this report that many such programs, including that in the United States, are prone to abuse. The primary difference between the UAE and most other states is the scope of their limited-term work visa program, meaning a program that provides legal status for the duration of work only. There are half a million to one million guestworker work visa holders in the United States; eight million limited-term work visa holders live in the UAE. Less than 1% of the US’s population has guestworker visas, but almost 90% of the UAE’s population has limited-term work visas. That limited-term work visa holders are such a large population in the UAE means that the UAE relies on the program for governance of its population. But many of the problems
that the lowest-earning workers on such visas in the UAE face parallel those facing the lowest-earning workers on such visas in the United States.\textsuperscript{20}

Labor conditions in the UAE are not an anachronistic cultural tradition but a modern practice consistent with market demand for labor and state imperative to govern a large noncitizen population. However, that does not mean resulting labor practices like forced labor are legal or inevitable. Knowledge of and respect for the lives of all noncitizens in the UAE is among the contemporary values that motivates compliance with the legal prohibition on certain conduct, notably forced labor.

This section summarizes the historical underpinnings of noncitizen labor in the UAE and provides a brief overview of the contemporary reality of noncitizens in the UAE.

Note that until the formation of sovereign states on the Persian Gulf coast in the 1970s, historical trends occurred at the regional level; as such, this section draws from history across the Persian Gulf coast where necessary.

1800-1971

Abu Dhabi sits on the Persian Gulf between South Asia to the East and the rest of the Arabian Peninsula to the West, which made it an entrepôt whose early economy was dependent on trade. Beginning in the nineteenth century, many of the cities along the Persian Gulf, like Dubai, developed as trading centers. The local economy rested primarily on maritime exchange – but also small industries in boatbuilding, date farming, pearl diving, weaving, and herding.\textsuperscript{21}
Up until the twentieth century, the region was what Frederick Anscombe calls an “anational society,” where individuals navigated a wide array of identities, loyalties, and polities. Movement was integral to everyday life, and the region hosted and benefitted from a remarkably diverse population from the region, which stretched from coastal cities on the Indian Ocean in South Asia, like Mumbai, to ports like Cairo to the West. Port cities rose and fell due to their location in regional trading networks and due to fluctuations in export commodity prices. Local political authority was governed by groups that defined themselves by common lineage, such as the Bani Yas Dubai and Abu Dhabi, which controlled certain regions of the current Emirates, including urban centers like Dubai. However, such authority was highly fragmented. Local leaders often found it necessary to include competing interests or incorporate rivals into decision-making in order to prevent revolt or outmigration. The British, Saudi, Ottoman and Persian Empires all competed over rights along the coast, while rulers often found it necessary to balance between these powerful actors in this fluid political borderland.

Ultimately, the British Empire consolidated a hegemonic position in the Gulf. In 1820, major regional leaders – including leaders of what would become the states of the UAE – signed a general maritime treaty with the British empire that turned into a permanent maritime truce in 1853. In the late nineteenth century, the British signed a series of “Exclusivity Agreements” that put the southern coast of the Persian Gulf and inland areas south under British military protection in exchange for exclusive British rights in Gulf principalities. While popular conceptions and some social science literature link oil wealth and monarchical government, it was the British Empire that enabled ruling families to consolidate power. The Maktoum in Dubai and the Nahayans in Abu Dhabi strengthened their positions as rulers as a direct result of imperial support. In effect, a formerly fluid and horizontal leadership structure was frozen, and individual rulers gained power vis-à-vis their populations thanks to British support. In fact, the first imperial “rents” were paid to ruling families in order to secure the air and sea route to India, considered the supreme imperial objective in the Gulf before the oil age. The territory that would become the UAE was known as the “Trucial States” precisely because they had entered into treaty relations – truces – with the British Government. The very name was a recognition that they were effectively, if not officially, incorporated into the British empire.

By the end of the nineteenth century, the Gulf was not only politically part of the British empire but also was integrated into the global economy. It experienced an economic boom not from oil, but from export of pearls and dates. This triggered an upswing in population and a demand for labor, which came from outside the Gulf – Persia, India, interior Arabia, and even East Africa. Pearling especially required a flexible labor force because it was seasonal: workers would spend the summer diving for pearls on the Persian Gulf coast, and the rest of the year integrated into the desert pastoral economy inland. Many workers were recruited by debt obligations, which were often hereditary and bound pearl divers and pullers to boat captains. But wages from pearling were valued because they supplemented profits from the pastoral economy and filled an otherwise less-productive season. While pearling boats were hierarchical, dangerous, and exploitative, they were also cooperative enterprises, with crews, captains, and financiers sharing the profits. Also prevalent was slavery. While the British Empire officially banned the slave trade, complete abolition was considered to be detrimental to British interests because it threatened to damage relations with the intermediary elites on which the empire depended. Slavery thus survived under the British imperial umbrella well into the twentieth century, including in the Gulf – where it expanded whenever the region experienced an economic surge. This form of slavery was generally more fluid and less sharply racialized than American slavery – enslaved people could sometimes even join households – but still entailed the legal ownership of human beings. It was abolished across the region by 1970 but had fallen into disuse prior.

When oil drilling began in the Gulf, the recruitment of wage labor using employment contracts became a common practice. Oil was first discovered in the region in Masjid-i-Suleiman, in what is now southern Iran, in 1908. Bahrain was the first producer in the future GCC, followed by Saudi Arabia, Kuwait, the Trucial States (the future UAE) and Oman. When production began in the 1930s, it generated a demand for skilled labor, particularly from the Arabic-speaking world. Initially, recruitment in the Gulf leveraged connections with the wider British Empire, and particularly with India. The recruitment of Indian labor is often attributed to the fact that Gulf states lacked a skilled local workforce. However, it is important to note that this also reflected an unwillingness on the part of openly segregated Anglo-American oil companies to properly train a local workforce. Indeed, the regional oil boom in the 1930s coincided with a major labor surplus.
Western oil companies in the Gulf built their labor practices around their preconceived notions of proper ethnic and racial hierarchy, in which white workers were at the top. Indeed, this effectively functioned as their central governing strategy, in the form of bureaucratized and officially-sanctioned segregation. In Saudi Arabia, then-American company Aramco (originally an acronym for Arabian American Oil Company) practiced pervasive segregation, which Robert Vitalis traces to corporate roots in the Jim Crow copper mining camps of the Southwestern United States. Separate housing facilities, transportation, social clubs, and even hospitals were the norm across the region. Segregation was so pervasive that when a group of Italians, recruited to work in Saudi Arabia at the end of WWII, found themselves separated from “white” workers, their furious complaints provoked an international incident. Only when Aramco faced strong protests from its largely Saudi workforce did it finally enact an official policy of integration. The contemporary practice of building labor housing in industrial areas outside the city can also be traced to the early oil years. Hired architects and city planners cooperated with emerging regimes to create segregated suburbs, giving “divide and rule” a suburban facelift and etching distinctions between people into the spatial structure of the region’s cities. As a strategy, however, housing segregation could be a double-edged sword, as workers found that they could take advantage of their close proximity to covertly organize.

In the Gulf, corporate controls were reinforced by new mechanisms of state control created by imperial officials and Gulf rulers. What makes certain workers “migrants” in the contemporary sense of the term – namely, their citizenship – is itself a legal category that emerged only in the twentieth century. The first nationality law, passed in the region, as a result of the Great Depression and with a collapse of pearling in the Arabian Gulf. Yet foreign recruitment was favored: in the early years of exploration, oil companies relied heavily on technical staff from British India, with British Petroleum going so far as to open a recruiting office in Bombay. Companies also benefitted from a preexisting recruitment network in the Indian subcontinent built up over years of Indian indenture, all of which was conveniently within British imperial jurisdiction. Indeed, in its early years, Anglo-Iranian Oil Company expressly built on the recruiting system used by indentured labor recruiters in India, even receiving a waiver after the program’s official abolition in response to pressure from Indian nationalists.

In particular, Dubai benefitted by Bahrain in 1937, was designed to discriminate against Persians and give imperial officials greater control over the island. Curiously, “nationality clauses,” which required that companies employ local nationals when possible, were often written into oil concessions before citizenship had been legally defined. Deportation, too, preceded formal passports and border controls. Its use was pioneered by British officials in Bahrain – particularly Charles Belgrave – in the first half of the twentieth century, but it soon became a regional phenomenon, used by imperial officials against a diverse array of wayward princes, accused Bolsheviks, and pro-democracy activists in the Gulf. Legal deportation began as an imperial control mechanism, and was only later systematized as a large-scale mechanism of labor discipline. Gulf rulers were consolidating their sovereign power by exercising control over a growing population.

1971 TO 2000

In 1968, the British government announced its plans to withdraw from all of its easternmost bases by the end of 1971. In three years, imperial officials and local allies had to scramble to build governance structures that would stand on their own for the seven Emirates as well as Qatar and Bahrain. The British encouraged the creation of a national federation of sheikhdoms: the future UAE. On December 2nd 1971, seven rulers of the Emirates met and six of the seven agreed to create a union; Ras al Khaimah joined the year after, while Qatar and Bahrain at early stages of negotiation decided to become separate nation-states. Sheikh Zayed bin Sultan al Nahayan of Abu Dhabi, who had replaced Sheikh Shakhbout in a British-backed coup in 1966, was a strong supporter of federation. Abu Dhabi took a leading role in consolidation from the beginning, together with Sheikh Rashid bin Saeed al Maktoum of Dubai.

The sixties and seventies were a period of rapid transition, particularly in Abu Dhabi. Change was driven by a number of factors: Sheikh Zayed’s accession, the onset of oil revenues, and a new British emphasis on “development” as a response to rising popular and Arab Nationalist pressure. The result was a rapid growth in state bureaucracy, the creation of a welfare state with universal systems of health and education for citizens, and construction of physical infrastructure and housing, including much of the city of Abu Dhabi. The 1973 oil crisis increased worldwide oil prices and government revenues from oil surged. In particular, Dubai benefitted...
from the well-timed construction of port infrastructure, which fortuitously coincided with the decline of its trading rivals in Bahrain and Kuwait.\textsuperscript{51}

Independence also forced newly-forged Gulf states to legitimate their rule. Most undertook a two-pronged strategy. On the one hand, they continued the developmentalist rhetoric used by the British in the fifties and sixties to counter Arab Nationalism, pan-Arabism, Third Worldism, and Soviet bloc influence. Pan-Arabism, with its anti-monarchical tinge, seemed particularly threatening and enjoyed widespread backing and strong international support, particularly from Nasser’s Egypt.\textsuperscript{52} Framing themselves as modernizers and reformers, embattled Gulf rulers drew on technocratic language to try and evade or diffuse political conflict. On the other hand, they sought to frame themselves as authentic or traditional rulers, naturally suited to govern the supposedly “tribal societies” of the Gulf. This narrative stressed the Gulf as inherently Arab, bedouin, or based on narrow kinship groups.\textsuperscript{53} The “nation” of the UAE was fashioned as the birthright of a singular people with certain family ties considered eligible for citizenship.\textsuperscript{54} It excluded from the imaginary of the “nation” the diverse populations that had long-standing ties there, describing migrants and traders as foreign guests who would need a valid visa to travel to or live in the UAE,\textsuperscript{55} rather than people who ever could have made a citizenship claim to the state.\textsuperscript{56}

Yet noncitizens continued to live and work in the Gulf states, including the UAE. Noncitizens occupied diverse roles in the economy – manual work, shopkeeping, trading, office work, etc. – and society further diversified along class and nationality lines. South Asians continued to migrate.\textsuperscript{57} From the start of the oil boom in the 1930s until after the 1960s, people came from neighboring Arab states as well; Iraqis migrated after the 1968 Ba’ath party change, Yemenis left after civil wars, Palestinians immigrated after the Arab-Israeli War of 1948 and the occupation of Palestine.\textsuperscript{58} However, although Arab workers were originally welcomed, the GCC gradually shifted from recruiting citizens of Arab countries to recruiting citizens of South Asian ones. According to Kapiszewski, Gulf states saw fellow Arab noncitizens as being more politically active on issues of pan-Arabism that could run counter to state goals, while Arab noncitizens also typically traveled to and settled in the Gulf with their families; by contrast, South Asians were not active in Gulf politics and had long-standing practices of solo migration for work to the Gulf.\textsuperscript{59} Many South Asian businesspeople, including construction contractors, already had business relations in the UAE as well, which facilitated recruitment of male South Asian workers.\textsuperscript{60}

As Noora Lori notes, many analysts presumed that the shift from primarily Arab to primarily South Asian labor would lead to further fissures between people no longer connected by a common language and culture, or that South Asian workers were somehow more quiescent.\textsuperscript{61} These predictions ignored a long tradition of protests and strikes amongst Indian and Pakistani workers in the Gulf, starting in Kuwait in 1948 and Bahrain in 1942 and 1947, not to mention incidents of cross-nationality working class collaboration.\textsuperscript{62}

**2000-PRESENT**

In the past twenty years, the UAE has almost doubled in population.\textsuperscript{63} A new generation of political leadership took power. In 1990, Sheikh Rashid al Maktoum of Dubai died and his son, Sheikh Mohammed bin Rashid al Maktoum, came into power as crown prince and de facto ruler then as ruler in 2006. In 2004, Sheikh Zayed bin Sultan bin Zayed al Nahayan of Abu Dhabi, founding President of the UAE, died, and his son Sheikh Mohammed bin Zayed al Nahayan (known as MBZ) became crown prince and de facto ruler of the UAE.

Both leaders aimed to grow their economies and diversify away from oil. In the early 2000s, Dubai began investing heavily in new infrastructure, like the Jebel Ali port – the busiest outside East Asia\textsuperscript{64} – and in new industries, such as finance, business, real estate, and tourism, as well as new urban development and a massive free zone in which to house it.\textsuperscript{65} Abu Dhabi invested in major real estate projects, its own quasi-state investment company, Mubadala.\textsuperscript{66} In addition to its foreign investments, in Abu Dhabi Mubadala operates joint ventures, urban renewal plans and major cultural projects like the Saadiyat Island development, home to NYUAD.\textsuperscript{67}

The new development projects contributed to a massive growth in population. But the new round of urbanization in Dubai and Abu Dhabi followed patterns of development characteristic of so-called “global cities” worldwide, in which development is linked to international flows of finance and trade and especially attracts two mobile classes of people: high-earning global professionals, like consultants and financiers, and low-wage workers to build the heavy investment in infrastructure and real estate and then provide cleaning, landscaping, maintenance, driving,
security, retail, cooking, and other services. In particular, such services are often subcontracted – meaning that there are certain incentives for and heightened risks of late payment of wages, nonpayment of wages, and nonpayment of recruitment costs and fees UAE law requires employers to pay.

However, the oft-used “triptych” description of citizen-expat-manual laborer is incapable of encapsulating the remarkable diversity that characterizes the population of Abu Dhabi. At last count, migration to the Gulf, including Dubai and Abu Dhabi, either the largest or second largest international migration flow second to migration to the United States. Taken primarily from anthropologists who have worked in and written on the UAE in recent years, the following is a depiction of several features of social, political, and economic life in the Gulf that shape the everyday reality of noncitizens.

Who is a “migrant?”

The word migrant suggests impermanence, but limited-term work visa holders often spend their entire adult lives in the UAE, simply by renewing their visas. Generally speaking, Emirati citizenship is unobtainable for long-term noncitizen residents. However, noncitizens at certain income rates can migrate with their families, and children born and raised in the Gulf often stay for school and then work, and eventually sponsor their retired parents; some such children and/or their parents return back to their country of citizenship after a lifetime away. Work visas for employment at the lowest wage rates in the UAE do not permit noncitizens to bring their family members; such contracts are typically two years. Such noncitizens may get long-term work with one company, especially when the company – like a state-run oil project – has long-term and stable work, meaning it will consistently renew a two-year visa. Other non-citizens may find work with companies working on a contract for a mega-project or for a company with varying needs over time, leaving it open-ended whether a two-year contract will be renewed or whether a noncitizen will have to begin searching for new work – either at home or abroad – after it expires.

Means of belonging

Several neighborhoods in major cities like Dubai and Abu Dhabi are home to businesses and residences of certain noncitizen nationalities. Sometimes such neighborhoods are longstanding, sometimes such neighborhoods emerged only in the past five or ten years. Sometimes the defining feature is nationality or ethnicity, sometimes the defining feature is class, with many middle-class residents and families sharing a neighborhood. In Abu Dhabi, certain neighborhood streets and courtyards have become areas to sit and meet with friends late into the night and for kids to play.

Western expats, South Asian middle classes and low-wage workers all to some degree exercise to “consumer citizenship” – an ability in the UAE to develop certain practices – habits, preferences, or purchases, that indicate the elevated status of having lived in the Gulf. For example, going to (if not shopping at) high-end malls, dressing in certain clothing or jewelry, bringing back gifts of consumer items like TVs or certain cell phones, souvenir statues, kids toys all serve as an “economic practice that signal[s] market success.” Indeed, to audiences at home, the UAE as a place signals market success, and people take photos behind backdrops of skyscrapers, beaches, parks or roads with palm trees to send to friends and family or post on social media; photo parlors have these UAE icons like the Burj Khalifa or Sheikh Zayed Mosque as backdrops for workers to take their photos in front of and send home, or to juxtapose photos of their family onto. These backdrops are especially meaningful as an image for people to send home to convey success if the reality of life in the UAE is less than picture perfect. Noncitizens who migrate to the UAE and face illegal and unfair conditions like forced labor still aim to adapt and make migration work however they can.

Means of exclusion

Discourses to differentiate noncitizen populations has developed informally in popular English-language parlance in the UAE. Depending on the speaker, expats is a category defined in a few ways: in terms of race, it refers to white noncitizens; in terms of nationality, it refers to American, Canadian, Australian or Europeans; in terms of class, it can include elite non-white, non-western citizens (for example those working at branches of multinationals, especially in consultancy, finance, etc.) as well. Professionals can include expats, but is more often used to refer to non-western citizens who work in a range of professional positions – doctors, lawyers, engineers, managers, businesspeople etc. Workers is typically a large catchall category to refer to non-professional, non-expat noncitizens employed in a variety of service sectors: everyone from retail workers to security guards to cab and van drivers to shopkeepers, traders, cooks and office
clerks. The term laborers refers to workers at the lowest wage rates in the UAE, who perform manual work in construction, oil, landscaping, and agriculture, *inter alia.* Though professionals and workers tend to be a mix of nationalities, there are racial and gender patterns among laborers and domestic workers. Laborers are typically male South Asian or increasingly East Asian and African citizens, often referred to in common parlance as “bachelors” or “single men” because they migrate alone, regardless of their marital status at home. Domestic workers are typically women from South Asia, East Asia, or Africa.

Identifying “who’s who” in Abu Dhabi is a common everyday practice in Abu Dhabi because access to public places like streets and parks and semi-public places like malls and hotels is restricted in explicit and implicit ways. Regarding public spaces, certain public family beaches in Abu Dhabi have a “no single men” policy, which was enacted in response to complaints. The policy is phrased to be class and race neutral, but while some citizens who approve of the policy see it as a policy against all men, others who approve the policy see it as a solution to large groups of laborers coming to beaches on their days off, arguing in some instances that having such workers around presents a threat to children. Certain streets are dominated by laborers, others are implicitly off limits. In the UAE, sometimes laborers are stereotyped as being from illiberal and even “unclean” places such that they are assumed to be a threat to the clean modern cities in the UAE. Regarding semi-public spaces like malls and hotels, laborers are often prohibited from entering either because of a “no construction wear” policy or because private security guards have been instructed not to let such people in. In interviews, workers and laborers excluded say they feel such policies are discriminatory; scholars of the Gulf also point to discourses about workers presenting bodily threats to the public by being “dirty” or staring as being racially discriminatory.

Though there is still downtown housing for workers and laborers in Abu Dhabi, many, especially laborers, are typically provided housing in one of several industrial areas with housing outside the city. This provides housing that is arguably better regulated, but such housing also maintains a significant security and surveillance presence and is segregated from the rest of the population; access to transportation from these areas is increasing but is often financially inaccessible. Nevertheless, downtown Abu Dhabi neighborhoods with businesses that catered heavily to workers and laborers, like small cafeterias and barber shops, have changed in recent years as such businesses and their residents have faced incentives to move away from downtown to more segregated industrial areas.

### Who speaks?

The dominant images of laborers in the UAE that appear in media – construction workers, all wearing their uniforms at work, in buses or on a worksite – can make it seem as though they are all the same, defined by their work, as they are in these photos. However, societally, laborers are much more than the work that provides their legal status in the country; indeed all noncitizens in the UAE are so. This fact is apparent from the varied body of work on life in the UAE and in Abu Dhabi, to which we footnote here. Indeed, as Ahmed Kanna observes, strikes of several thousand workers in prominent areas of Dubai during the Arab Spring were arguably protests against both economic and political control, two threads in governance that are often indistinguishable.

### 1.2 LAWS

This section outlines UAE laws which are the basis for or relevant to New York University Abu Dhabi’s labor policies. We cover four areas of UAE law: immigration, labor, constitutional, and international. For comparative context, we also provide a brief overview of guestworker programs in the United States and federal regulations about recruitment costs and fees, a key cause of forced labor.

### IMMIGRATION

The “kefala system” is the term that term has come to dominate discussions of labor migration in the Gulf, where many states have comparable systems. It refers to the fact that each noncitizen visa is attached to a guarantor, or *kafeel,* a citizen with significant power over that visa. Accounts of its historical origins vary; some cite use of a *“kefala”* document, used as a guarantee of future behavior, as early as 1923; others see antecedents to the *kefala system* in the later British “No Objection Certificate,” a form required for local merchants recruiting workers from outside the Gulf, usually from the Raj. But more fundamentally, as Neha Vora and Natalie Koch have argued, the term itself often obscures as much as it reveals. The seeming Arabness of the term masks the fact that, far from being a modern iteration of
the *kifala* document, it in fact relies on an array of legal instruments and surveillance systems first imposed by the British Empire.\textsuperscript{111} Furthermore, labor and immigration practices have essentially been codified, suggesting an understanding of the contemporary law on the books is most important for understanding this governance system.

**Noncitizen work visas**

In the UAE, all noncitizens have visas that are granted by the UAE through citizen “sponsors.”\textsuperscript{112} To enter the UAE for work, noncitizens must have a work entry visa,\textsuperscript{113} which the UAE only gives if that person also has an official employment contract;\textsuperscript{114} accordingly, when employment ends, noncitizens lose their legal immigration status unless they transfer to another employer.\textsuperscript{115}

It is critical to distinguish employers from sponsors. Though *kefala* requires each noncitizen have a visa tied to a citizen sponsor, that does not mean each noncitizen works directly for that sponsor.\textsuperscript{116} Citizen sponsors may sponsor workers for a company they own (or for their own household, if a domestic worker) but they also may sell visas they have. Sale can be either to a company in need of additional visas for its direct employees or to a labor outsourcing firm in the UAE, which hires workers and then subcontracts them to other companies on a temp basis. In both instances, it is rare that the citizen sponsor is actually the direct workplace supervisor. In many instances, noncitizens are not hired by major firms but instead run their own small business. In these instances, a sponsor may provide a visa to a noncitizen on the unofficial agreement that the noncitizen operate the business with significant freedom to do so, and simply pay rent to the sponsor for the privilege.\textsuperscript{117}

**Employer power to represent employee to government, including terminating work visa**

Employers have the power to complete immigration and labor paperwork on behalf of workers with their passports.\textsuperscript{118} Employers may unilaterally terminate a contract if they decide not to renew a contract at its end.\textsuperscript{119} Before a contract has ended, an employer may terminate without cause with one to three months’ notice, so long as they are honoring and continue to honor all contractual obligations and indemnify the other party for all costs agreed to prior under the contract, not more than three months of gross wages.\textsuperscript{120} An employer may also terminate for cause without notice after the probation period,\textsuperscript{121} where “for cause” firing may only be a) if a noncitizen assumes a false identity or nationality or has false papers, b) commits a fault resulting in substantial material loss to the employer so long as the employer notifies the labor department of the incident within 48 hours of its occurrence, c) disobeys safety instructions that are in writing, in a conspicuous place and if the worker is illiterate, are communicated verbally, d) defaults on basic duties under the contract, so long as the employee has failed to redress after a written interrogation and warning of dismissal upon repetition, e) conviction of a crime “against honour, honesty or public morals,” f) reveals confidential information of the employer, g) is found to be drunk or intoxicated during work, h) assaults an employer, manager or coworkers during working hours, or i) is absent without reason for more than 20 successive days in a year or for more than seven successive days.\textsuperscript{122}

Note that UAE labor law codifies a certain degree of due process. Disciplinary measures, including dismissal, may not be imposed until a worker has been notified in writing of the charges against him, heard and allowed to have their defense investigated, and until documentation of such process has been entered in their personal file and the specific penalty also mentioned.\textsuperscript{123} The worker shall be notified in writing of such penalties, the reasons, and the penalty to which they are subject if they repeat the alleged offense.\textsuperscript{124}

If one party fails to comply with required procedures in terminating employment, the wronged party may initiate legal action for indemnification or recovery of other rights.\textsuperscript{125} Failure to follow the required procedures on the employee’s part also eliminates their right to get a new work permit.\textsuperscript{126} However, the power of an employer to complete immigration and labor paperwork on behalf of workers creates a significant imbalance in the relationship between employer and employee, creating an obstacle to employees exercising their legal rights to terminate an employer-employee relationship or to challenge alleged conduct leading to termination. Employment relations are considered to have ended without due process when either party terminates without following the appropriate procedures.\textsuperscript{127}

**Expanding, but limited access to justice**

The Abu Dhabi Judicial Department Labor Court has exclusive jurisdiction over labor disputes arising from
employment in Abu Dhabi. For individual claims, the Court hears employment disputes including unpaid salary, arbitrary dismissal, vacation allowance, accommodation or transport allowances, airline tickets, or work injuries, *inter alia*. The court has several chambers: five minor chambers dealing with claims less than AED 500,000 ($136,132), one major chamber dealing with claims worth more than AED 500,000 or those involving claims of unknown value (like passport recovery), and two appeals and one enforcement chamber.

The Government of Abu Dhabi is reforming to speed up resolution of work disputes, having decided in 2017 to direct more cases directly to labor courts and creating a new fast track labor court to deal with disputes and claims under AED 50,000 ($5,445). The fast track court deals primarily with cases in which facts are clear, such as those in which workers have not been paid, for which there are typically government records of payment (or lack thereof). Reform aimed to speed resolution of nonpayment claims, since going through a lengthy trial without having been paid and without an ongoing source of income is extremely challenging for workers. Fact intensive claims regarding mistreatment or abuse go to regular labor courts.

For collective labor disputes, defined as “any dispute between an employer and his workers, which involves the common interest of all or a group of workers in a certain firm, occupation, trade or professional sector,” UAE law requires that certain procedures be adhered to. Workers must submit their claim in writing to the employer, then the employer must file a response within seven days; the relevant ministry must be copied on both. If the employer fails to respond or reply does not lead to settlement, competent labor department shall mediate. In the event the employer files a complaint, the labor department directly intervenes to mediate without providing opportunity to workers to respond. In the event the employer fails to respond or reply does not lead to settlement, competent labor department shall mediate. In the event the employer files a complaint, the labor department directly intervenes to mediate without providing opportunity to workers to respond. In the event the employer fails to respond or reply does not lead to settlement, competent labor department shall mediate. In the event the employer fails to respond or reply does not lead to settlement, competent labor department shall mediate. In the event the employer fails to respond or reply does not lead to settlement, competent labor department shall mediate. In the event the employer fails to respond or reply does not lead to settlement, competent labor department shall mediate. In the event the employer fails to respond or reply does not lead to settlement, competent labor department shall mediate.

In the event of unsuccessful or untimely labor mediation, labor department shall refer the dispute to a conciliation committee within the Ministry of Labor and Social Affairs binding on both parties. In 2014, such procedures were amended to include the ability to engage in direct negotiation, mediation, conciliation, or arbitration.

However, the primary challenge that many noncitizens face is getting to court at all. Doing so requires formal complaints with the court, which requires not only literacy and knowledge of the law, but Arabic language literacy (or ability to hire relevant translations). Only UAE nationals and “a few other Arab nationalities” have rights of audience before Labor Courts. Making a submission also requires physical access to courts, which are commonly closed on Friday and Saturday – non-work days noncitizens who work Sunday through Thursday and who do not have flexibility over their schedules would be able to get to courts.

Because the dispute resolution procedures described above are exclusive, there is no lawful recourse to collective organizing, creation of unions, or striking as an option for resolving labor disputes in the UAE. UAE labor law permits workers to be temporarily suspended from work if accused of a criminal offense or “an offense associated with strike.” UAE criminal law prohibits three or more “public employees” from leaving their place of work or willfully abstaining from performing their duties based on mutual agreement among them or to “seek to achieve an illicit purpose,” and provides for punishment by imprisonment under certain circumstances.

**Expanding, but still limited freedom for employees to transfer or terminate employment**

Under UAE labor law, parties may terminate a contract by employer unilateral decision (discussed above), mutual agreement, or employee initiation. By mutual agreement, parties may terminate a contract or transfer to a new UAE employer; transfer is allowed by mutual consent for low-wage workers only if they have spent six months with that employer.

There are two narrow circumstances in which a noncitizen on a definite term contract may terminate their employment, which are the product of two 2015 rules put forward by the Ministry of Labor.

First, a noncitizen may terminate their employment if the employment relationship has de facto ended. This occurs 1) if a labor court establishes the employer failed to meet contractual or legal obligations to the worker, or 2) if a worker has filed a court complaint against an employer who has gone out of business for two months or more and failed to employ the worker as originally promised (so long as the worker timely reports) or 3) if a worker has obtained a ruling its favor stating that the worker is entitled to at least two months of unpaid wages or indemnification for arbitrary firing or early termination of a fixed term contract, or any other benefits denied to him by the employer for no lawful reason, including.
Employees may also terminate unilaterally if they give the one to three months’ notice. Second, a noncitizen may terminate their employment if they request to the government to cancel their work permit and the employer fails to respond or gives an inadequate response. If an employee requests to the competent authority to cancel their work permit and leave the country, the government must notify the employer and request a response in seven days; if the employer fails to respond or if their response is inadequate, the employee has a legal right to leave. If they follow additional required procedures, employees may further be granted a new work permit.

Deportation as a means of control

In the case a noncitizen is fired for cause according to law or fails to lawfully leave employment, the UAE government has the right to impose at least a one-year ban on employment. However, an exception may be granted with written approval of the original employer. In certain cases, exceptions are not possible. If a noncitizen has a separate deportation order (which may be granted, for example, in the event of a criminal conviction), is fired due to participating in or instigating a strike, has their work permit or sponsorship cancelled because of an infectious disease, inter alia, working without a permit or working for an employer for which they are not permitted or fails to timely notify the Ministry of Labor of an employment ending, they are subject to at least a one year work ban without apparent exception.

If a noncitizen’s legal status ends, they have thirty days after expiry to seek renewal of their status or leave the country; if they fail to do so, they are fined with a maximum amount of AED 100 ($27) per day beginning after those thirty days. If they fail to pay the fine they may face imprisonment for a period not exceeding month or a punitive fine not exceeding AED 4000 ($1089); a court may also recommend deportation.

LABOR

There are several areas for which the UAE labor law provides minimums or requires certain conduct.
Recruitment

In this context, recruitment costs and fees are the costs and fees associated with hiring a person from outside the jurisdiction in which they will work. In the UAE, a person must have a work visa and an employment contract before they enter into the UAE for work. As a result, employers in the UAE typically hire noncitizen employees in their home countries through a recruitment agency in that home country, or in some cases, from a recruitment agency in the UAE that itself has recruited from abroad. Recruitment agencies are companies that employers in foreign countries, like the UAE, hire to gather workers to supply to that employer. In most major labor-sending countries for the UAE, like India, Nepal, Sri Lanka, Pakistan, the Philippines, Kenya, and Uganda, there is a government licensing system for such recruitment agencies. Recruitment agencies provide a different function depending on the labor market. If recruitment agencies primarily connect job seekers to already publicly available jobs, then they primarily provide a service to job seekers. If recruitment agencies are the exclusive means through which an employer hires, then they are primarily for the benefit of the employer.

The UAE government considers the Ministerial Decree No. 52 of 1989 to require employers to pay recruitment costs. The Decision states, “An employer who applies for recruitment of non-nationals to work for [them] shall have the following commitments: … Sponsoring the worker and bearing the costs of recruitment and employment in accordance with the work contract which shall comply with the provisions of Federal Law No. 8 of 1980.” It appears given the UAE position that the cost bearing requirement cannot be contracted around. Furthermore, note any labor supply agency from which employers hire within the UAE must not demand or accept payment for costs or fees. Article 18, Federal Law No. 8 of 1980 states “No licensed employment agent or labor supplier shall demand or accept from any worker, whether before or after the latter’s admission to employment, any commission or material reward in return for employment, or charge him for any expenses thereby incurred, except as may be prescribed or approved by the Ministry of Labor and Social Affairs.” Note that there does not appear to have been any further relevant action by the Ministry of Labor and Social Affairs.

However, employers commonly do not pay such costs and fees, which can add significantly to the costs of labor, and are especially disincentivized in the competitive bidding processes that many sectors in the UAE involving subcontracting use to award subcontracts. It may be inferred that if workers do not pay for recruitment costs and fees, then the labor suppliers must. In reality, workers often end up paying for recruitment costs and fees.

UAE law does not directly address whether employers must reimburse any additional payments employees have made related to recruitment, which may arise if local agents charge additional payments to workers. The local agents appear to be outside the definition of “licensed immigration reform. The H1B for highly-skilled workers was not created until the 1990s. The Southern Poverty Law Center has noted that “The most fundamental problem with guestworker programs, both historically and currently, is that the employer – not the worker – decides whether a worker can come to the United States and whether he can stay. Because of this arrangement, the balance of power between employer and worker is skewed so disproportionately in favor of the employer that, for all practical purposes, the worker’s rights are nullified.” Recruitment costs and fees being borne by employers, wage and hour abuses, contract violations, including poor housing and lack of remedy for injuries are all common.

Recently, additional types of visas have been the basis for worker abuse for similar reasons. In recent years, the J-1 cultural exchange program in the United States, which provides 130,000 visas yearly and is intended to sponsor noncitizens (primarily college students) looking for summer work or training or internships, has been used as a guestworker program in which employers charge jobseekers for access to their visas. Finally, noncitizens have faced both forced labor and trafficking when they were hired for to work for US military contractors in Iraq and Afghanistan through US government contracts.

Note that there does not appear to have been any further relevant action by the Ministry of Labor and Social Affairs.
employment agent or labor supplier.” This risk of local agents charging workers is reduced when employers pay for the services of recruitment agencies that have the skill and willingness to hire agents who are paid by the recruitment agency rather than workers and can enforce this in exchange for repeated business. However, recruitment debt still occurs. Reimbursement may still be required under the forced labor prohibition in the UAE constitution and under UAE international law obligations.

**Worker qualifications**

The minimum working age in the UAE is age 15, though noncitizens must be 18 to be lawfully recruited for work. Such employment is subject to several protective measures in law.

**Contracts**

Since 1980, it has been a legal requirement that workers be given a copy of their contract. Such contract had to specify the date of its conclusion, the date work would begin, the type and place of work, the duration of the contract, if definite, and the wage rate. A 2015 rule requires that workers sign their contract before the Ministry of Labor will give a sponsor approval to admit the worker for that purpose. The contract that will be presented to the worker must be retrieved from the Ministry of Labor system that records such contracts and captures the terms of the employment offer from the employer; terms may not be changed unless more favorable to the worker and approved by the Ministry.

**Minimum wage**

There is no minimum wage in the UAE, though there is a provision in law that suggests the Minister of Labor and Social Affairs may do so.

**Wage theft**

Wage theft, or employer failure to pay owed wages, is common in major industries in the UAE, especially those that are heavily subcontracted, like construction and facilities management. In 2009, the UAE implemented a system for monitoring companies’ wage payments called the Wage Protection System, whereby institutions pay workers directly into workers’ accounts at banks and authorized financial services; the Ministry of Labor keeps a database that records these wage payments. As of 2016, the program is effectively mandatory for all employers hiring noncitizen workers, and roughly 86% of UAE companies employing 99.7% of Ministry of Labor-registered workers were part of the program by end of June 2015. The program also bans companies with over 100 workers from getting more work visas if they have delayed payment by 16 days or more; after delaying payments for one month, the company will be referred to a judicial body for punitive action. There is a further scale of escalating fines for further delays beyond a month, up to a total maximum of AED 50,000 ($5,445). Payments on schedule are made at least once a month.

**Probationary period**

Workers may be employed on probation for a maximum of six months during which they are subject to at-will employment, meaning they can be fired without notice or severance pay.

**Working hours and overtime**

Normal working hours are capped at eight hours a day, six days a week. Workers shall work no more than five successive hours without a break or breaks of at least an hour, not to be counted as working hours, unless otherwise specified by the Ministry of Labor; hours are also reduced during Ramadan. Overtime work is paid at 125% of the normal wage rate and overtime cannot exceed two hours daily. There are statutory requirements that the required hours and rest periods be publicly posted at main entrances and at a conspicuous location at work. Under certain exceptional circumstances, workers may be expected to work with reduced breaks.

**Annual leave**

Workers are entitled under law to fully paid leave for several holidays. For each year of service, workers employed between six months and a year are entitled to fully paid leave for two days for each month worked; workers employed for more than a year are entitled to fully paid leave for a month per year worked. The employer may decide the date of the annual leave. If workers leave for any reason in accordance with required procedures, they are owed pay for days of leave they did not take.

**Sick leave**

Workers are not entitled to any paid sick leave during probation or if the illness is the result of “worker misconduct,” “such as consumption of alcohol or
narcotic drugs. Subject to the above, workers who have been employed for more than three months after the probationary period – up to a total of nine months after starting employment – are entitled to sick leave of a maximum of 90 days, in which the first fifteen days are paid and the next thirty days are half-paid. A worker must report a non-work-related illness within two days of contracting it; the employer is then obligated to “take the necessary measures to have him medically examined immediately for the purpose of verifying his illness.”

Severance pay
Workers employed for a year or more continuously are entitled to severance pay; 21 days if employed for five or fewer years, and 30 days wages for each year thereafter, up to two years’ wage.

Work conditions
Several aspects of health and safety conditions are regulated by UAE labor law – including special protection for workers in remote areas, limits on work hours for especially dangerous work, general workplace safety standards, and workplace sanitation requirements. This includes a prohibition on work at the hottest times of day from mid-June to mid-September; when the rule was first enacted in 2007, accidents on construction sites dropped by more than 50% in the relevant period the next year.

Living conditions
Under kefala, sponsors have been expected to provide food, housing and medical care to workers or to provide them a reasonable stipend for the same.

Until 2005, UAE statute stipulated that employers provide medical care facilities and a minimum amount of medical care required to be provided – which could be first aid only. Under Abu Dhabi emirate law, all employers must now provide health insurance for all employees, which includes primary health care, lab tests and x-rays, in-patient stay and hospital treatment, dental treatment, inter alia.

Regarding housing, as of 2016 employers with more than 50 employees earning under AED 2000 ($544), must provide those employees with housing consistent with legal requirements.
employer is not, in reality, providing the benefit for which they are deducting wages.796 However, if an expense is “primarily for the benefit or convenience of the employer” – not the worker – then the worker cannot deduct it from employee wages under the FLSA, because it is not considered to fall under the “other facilities” that can be included in the statutory definition of reasonable costs.797

As a result, the question of who must legally cover “pre-employment expenses” including transportation costs, visa costs, and recruitment fees, has become a question in US federal courts over whether an expense is “for the benefit of the employer.” For a number of years, the federal Department of Labor (DOL) and Department of Homeland Security (DHS) vacillated regarding whether such costs and fees were considered “for the benefit of the employer.” Until 2008, the dominant case governing the issue was 

Arriaga v. Florida Pacific Farms, a federal appeals court holding from the 11th Circuit which held transportation costs and visas costs were for the benefit of the employer, while recruitment fees were not.798 Therefore, while employers had to cover transportation and visa costs, they could pass along the costs of recruitment fees to guestworkers.799

However, a federal district court case, Riviera v. Brickman Group, distinguished and narrowed the application of 

Arriaga to future cases.800 In Brickman, the Court found that unlike in 

Arriaga, there are cases in which the employer “has structured the process in such a way that a prospective employee cannot but pay a recruiting fee in order to work for [them],” as when an employer hires a recruiter as the exclusive means through which it hires workers.801 In that instance, the Court wrote, “the cost of the recruiting fee is primarily for [the employer’s] benefit as a cost associated with [the employer’s] business decision to utilize an exclusive workers’ representative.”802

DOL has gradually adopted the Brickman position on recruitment costs and fees. First, in 2009, it issued a so-called “Field Bulletin” stating that transportation costs, visas costs, and recruitment fees were for the benefit of the employer.803 Following the logic from Brickman,

Passports

It is common practice in the UAE for employers to retain workers’ passports. Because employers may legally be responsible for maintaining workers’ work and immigration status, employers retain workers’ passports to renew, or cancel residency visas or make other required changes.

However, as a rule, noncitizens are supposed to retain their passports. By UAE statute, noncitizens are required to present their passport upon request and are obligated to inform the Directorate of Nationality and Immigration or the police within three days of losing a passport, which is not possible if noncitizens do not have control of their passport.215

A 2002 UAE Ministry of Interior circular – less formal than administrative decisions or decrees, akin to a guidance document in the US – states, “as the passport is a personal document that the law obliges its owner to keep and show when required by the governmental authorities, it is not allowed for any party to detain the passport except by the official parties with a judicial order and according to the law.”214 The same circular states there will be “suitable punishment” under law for such violations.215

In this context, detaining a passport is to hold it when there is no legal reason to do so beyond the time required for an employer to execute the necessary legal procedures.

Several sources also cite the Ministry of Human Resources and Emiratization as having advised that “retaining workers’ passport also amounts to forcible work in violation of the International Labor Organization (ILO) Convention on the Abolition of Forced Labor, to which the UAE is a signatory.”216 There are at least two court cases in the Dubai Court of Cassation noting that “confiscating passports violates the right of freedom of movement.”217

CONSTITUTIONAL

Article 34 of the Constitution of the UAE states, “No person may be subjected to forced labor except in exceptional circumstances provided for by the law and in return for compensation.”218 Person means noncitizen in this context, and no exceptional circumstances have been provided for.219

The relevant definition of forced labor is provided by treaties to which UAE is a party. Under international
Part 1.2: Laws

law, nations are obligated to follow the treaties they sign. Furthermore, Article 40 of the UAE constitution, discussed above, also requires that the UAE treat noncitizens in accordance with treaties to which the UAE is party. Under that requirement, any definition the UAE gives to forced labor must be consistent with the definition in relevant treaties, and the UAE has not reserved to or qualified its ascension to relevant treaties, discussed below.

INTERNATIONAL

Treaties

In 1930, the International Labor Organization, which was founded in 1919 and became the first United Nations agency after the United Nations was created in 1946, enacted the Forced Labor Convention of 1930. The Convention responded to the League of Nations’ Slavery Convention of 1926, which four years earlier had not only required prevention and suppression of slavery and the slave trade, but had called on all states to “take all necessary measures to prevent compulsory or forced labor to develop conditions analogous to slavery.” The ILO enacted the Convention in response, which required all state parties to take all steps to eliminate forced labor. The Convention was directed against imperialism and colonialism – specifically, colonial powers’ practice of conscripting workers for public and private development, such as “communications … economic infrastructure, mining and the forced production of crops on plantations.”

The Convention of 1930 wrote a definition of forced labor that remains in force today: work or service for which a person did not voluntarily offer themselves and in which they work under the threat of a penalty. To meet the definition of forced labor, a person both must not voluntarily offer themselves for work and must also work under threat of a penalty. Risk that a person does not voluntarily offer themselves for work or that a person works under threat of penalty can materialize at any time throughout the employment period.

In 1957, states began signing Convention No. 105 as a supplement to the Convention of 1930. While the Convention of 1930 had put certain conditions on the use of forced labor, the Convention of 1957 directly required states to abolish forced labor when it was used for one of several common purposes: as a means of political coercion or education or as punishment for certain beliefs, as a means of mobilizing and using labor for economic development, as a means of labor discipline, as punishment for having participated in strikes, and as a means of racial, social, national and religious discrimination.

The UAE is a state party to the Convention of 1930 and the Convention of 1957. The UAE government has explicitly affirmed that it abides by the Forced Labor Convention of 1930. It has also stated that it believes its legislative framework to be consistent with the prohibition on forced labor. Though the legal framework does create a significant risk of forced labor, if it is followed – including that employers pay for recruitment and no employers pay recruitment debt – that it would technically be consistent with the prohibition.
Customary international law also arguably prohibits forced labor. Customary international law is conduct that enough states practice to be considered a widespread and uniform state practice, and which states follow because they feel they are obligated to under law, and which can also give rise to legal obligations. Besides the statutory prohibitions on forced labor in United States law, discussed below, federal courts consider the prohibition on forced labor to be part of customary international law.

1.3 PRACTICES

This section outlines common unlawful labor practices in the UAE. The below practices are pulled from sources about noncitizens in the GCC, with a focus on noncitizens who work in manual labor, often referred to as laborers in the UAE, as discussed in Part 1.1. However, such practices also occur among certain sectors of so-called workers, people in service positions such as security, driving, and food service.

The practices have been organized into determinants of forced labor according to the ILO. Where a practice is a strong determinant of the relevant element of forced labor, it is marked with (+).

**FORCED LABOR ELEMENT 1: INDICATORS THAT A PERSON DOES NOT VOLUNTARILY OFFER THEMSELVES FOR WORK**

Recruitment linked to debt and work for indeterminate period required to pay outstanding debt (+)

Recruitment linked to debt is an indicator that a person does not voluntarily offer themselves for work. Many workers pay recruitment costs and fees, which can be

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**FORCED LABOR RISK CHART 1/7: UNDERLYING RISK**

<table>
<thead>
<tr>
<th>Indicators person does not offer themselves voluntarily</th>
<th>Indicators person works under menace of penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recruitment linked to debt (+)</td>
<td>Denunciation to authorities (+)</td>
</tr>
<tr>
<td>Misinformation (regardless of intention) about nature of work</td>
<td>Confiscation of identity or travel papers (+)</td>
</tr>
<tr>
<td>Multiple dependency on employer</td>
<td>Withholding of wages (+)</td>
</tr>
<tr>
<td>Reduced freedom to terminate employment</td>
<td>Isolation (+)</td>
</tr>
<tr>
<td>No freedom to resign in accordance with legal agreements (+)</td>
<td>Constant surveillance (+)</td>
</tr>
<tr>
<td>Work for indeterminate period required to pay outstanding debt (+)</td>
<td>Threat of employment ban (+)</td>
</tr>
</tbody>
</table>

One strong indicator and two medium indicators met. Two strong indicators and one medium indicator at significant risk of being met.

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Work conditions likely satisfy the definition of forced labor where one strong indicator satisfied for each element of forced labor definition, in context of significant risk of several other indicators also being present.

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**Key:** 〇 = not met, 〇 = at significant risk, □ = indicator met. (+) = strong indicator.
Part 1.3: Practices

up to ten times their monthly pay, and to do so go into debt, often with informal loan providers at high interest rates.\textsuperscript{237} For those who were in fact recruited with misinformation or who are subject to variable interest rates, debt may balloon past an employees’ planned ability to pay it off, creating a high risk of long-term or indefinite indebtedness from recruitment fees.\textsuperscript{238} Recruitment fees capped a certain (relatively low) limit are permitted in some sending countries; it is not clear what conflict of laws rules apply to such circumstances.

As discussed above, when employers do not pay for the costs and fees associated with recruitment, then such payments get passed on to workers.

The first concern is that workers are in a weak financial position to pay for recruitment compared to companies. Companies – especially those in heavily subcontracted and often cash-poor industries – have significant incentives not to pay for recruitment. Since wage rates start at $190 to $210 a month, recruitment costs of even $500 make the costs of labor significantly higher.\textsuperscript{239} But for workers, to bear costs of recruitment can be a financial disaster. Workers at low wage rates paying recruitment costs of ten times their monthly wage typically have to sell assets and/or take on significant debt in order to pay such costs. As discussed below, having such recruitment debt is a critical path to forced labor in the GCC. When employers fail to pay recruitment costs and fees, they pass along costs to workers.

The second concern is that recruitment agencies have to engage freelance subagents to gather workers to their jobs in the first place; especially for work at the lowest wage levels in the UAE, workers are typically recruited from rural areas – so additional outreach throughout sending countries is required because recruitment agencies are typically based in cities, especially capital cities. Some recruitment firms choose not to exercise control over subagents and/or not to pay subagents. As a result, subagents take charges from workers, and may misinform workers about potential employment – whether intentional or unintentional.

Misinformation about the nature of work (+)

Misinformation about the nature of work is a medium indicator that a person does not voluntarily offer themselves for work. Across ethnographic studies in Qatar, Saudi Arabia, and the UAE, migrant workers state that the work they found upon arrival is different than

US CONTEXT: FORCED LABOR LAWS IN THE UNITED STATES

There are two definitions of forced labor in the United States federal law – the statutory definition and the customary international law definition.

The first is the statutory definition of forced labor in United States federal law provided by the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), which provides both civil and criminal penalties for forced labor. The TVPRA defines forced labor as “labor or services obtained by the means of force, threats of force, compulsory labor, or any other form of coercion” (22 U.S.C. § 7102). The TVPRA defines forced labor as labor or services obtained by “one of, or by any combination of, the following means— (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person; (2) by means of serious harm or threats of serious harm to that person or another person; (3) by means of the abuse or threatened abuse of law or legal process; or (4) by means of a scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.”

The term “abuse or threatened abuse of law or legal process” means the “use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.” The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

The term “threat” requires some expression of threat under the specific circumstances. As several federal appeals courts have held, the standard for assessing whether an employer’s conduct is sufficiently serious to coerce a person to provide labor or services against their will requires considering whether a person continuing to work under such conditions would be objectively reasonable given the particular circumstances.
This can mean that the worker works in a field they are overqualified for, overworked, or, in some cases, is left to find a job on their own when they were led to believe they had a job waiting for them in the Gulf. Reasons for misinformation vary. One critical preventative measure for misinformation is that workers are able to see a confirmed and correct contract before they commit to payment – however, because of the order of operations in recruitment, workers often pay and hand over a passport to a recruiter before seeing a physical contract. Other forms of misinformation include misunderstanding, change of circumstance, or in some cases, intentional misinformation.

Multiple dependency on employer

Multiple dependency on employer is a medium indicator that a person does not voluntarily offer themselves for work. When a person relies on their employer for ongoing food and shelter, losing employment has significant consequences; employer control over such basic features of life also suggests significant employer control over an employee.

No freedom to resign in accordance with legal agreements (+)

Not having freedom to resign in accordance with legal agreements is a strong indicator of not voluntarily offering oneself for work. Though UAE labor law stipulates conditions under which workers may resign, in practice such laws may not be respected.

FORCED LABOR ELEMENT 2: WORK UNDER MENACE OF PENALTY

Denunciation to authorities and threat of employment ban (+)

Denunciation to authorities is a strong indicator of working under menace of penalty. It can often refer to situations in which a preexisting condition with regard to the law – for example, a person not having legal immigration status – is used as a threat of penalty against an employee.
In the UAE, it appears workers may be subject to deportation and a work ban for failing to end the work relationship consistent with law and before the end of a definite term contract. However, in the absence of legal counsel workers have a significant constraint on their ability to terminate the relationship consistent with law. Meanwhile, employers have significant power in practice: power to unilaterally fire a worker, often in effect without employee opportunity to challenge the legal basis thereof according to statute, and power to undertake action on behalf of workers with regard to their immigration status. As a result, employers have significant power to take steps resulting in deportation of workers, even if the worker has not had adequate process or where the termination of the employment relationship was not the fault of the worker. In such a case, a penalty like an immigration ban may reasonably be considered an improper or illegitimate consequence.

**Confiscation of passports (+)**
Confiscation of passports is a strong indicator of working under menace of penalty. Recruiters and employers regularly confiscate the passports and documents of migrant workers as soon as migrants arrive to their nation of employment.

**Withholding of wages (+)**
Withholding of wages is a strong indicator of working under menace of penalty. Despite the Wage Protective System, it remains common practice for employers to withhold wages from migrant workers for undetermined amounts of time. In some cases, when wages are received, there are unexplained deductions made from workers’ salaries. Those who experience such deductions are put at higher risk for long-term indebtedness.

**Financial penalty (+)**
Financial penalty is a medium indicator of working under menace of penalty. The accruement of debt, withholding of wages, and confiscation of documents are often enough to keep migrant workers from leaving their employment in the Gulf, but in many cases, employers take deliberate steps to limit workers’ freedom to resign. These measures include forcing the worker to pay additional fees if they wish to leave – for example, having to pay the flight back.

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**US CONTEXT: FORCED LABOR PRACTICES IN THE UNITED STATES**

Forced labor occurs in the United States, sometimes among guestworkers. For example, in 2006, Signal International, which operated shipyards in Mississippi, hired nearly 500 men from India to repair oil rigs and other facilities damaged during Hurricane Katrina. Going into deep debt to do so, the workers paid recruiters between $10,000 and $20,000 and were promised good jobs and green cards. In reality, the workers were forced to pay $1050 a month to stay in isolated and guarded labor camps. Their status, debt, poor conditions at the camp and disparaging treatment towards the men as Indian led them to feel trapped. When the workers met with workers’ rights advocates and complained, the workers were detained by private security guards. Similarly, post-Katrina, workers hired under H-2B visas to work at a hotel company, Decatur Hotels, spent $3000-5000 on recruitment, visa and travel fees, were housed in unhygienic conditions, and received less pay than was promised. The National Guestworkers Alliance has identified forced labor practices among undocumented workers and H-2B visa holders in the seafood industry as well. However, forced labor is not limited to guestworkers. A 2017 investigation found forced labor practices among port trucking companies in southern California.

However, migrant workers have had access to remedy in some cases. In the Signal case, five men ultimately pushed on and decided to sue Signal International. Represented by several organizations, including the Southern Poverty Law Center and ACLU, the plaintiffs were awarded $14 million in compensatory and punitive damages – roughly $2.8 million each.

Furthermore, remedies are not only judicial. Several workers’ groups have developed campaigns to call on major food corporations to take responsibility for abuses in their supply chains – including forced labor. Coalition for Immokalee Workers, a worker-based organization that began with farmworker community organizing, runs the Fair Food Program, which is a partnership between farmworkers, Florida tomato growers, and retail buyers such as Whole Foods and Walmart, to improve labor standards; the program was based on CIW’s “Anti-Slavery” campaign, which was a

worker led campaign to prosecute cases of forced labor in farmwork and advocate for legislation, such as the Trafficking Victims’ Protection Act under which relief for forced labor can now be brought. Migrant Justice recently launched its Milk with Dignity campaign, creating a Code of Conduct for the dairy industry, into which Ben & Jerry’s has joined and which has “zero tolerance” for forced labor.

Under UAE law, in the event of firing, a worker may be asked to pay for their flight back “if they have the means to pay.” Workers do not effectively have a legal opportunity to challenge such a determination. The requirement that they pay can create a penalty of $150-200 or more, depending on the flight booked.

Physical violence or punishment (+)

Physical violence or punishment are strong indicators of working under menace of penalty. In many documented instances, employers have used threats against the workers freedom and physical well-being to prevent workers from leaving employment. Migrant workers across the Gulf reported that their employer utilized physical violence if they refused to work, asked for their wages, or tried to leave. Note also that migrant workers reported working for hours that greatly exceeded the labor laws of their respective nations of employment. Many also report being underpaid or not paid at all for their overtime work hours.

Isolation and/or constant surveillance (+).

Isolation and constant surveillance are both strong indicators of working under menace of penalty. Forms of housing accommodation vary from older buildings in downtown Abu Dhabi to worker accommodations, which are large dormitories typically in “labor camps” or “worker cities” or “industrial areas” outside downtown – and in some cases, quite far. Employers typically provide transportation to and from work sites. Leaving for other purposes can be prohibitively expensive for workers or otherwise challenging unless there is easy access to public transportation. Surveillance and security at such housing can be significant, and non-residents often are not allowed to enter.

PATHWAYS TO FORCED LABOR

As discussed above, forced labor is work or service for which a person did not voluntarily offer themselves and in which they work under the threat of a penalty. Forced labor, in practice, is not obvious from simply observing a workplace. As the ILO notes, “forced labor is not characterized by the nature of the work performed, rather by the relationship between the worker and his or her employer, supervisor or other person in control. It is therefore not ‘visible’ through observation alone.” Importantly, poor working conditions or wages are not themselves indicators of forced labor.

We provide below some examples of how work conditions in the UAE may produce forced labor conditions:

Example 1: A noncitizen has their passport taken during recruitment such that the recruitment agency processes their application for employment and UAE visa without the worker having first seen and approved an official contract. Employer has not paid for the costs of recruitment, and so the worker pays for the cost of recruitment by taking out a high interest loan. For worker to leave their employment in the UAE would involve paying for repatriation at their expense and leaving themselves without any income source with which to repay their loan. This worker has involuntarily entered into work and faces a financial penalty for leaving work. This provides a basis for reasonable inference that the statutory definition of forced labor is met.

Example 2: A noncitizen does not have to undertake debt to pay their recruitment costs – either because an employer has paid their costs as required by law or because they had the liquid assets to pay such costs. However, the worker faces financial penalties of having to pay the cost of their repatriation if they want to leave. The worker faces a risk of retaliation and does not have any ability to file required papers in Arabic with a labor court to challenge a firing inconsistent with the law. The worker is also dependent on the employer for their housing and food. Because the worker has multiple dependency...
on their employer and no practical ability to correctly follow procedures to end their employment, they are not voluntarily offering themselves for work. Because the worker is under constant surveillance and faces a financial penalty – and under some circumstances, an immigration ban – if they fail to correctly follow procedures to end their employment, they work under threat of penalty if they leave. This provides a basis for reasonable inference that the statutory definition of forced labor is met.

**Example 3:** Worker in Example 1, a common scenario for recruitment, also faces the conditions of the worker in example 2, a common scenario for employment in the UAE. This worker is employed as forced labor.

The possible permutations of these circumstances are numerous.
NYU ABU DHABI LEGAL OBLIGATIONS RE: CONTRACTED NONCITIZEN LABOR
Make Saadiyat, your Saadiyat
2. NYU ABU DHABI LEGAL OBLIGATIONS RE: CONTRACTED NONCITIZEN LABOR

This section, Section 2, “NYU Abu Dhabi Legal Obligations re: Contracted Noncitizen Labor,” explains certain legal obligations of NYUAD relevant to forced labor with regard to the employees it hired through contracts. When NYU issued its standards regarding labor, presented in Part 3, it did so for all contracted employees involved with NYUAD. This included those Tamkeen hired in its operations and those that would be hired to construct the Saadiyat Island campus by Mubadala Infrastructure, the developer who contracted out construction to Al-Futtaim Carillion.267

In describing its creation of contractual standards regarding labor, New York University Abu Dhabi and its members have described its conduct as “ambitious,”268 “innovative,”269 “groundbreaking”270 and as an “exceptional model”271 whose deficiencies were “part of the massive challenges a start-up university takes.”272

At the same time, laws governing labor and prohibiting forced labor already existed in the UAE. Multinationals had longstanding experience implementing compliance programs in their supply chains, and dealing with the consequences when they failed to do so. Draft UN principles for enterprise obligations were released in final version five months after construction of the Saadiyat campus began at NYUAD,273 but several public prior reports had already established the basic parameters of obligations,274 which as discussed below, themselves built on basic corporate governance principles like compliance with laws and due diligence to which NYU has always been committed.

The commitment to be “a model of best practices in Abu Dhabi” in particular was independent from the question of whether NYU and NYUAD were a model of standard practices with regard to legal compliance—whether NYUAD could commit to compliance with applicable law and exercising due diligence to do so. The following sections will outline the legal structure of NYUAD and the resulting legal obligations of NYUAD.

9 OUTLINE

In Part 2.1 NYU Abu Dhabi as Legal Entity, we explain NYUAD’s several related entities: New York University, New York University in Abu Dhabi Corporation, the Abu Dhabi Executive Affairs Authority, and Tamkeen, LLC.

In Part 2.2 NYU Abu Dhabi Obligations to Follow UAE Law, we explain how NYU requires members of the University and the University itself, including NYUAD, to comply with applicable laws.

In Part 2.3 NYU Abu Dhabi Obligation to Implement “Due Diligence,” we begin by explaining the concept of due diligence in general, which is a fundamental legal principle in US and UAE law and to which NYU has institutionally committed itself. We then turn to best practices in due diligence for business and human rights
generally – the UN Guiding Principles on Business and Human Rights. We conclude by identifying the accepted due diligence practices that multinationals have created with regard to forced labor.

### 2.1 NYU ABU DHABI AS LEGAL ENTITY

There are several legal entities involved in the governance of NYU Abu Dhabi: New York University (NYU), New York University in Abu Dhabi Corporation (NYUAD), the Government of Abu Dhabi Executive Affairs Authority (EAA), and Tamkeen, LLC. (Tamkeen).

#### NEW YORK UNIVERSITY (NYU)

NYU is a registered 501(c)(3) in New York. The Board of Trustees holds ultimate authority over NYU and appoints the President and Chancellor of NYU, who serve at the pleasure of the Board of Trustees. The President and Chancellor are chief executive and academic officers of NYU and are delegated authority for administration and management of the university. The Board has an Executive Committee with broad authority to act for the Board between meetings. Standing committees include the Audit and Compliance Committee, the Committee on Trustees, and the Global Initiatives Committee, *inter alia*.

NYU operates a so-called Global Network University, which includes three “portal” campuses defined at those that grant NYU degrees – NYU New York, NYU Abu Dhabi, and NYU Shanghai – and eleven study abroad sites.

#### NEW YORK UNIVERSITY IN ABU DHABI CORPORATION (NYUAD)

NYU in Abu Dhabi Corporation is a publicly registered 501(c)(3) whose primary activity is to support NYU’s campus in Abu Dhabi (now referred to as NYU Abu Dhabi, not NYU in Abu Dhabi). NYUAD is a subsidiary of New York University, legally domiciled in New York and licensed to do business in Abu Dhabi. NYU subsidiaries are common: several entities at NYU, such as Washington Square Legal Services, NYU Hospitals, NYU School of Business, Institute of Fine Arts, and School of Law operate as 501(c)(3) entities like NYUAD.

#### GOVERNMENT OF ABU DHABI EXECUTIVE AFFAIRS AUTHORITY (EAA)

NYUAD operates in the UAE through a partnership with Tamkeen, LLC which is a subsidiary of the Government of Abu Dhabi Executive Affairs Authority (EAA). The EAA is “a specialized government agency mandated to provide strategic policy advice to the Chairman of the Abu Dhabi Executive Council, (ADEC).” The Chairman of ADEC, the local executive authority of the Government of Abu Dhabi, is Sheikh Mohammed bin Zayed al Nahayan (known as MBZ), crown prince and *de facto* head of the Government of Abu Dhabi. The EAA reports directly to MBZ and has a wide-ranging portfolio that provides advice and recommends policy on government affairs, legal and risk management, economic and energy policy, strategic communications including diplomacy, and “Strategic Affairs.” Tamkeen appears to be part of “Strategic Affairs,” which “provides research, analysis and advice to [MBZ] across a variety of portfolios [and] performs an executive support function, preparing briefing and decision-support materials, including advisory pieces on projects, policies, regulatory frameworks, or strategies to further the priorities of the Emirate.”

Rima Al Mokarrab is the Executive Director of Strategic Affairs of the EAA and Chair of the Board of Directors for Tamkeen LLC, the EAA subsidiary discussed below. She was present at the six-person ribbon cutting of the NYUAD portal office on Washington Square North in 2009 and accompanied MBZ on his tour of the NYUAD campus in August 2017. Al Mokarrab is a 2000 graduate of Harvard College and 2005 J.D./M.I.A. graduate of Columbia Law and Columbia School of International and Public Affairs. She appears to have practiced international arbitration at White & Case before working for the EAA.

At its 2017 All-University Commencement, New York University awarded Al Mokarrab the 2016-2017 “Presidential Medal” as “one of the highest honors bestowed by the University … presented to a leader of extraordinary accomplishment.”

#### TAMKEEN, LLC (TAMKEEN)

Tamkeen’s official description is “a subsidiary of the Executive Affairs Authority that plans, develops, and delivers projects on behalf of the Government of Abu Dhabi.” NYU and NYUAD (and most media outlets) typically refer to Tamkeen as their “government partner” or “local partner.” Tamkeen has about twenty
employees with LinkedIn profiles online, with roles in policy and strategy, with a focus on education policy, risk and compliance, and communications. Certain relevant personnel are introduced later in this report.

Rima al Mokarrab is Chair of the Board of Directors for Tamkeen. It is unknown who else serves on the Board of Directors.

Jason Harborow was CEO of Tamkeen from an unknown start date to June 2015. Harborow had been general commercial manager of the Manchester Commonwealth Games and from 2006-2008 was CEO of the Liverpool Culture Company, responsible for Liverpool’s European Capital of Culture campaign in 2008. His experience with large projects was consistent Tamkeen in working to create the NYUAD Saadiyat campus.

John Tate has been CEO of Tamkeen from June 2015 through present and was Chief Operating Officer from January 2014 until his promotion. Tate was previously director of Policy and Strategy and Chairman of studio and post-production business for the BBC. Tate is on the board of Teach First, the UK-variation of Teach for America, and from 2003 to 2005 was Head of Policy for the UK Conservative Party. Tate appears to have more experience than Harborow in the education sector, consistent with the current on operations and future planning.

PARTNERSHIP BETWEEN NEW YORK UNIVERSITY AND THE GOVERNMENT OF ABU DHABI

In 2007, NYU and the EAA signed an agreement governing the terms and conditions of their relationship. That agreement is confidential. However, NYU does control NYU Abu Dhabi Corporation as a subsidiary of NYU.

2.2 NYU ABU DHABI OBLIGATIONS TO FOLLOW UAE LAW

This section shows that NYU is required to follow applicable laws and provides evidence that the University appears to consider itself obligated to follow both University policies and UAE law.

NYU requires NYUAD to comply with applicable law at both an individual and institutional level.

The NYU Code of Ethical Conduct governs every individual member of the University, including employees. The policy “II. Respect for and Compliance with the Law” states “Every member of the University is expected to become familiar with those laws, regulations and University rules which are applicable to his or her position and duties, and to comply with both their letter and spirit.” Note that the Code of Ethical Conduct mentions individual behavior, not institutional behavior.

Institutionally, NYU also commits to compliance with laws. The Faculty Handbook states “New York University has a strong institutional commitment to lawful and ethical behavior.” The 2015 NYU Policy on Developing University Policies which was amended in April 2018 and now does not have the following language, stated “it is the policy of New York University … that University affairs be conducted consistent with applicable laws (which includes regulations for all policies), ethical norms, and accepted best practices.”

NYU appears to commit to compliance with applicable law in the jurisdiction in which NYU operates. University policies apply to operations of the University in other jurisdictions, and to the extent that a University policy conflicts with local law, “the University Policy shall apply to the maximum extent permitted by applicable law.” In the event of a question about the University’s legal responsibilities outside New York, the NYU Office of General Counsel “must be consulted to evaluate the University Policy in the context of foreign laws.” It appears that the Supplier Code of Conduct is likely not a University Policy because it applies only to NYUAD; GNU sites may supplement University policies by implementing policies that are applicable only to them.

NYU has made an apparent attempt to comply with UAE law with regard to labor. Note that the Statement of Labor Values and 14 Points were themselves based on UAE Law. The current Supplier Code of Conduct states that it is “generally based on UAE law.” It further states that “NYUAD conducts its business with honesty and integrity, in accordance with applicable laws and regulations, and in alignment with international laws and standards.”

There are certain US laws that remain applicable to NYUAD. Certain laws do have extraterritorial application under certain conditions, such as the Alien Tort Statute,
which has in the past permitted noncitizens to sue for violations of customary international law in US courts including forced labor, under certain conditions.\footnote{310}

2.3 NYU ABU DHABI OBLIGATION TO IMPLEMENT “DUE DILIGENCE”

INTRODUCTION TO “DUE DILIGENCE”

Due diligence is the care, prudence, or attention that is expected from and ordinarily exercised by a reasonable person or entity under the relevant circumstances.\footnote{311} Due diligence is applied in common law and civil law countries; the UAE recognizes the concept of due diligence in its civil code.\footnote{312}

Legal due diligence is an obligation of entities that want to protect themselves from allegations of negligent commission of an unlawful act that could lead to civil liability. It is a duty of conduct, not result: it asks not whether a harm occurred, but about whether there were policies and procedures in that were reasonably calculated to avoid committing the harm and that were enforced in such a way that suggests a reasonable calculation to avoid committing the harm.

Whether a policy and its implementation are “reasonably calculated” to avoid harm is an objective standard assessing whether the legal entity knew or ought to have known of any shortcomings in their policy. What constitutes reasonableness depends upon several factors:

- The law and the facts: Given the known ways that the legal violation occurs, is the policy likely to prevent a violation?
- Reparability of the harm: Is the harm from the legal violation able to be remedied through monetary damages or restitution, or is the harm irreparable?
- Risk of violation: What is the risk of violations occurring? How great are the incentives to violate the law, and how common are such violations? A higher risk of violations means the legal entity must undertake more work to ensure compliance with laws.
- Prevailing best practice: What policies do legal entities facing comparable risk of violation have and how do they enforce them? Is there a single or multiple “best practices” on which legal entities agree? If there are differences in practices, are they due to disagreements about what is reasonable or are they because of failure to implement procedures that would reasonably prevent the legal violation?
- Cost: Necessary costs or costs that law requires to be borne by certain parties are nondiscretionary. However, when there are discretionary costs, cost-saving is reasonable. Tort law recognizes that compliance work that avoids harm may be more cost-effective overall than remediating harm after it has occurred.

Due diligence is a continuing obligation over time. It involves a duty before an operation or transaction occurs to identify risks of violating law, an ongoing obligation to eliminate the risk of violating law to the extent possible and to monitor violations of the law, and an \textit{ex post} obligation to remedy violations.\footnote{313}

NYU COMMITMENT TO DUE DILIGENCE

Within the NYU Office of the General Counsel sits the Office of Compliance and Risk Management, which coordinates compliance and risk management at NYU, including due diligence.

The Office has two major roles. First, the Office communicates to and from the Board and Senior Leadership. The Office is responsible for coordinating identified risks and mitigation plans for reporting annually to the Audit and Compliance Committee of the NYU Board of Trustees and to Senior Leadership, and for relaying their concerns to compliance committees and substantive risk owners.\footnote{314} This is consistent with the role of due diligence within an organization – to provide information about legal and other risks to the responsible bodies; to be useful, such information has to be correct or produced through a process that one would reasonably expect to produce correct information.\footnote{315} Second, the Office co-chairs University wide compliance committees – the Compliance and Risk Officers Working Group, Schools Compliance and Risk Officers Task Force, and the Global Compliance and Risk Officers’ Task Force (which includes Chief Compliance Officers for NYU Abu Dhabi and NYU Shanghai).\footnote{316}

The Chief Compliance Officers for NYU Abu Dhabi and Shanghai report to the Chief Global Compliance Officer at NYU, Robert Roach.\footnote{317}
BEST PRACTICES IN IMPLEMENTING “DUE DILIGENCE” FOR HUMAN RIGHTS RISKS

The United Nations Guiding Principles on Business and Human Rights provide the prevailing best practice for corporations to protect human rights through due diligence.318

The Guiding Principles were drafted in response to growing identification of human rights violations – including extrajudicial killings, rape, torture, land grabs, child labor, forced labor, or unhealthy work conditions – associated with business conduct by multinationals.319 The UN produced a draft set of binding norms that were rejected by business, and so the UN Secretary General appointed a Special Representative to write an authoritative document clarifying the role of business in respecting fundamental human rights.320 The Guiding Principles, authored by Special Representative John Ruggie, were the result. The Guiding Principles recognize states’ responsibility to protect against human rights abuses by third parties, corporations’ responsibility to exercise due diligence to eliminate human rights abuses associated with their activities, and both states’ and corporations’ obligations to provide remedy for human rights abuses when they do occur.321

Though the Guiding Principles were published in 2011, as discussed in the introduction to Part 2, several drafts had been published in the years immediately prior, during which NYU was adopting its labor policies and compliance plans.322 They incorporated preexisting common and civil law approaches to due diligence, which are a preexisting commitment of NYU.

Though the Guiding Principles are directly addressed to corporate responsibility rather than that of nonprofits like universities, there is good reason to extend their logic to nonprofits, which are also legal entities other than non-natural legal persons.323 The underlying logic behind the focus on corporations is to focus on the legal responsibilities of entities other than states and individuals, arguably not to distinguish between for profit and non-profit private entities.324 The Guiding Principles have been widely adopted – not only by multinationals based in the United States, United Kingdom and European Union, but also in emerging economies such as South Africa, Turkey, Mexico, and Indonesia.325

GUIDING PRINCIPLES

We have broken down the Guiding Principles’ duty of corporations to respect human rights into five parts:

» Compliance with laws. Complying with human rights (“over and above”326 the obligation to comply with applicable jurisdictional law) honoring its principles to the extent there are conflicts with domestic laws, assessing the risk of violation using relevant expertise and with meaningful consultation.

» Policy that eliminates the risk. Eliminates to the greatest extent possible for impacts the enterprises causes or contributes to.

» Tracking implementation. Uses appropriate qualitative and quantitative indicators to assess elimination of risk.

» Communication. Communication internally and externally such that external parties can assess the enterprise’s response.

» Remediation. Internal grievance mechanisms, remedy for harms incurred, and access to said remedy.

Below is a summary of the Guiding Principles standards that address corporate responsibility to respect human rights, including through due diligence.

Compliance with Laws

» Compliance with laws. In all contexts, businesses should respect internationally recognized human rights.327

» Conflicts. Seek ways to honor principles of internationally recognized human rights to the greatest extent possible and be able to demonstrate such policy when confronted with conflicting requirements between human rights and the domestic context.328 For example, in the UAE, given limited availability of collective organizing, it is especially important that relevant laws be followed, grievance systems be accessible to workers.

» Legal compliance. “Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue.”329

» Assessment of risk. Identifying and assessing actual or potential adverse human rights impacts with
which the entity “may be involved either through their own activities or as a result of their business relationships.”330 Such risk assessments should be undertaken regularly prior to new business activities or relationships.331

» **Expertise.** Using “internal and/or independent external human rights expertise,” which may be drawn from various sources and can include credible written sources and consultation with recognized experts,332 but should be consistent with treating the risk as a legal compliance issue and which should be publicly demonstrable.

» **Meaningful consultation.** Build into a risk assessment “meaningful consultation with potentially affected groups and other relevant stakeholders” as appropriate.333

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**Policy that eliminates the risk**

» **Responsibility and expertise.** A statement of policy needs to be “approved at the most senior level” of the entity and “informed by the relevant internal and/or external expertise.”334

» **Content.** The statement of policy should “stipulat[e] the enterprise’s human rights expectations of personnel, business partners, and other parties directly linked to its operations, products or services.”335

» **Scope.** The policy should cover impacts where the business enterprise causes or contributes to an adverse impact – or, if the business does not contribute to the adverse impact, which may be directly linked to it through business relationships;336

» The **Guiding Principles** do not define what constitutes contribute. Contribute to arguably means, *inter alia*, hiring a company that does not comply with laws or that itself has not taken adequate steps to guarantee compliance with laws may be considered to contribute to adverse impacts. For recruitment fees, an entity that subcontracts with a company that fails to pay recruitment costs and fees is purchasing services at a lower cost arguably in violation of law. This is especially important where a single reparable harm – like failure to pay recruitment costs and fees – results in an irreparable harm, like forced labor.337 Even if the entity is considered not to cause or contribute to an adverse impact, the *Guiding Principles* counsel an obligation to mitigate harm through their leverage or consider terminating the relationship if it is not crucial, meaning that there is a reasonable alternative to the supplier. Extent of harm reduction should increase – and suppliers should consider terminating relationships – if the risk of the abuse is high. If entities cannot terminate a crucial relationship, they should try to mitigate harm and accept the consequences of an ongoing business relationship.

» **Outcome.** The policy should use the company’s power to mitigate impact to which it contributes “to the greatest extent possible” and by ceasing or preventing impacts that it causes.338 Whether eliminating a risk is “possible” is closely related to whether it is a risk to which the entity contributes, discussed below. To the greatest extent is straightforward. For example, if an indicator of forced labor can be eliminated through employer practice, then it should be.

» **Complexity.** The policy and application should vary in complexity with the size of the enterprise, risk, and “nature and context of its operations.”339

» **Priorities.** The content of the policy should focus on the areas of highest risk.340

» **Implementation.** The *Guiding Principles* note “business enterprises need to strive for coherence between their responsibility to respect human rights and policies and procedures that govern their wider business activities and relationship. This should include, for example, policies and procedures that set financial and other performance activities for personnel; procurement practices; and lobbying activities where human rights are at stake.”341

» **Factual basis.** This integration should build on the findings of the risk or impact assessment, which should be incorporated across all relevant internal functions and processes.342

» **Timing.** It should be initiated as early as possible because impacts can be mitigated or worsened in the structuring of contracts.343

» **Internal communication.** “Internal communication of the statement [of policy] and of related policies and procedures should make clear what the lines and systems of accountability will be.”344

» **Expertise.** These requirements should be supported by necessary training for relevant personnel.345
Arguably, policy should adopt prevailing best practices if they eliminate the risk “to the greatest extent” that is “possible” unless there is an evidence-based reason to do so that is still consistent with eliminating the risk “to the greatest extent” that is “possible.” For example, where there is a clear prevailing practice, as on passports and recruitment fees, if an entity is going to deviate they need to show it still mitigates the relevant risk to the greatest extent possible and that there is reason to adopt the provision compared to the prevailing practice.

Relationship to enterprise risk management. Human rights due diligence can be included within broader enterprise risk management (ERM) systems like NYU’s – which assess not only legal risks but other business risks — “provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.”

Tracking implementation

Tracking implementation. “In order to verify whether adverse human rights impacts are being addressed … enterprises should track the effectiveness of their response.”

Indicators. Tracking should be based on “appropriate quantitative and qualitative indicators.” Each of the legal standards should have indicators to assess compliance. This may also involve not only putting in policies but actively doing audits and gathering data in order to provide affirmative assurance that a policy has been implemented in spirit and practice.

Feedback. Tracking should draw on “feedback from both internal and external sources, including affected stakeholders.”

Communication

Public access. The statement of policy itself should be “publicly available and communicated internally and externally to all personnel, business partners and other relevant parties.”

External communication. Furthermore, entities “should be prepared to communicate … externally” about how they are addressing impacts.

Adequacy of communication. Such communications should provide information sufficient to evaluate the adequacy of an enterprise’s response and “be of a form and frequency that reflect an enterprise’s human rights impacts and that are accessible to its intended audiences [and] provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved.”

Remediation

Grievance mechanisms. Businesses should establish grievance mechanisms that are legitimate, accessible, predictable, equitable and transparent.

Effective remedy. To “counteract or make good any human rights harms that have occurred,” entities should provide effective remedy, which “may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions … as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.”

Access to effective remedy. Procedures for accessing remedy “should be impartial, protected from corruption and free from political or other attempts to influence the outcome.”

PREVAILING PRACTICES AMONG LEGAL ENTITIES FACING AND ADDRESSING FORCED LABOR RISKS

In the past decade, several multinationals have encountered forced labor risks in their business operations and undertaken due diligence to comply with the prohibition against forced labor in international and domestic law. Due diligence in the prevention of forced labor requires enacting policies that eliminate or reduce the causes of forced labor in the company’s business operations. As such, multinationals in several sectors – electronics, agriculture, and garment manufacturing – have begun addressing specific causes of forced labor that occur in their supply chains.

We have tracked clear standard practices in three areas: prohibitions on forced labor, passports, and recruitment. Prohibitions on forced labor are widely adopted. Prohibitions on retaining personal documents unless required by law has also been widely adopted by companies.
Dominant standard of care: employer pays and reimburses recruitment costs and fees

Among multinational entities facing and addressing forced labor risks in their supply chains, in the past eight years a single dominant practice has solidified as due diligence practice regarding recruitment: employer pays and reimburses recruitment costs and fees.

In 2010, there was still a range of recommended policies that entities could adopt to conduct due diligence regarding recruitment costs and fees. The industry group Business for Social Responsibility recommended auditing of recruitment firms to eliminate forced labor needed to include auditing of fees charged, breakdown of costs, use of subagents and the kickbacks by recruitment agencies. Regarding payment of costs, they presented three options: 1) that the contractor pays all costs, 2) that employees and employers split costs, where employees pay a maximum of one-month’s salary, and 3) that employees be charged another reasonable amount for costs.\(^{359}\)

However, by 2013, companies, nonprofits, and foundations alike began to converge on one best practice: that employers pay any recruitment fees and that if workers have paid, companies should pay back those fees. In creating standards to be implemented for construction of stadiums and related facilities for the FIFA World Cup 2022 in Doha, Qatar, Qatar Foundation Mandatory Standards of Migrant Workers’ Welfare for Contractors & Sub-Contractors stipulated employers shall pay and shall reimburse any fees, regardless of whether workers were recruited for projects at the Qatar Foundation.\(^{360}\) Shift, the non-profit dedicated to implementing the Guiding Principles and the Institute for Business and Human Rights recommended employers pay to mitigate the risk of forced labor.\(^{361}\) In 2016, the Responsible Business Alliance, which is comprised of over 110 major electronics manufacturing companies, including Apple, Microsoft, Bose, Cisco, Dell, Ford, Foxconn, IBM, Intel, etc., announced a pay and reimburse policy.\(^{362}\) In 2017, the Leadership Group for Responsible Recruitment – which includes Coca-Cola, HP, IKEA, Marks and Spencer, Unilever, Vinci and Walmart – all announced what is an employer pays and reimburse policy, which the Leadership Group calls the “Employer Pays Principle.”\(^{363}\)

The above suggests that among multinationals facing and addressing forced labor risks in their supply chains, employer pays and reimburses is the dominant standard of care.

However, there are several other bases on which “pay and reimburse” is required for due diligence. Though it appears among multinationals facing and addressing forced labor risks, employer pays and reimburses considered the dominant standard of care. However, even if it is not considered the dominant standard care it is the dominant best practice. Arguably, on traditional due diligence principles alone NYUAD would have to eliminate the risk to the greatest extent reasonably possible as represented by the best practice, given that the underlying risk of violation is high and the violation itself serious, since forced labor as a violation of the UAE constitution, international laws to which the UAE is a signatory, and customary international law. The Guiding Principles also recommend having policies and implementing them to eliminate risk of relevant human rights violations to the greatest extent reasonably possible.

Examples of best practice

Outdoor gear and apparel company Patagonia committed to pay and reimburse recruitment costs and fees in its Migrant Worker Standard made public in June 2015 – but more important was the process through which it arrived at its policy and is ensuring that it be implemented.\(^{364}\) Patagonia conducted extensive auditing of risk in its supply chains beginning in 2011, hired two experts in corporate supply chain responsibility after an extensive search, and developed data collection methods to measure compliance with its standard through several different pilots.\(^{365}\) The standard itself was developed with explicit consultation with several NGOs, and includes clear definitions and deadlines for compliance.\(^{366}\) Though it hired an outside compliance monitor – Verité, which has a clear record of policy expertise and leadership on recruitment – it hired them as an auditor, while it developed its own in-house expertise.\(^{367}\) After its pilots, Patagonia systematically gathered data about compliance with its Migrant Worker Standard and it also used its data to design a three year systematic roadmap to full compliance by suppliers, directly confronting and committing to address the structural change in its supply chain that needed to occur for compliance.\(^{368}\)

Technology company Apple has paid $30 million to 35,000 workers to reimburse them for recruitment fees since 2008,\(^{369}\) pursuant to its “pay and reimburse” rule.\(^{370}\) In the UAE, when Apple found a single case of bonded labor hired by the subcontractor of one of its suppliers, it worked with the subcontractor to resolve the issue. When that failed, Apple worked with the supplier to end
Part 2.3: NYU Abu Dhabi Obligation to Implement “Due Diligence”

relations with the subcontractor and to help the supplier to become a member of the RBA, discussed above, which adopts a “pay and reimburse” rule.371

In Qatar Supreme Committee for Delivery & Legacy responsible for delivering the 2022 FIFA World Cup in Qatar is reimbursing 30,000 workers $5 million for paid recruitment costs and fees, which it began in March 2018.372 Instead of requiring workers to provide proof of payment, the burden of proof is on contractors to reimburse for claimed recruitment costs and fees unless they can show that they paid such costs and fees in the first instance.373

Underlying policy
The “pay and reimburse” policy creates the right incentives for suppliers and buyers and places responsibility for wrongs on the correct parties.

Employer pays

Recruitment agencies can control informal fees associated with recruitment if they are able to select subagents they can hold accountable for misinforming or charging workers and if they pay those subagents directly. There are recruitment agencies in worker sending countries that have experience providing this kind of service for employers that require it. But this requires that employers pay recruitment agencies for their service and work with recruitment agencies to demand this as part of the services for which they contract. When employers fail to pay recruitment costs and fees, not only do they pass along costs to workers, but they also relinquish control as contractors of recruitment agency services.

Employer reimburses

If despite an employer pays policy, along with auditing or vetting of recruitment agencies, yet workers paid recruitment fees that means one of several things in the UAE context. Either the employer did not pay for recruitment costs and fees or take due diligence with regard to hiring a recruitment agency – or a recruitment agency did not structure recruitment to avoid payment of recruitment costs and fees by workers. In such instance, to make workers pay because of the error of either the employer or the recruitment agency is inequitable.

In some instances, despite compliance with laws, or best practices (or even simply because of the preexisting risk of recruitment in the UAE), workers may still pay recruitment fees. In that instance, reimbursing recruitment fees remains the only way to eliminate recruitment linked to debt – a significant indicator that a person does not voluntarily consent to work and work under forced labor – for those who entered into debt to pay those fees.

In implementing a reimbursement policy, the burden of proof of showing that a worker has not paid recruitment fee should be on the entity. If an entity is paying for recruitment costs and fees or requiring such payment from their contractors – and auditing such payments – then they should have a preexisting paper trail to assess whether a worker paid. An entity should then check with workers to assess whether they paid recruitment fees, knowing that workers may have paid additional fees. There should be a clear and transparent evidentiary procedure for assessing whether a worker did pay such fees and for the burdens on each party.

Finally, requiring reimbursement creates the correct incentives for all actors involved. It shares responsibility for fair recruitment jointly between the employer and the recruiter, creating an incentive for employers to monitor recruitment closely.

UNAVAILABILITY OF EXCUSES FOR FAILING TO CONDUCT “DUE DILIGENCE”

There are several excuses NYU may make in response to its obligations of due diligence, but none are legally applicable.

Relationship with the Government of Abu Dhabi

In preparation for opening NYU Abu Dhabi, former NYU General Counsel Cheryl Mills negotiated apparent privileges for its campus from enforcement of certain UAE laws. The talks were with “quasi-governmental if not governmental” officials under the Government of Abu Dhabi Executive Affairs Authority, the executive Branch of the Abu Dhabi Government.374

Mills has stated to reporters that her responsibilities included negotiating apparent privileges from enforcement of UAE laws that would otherwise restrict academic freedom and the relationships of same sex and unmarried couples employed at the University; the talks also covered imposing labor standards. Mills concluded the last four months of work on the negotiations as a
NYU may assert that these privileged exceptions to UAE law enforcement also exempt NYU from conducting due diligence to prevent labor violations. It is inconsistent with the mission of NYUAD and with the spirit of the negotiations (which were primarily concerned with securing privileges that advance liberties for NYU staff, students, and workers) to assert these same privileges to deny the application of the UAE law prohibiting forced labor, which is designed to promote liberties. Such an interpretation would be inconsistent with New York University’s commitment to follow the laws of the applicable jurisdiction and with its humanistic values as an educational institution.

NYU may also assert that working in partnership with the Government of Abu Dhabi requires concessions to Government of Abu Dhabi policy preferences with regard to labor, even if such preferences fall short of compliance with laws or due diligence consistent with best practice to avoid violating such laws. However, operating in partnership with a government is not a legally relevant excuse for failing to comply with laws. As the Guiding Principles state, “the responsibility to respect human rights ... exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations.”

Lack of awareness of risk

It is a general principle of law, including in UAE law, that ignorance of law is no excuse for breaching it. Similarly, where there is notice of a human rights and legal risk, it is the responsibility of the relevant counsel to identify that risk and conduct due diligence. Regarding forced labor in Abu Dhabi, in 2009, Human Rights Watch identified conditions of forced labor on Saadiyat Island, where the New York University campus was being built. As a factual matter, NYU has had ample warning of the risks of forced labor; as a legal matter, claims of ignorance do not obviate their responsibility for breaches.

Lack of awareness of prevailing practice

In Nardello & Co’s report of the independent investigation it conducted into labor practices at New York University Abu Dhabi – discussed extensively in the next section – Nardello & Co. frequently repeated a claim that New York University officials originally made that the attempt to implement standards in the construction of NYUAD was “unprecedented in the region” and as such faced “real challenges” in implementing the policy they made. In his response to the Nardello & Co. report, then NYU President John Sexton stated that implementing labor standards was an “unprecedented step for an educational institution in that region,” describing the labor standards as “ambitious and innovative.”

Implementing labor standards to address the risk of forced labor at NYUAD was not unprecedented in a legally relevant way. The relevant actors for setting best practices are legal entities (non-natural persons) that have forced labor involved in their business activities – and whether such an entity has an educational or profit-based mission is irrelevant to whether their activities contribute to or use forced labor. That the University worked with the Government of Abu Dhabi to create the standards is not relevant if the standards were the same as UAE law, which in most instances, they were. It is true that such standards had not been implemented by construction companies in the UAE. However, issues like passport retention and recruitment fees are not unique either to the construction industry or to the UAE, as discussed above.

Social responsibility programming

NYUAD has an Office of Social Responsibility. The Office provides adult education programming (Business English courses, CV writing workshops, athletic programs, etc.) which started in 2012. According to the Office’s website, the Office hosts celebrations for the variety of holidays that NYUAD staff celebrate, such as Diwali, Dashain, and Eid, book clubs, and staff recognitions and appreciation ceremonies. It coordinates home item/food supply drives for local migrant camps and also organizes a secondhand goods store every year for the NYUAD community called “Second Chance.” The Office of Social Responsibility programs create tangible benefits for campus workers and provide opportunities for students and staff to learn and be together. This is surely valuable for all parties.

Nevertheless, such social welfare activities do not relate to an entity’s compliance or noncompliance with laws. As the Guiding Principles note, “enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.”
KNOWN NYU ABU DHABI CONDUCT THROUGH MAY 2014
This section describes known conduct of NYU Abu Dhabi until May 2014 when NYU announced it would respond and investigate allegations of labor standards that violated its labor standards. At that time, NYUAD immediately began changing its compliance program. However, May 2014 was already a moment of labor governance transition for NYUAD. May 2014 marked the graduation of NYUAD’s first class, which occurred on Saadiyat Island. Beginning in the Fall, NYUAD operated out of Saadiyat full time. The physical change meant the University had more operational workers but fewer construction workers.

OUTLINE

Section 3, “Known NYU Abu Dhabi Conduct Through May 2014,” explains known conduct related to the implementation of its labor standards.

In Part 3.1 Labor Standards, we present the labor standards NYUAD used until 2014 – the Statement of Labor Values and the 14 Points, and a third document, the Supplementary Specifications, which was not made public.

In Part 3.2 Construction, we explain what happened with regard to the compliance program during the construction of NYUAD’s Saadiyat Island campus.

In Part 3.3 Operations, we highlight several Nardello Report findings that impacted workers employed in operations – cleaning, maintenance, driving, security, and food services – of the NYUAD campus.

In Part 3.4 Forced Labor Risk, we compare work conditions in construction and operations to the definition of forced labor.

In Part 3.5 Due Diligence, we compare NYUAD conduct to the chart of Guiding Principles discussed above.

WHAT IS THE NARDELLO REPORT?

After several media reports documenting apparent violations of its labor standards in the construction of the NYUAD campus, Tamkeen hired a law firm to verify media allegations of violations of the Statement of Labor Values and 14 Points.

The resulting report, Report of the Independent Investigation into Allegations of Labor and Compliance Issues During the Construction of the NYU Abu Dhabi Campus on Saadiyat Island, United Arab Emirates, released April 15, 2015 and referred to in this document as the Nardello Report, touched on conduct of the so-called Key Parties, which refers to: NYU, the Government of Abu Dhabi Executive Affairs Authority (EAA), Tamkeen, Mubadala, EC Harris, Mott MacDonald, and AF Carillion.

According to NYU statements, once the report was issued, NYU and Tamkeen “decided to develop a partnership response.”

Who is Nardello & Co?

The firm Tamkeen hired was Nardello & Co, a law firm that provides independent investigations with a focus on several practice areas: reputational due diligence, forensic accounting and fraud investigation services, Foreign Corrupt Practices Act and UK Bribery Act investigation services, white collar criminal defense and civil litigation and arbitration support. They are based in New York.
and conduct investigations worldwide, including in the UAE. 389

What was the scope of the investigation?

The Nardello Report was even by its own account not a complete investigation. According to the Nardello Report, Tamkeen gave Nardello & Co. a significant but limited mandate to "(i) Determine the veracity of the media and NGO allegations that the Labor Guidelines were violated during the construction of the Main Campus Project; (ii) Provide recommendations to strengthen compliance procedures going forward; and (iii) Issue a public report setting forth our findings and recommendations." 390

Several salient issues were outside the scope of the Nardello & Co. investigation: providing an opinion on compliance with UAE law, “general review of the overall compliance program” for the Interim Campus and Main Campus, and examining the monitors’ actions to assess their merits. Nardello & Co. reviewed compliance “only in the specific instances where the allegations called into question the role of compliance monitors, 391 and examining thoroughly companies’ exemption policy. 392

Nardello & Co. found that the media allegations “do not cite evidence of problems relating to ... forced labor” so it did not investigate whether there was forced labor on the campus. This was arguably a misreading of the allegations given allegations of recruitment fees paid and passports retained, key indicators of forced labor, and the underlying risk of forced labor in the UAE, which was widely known.

Because of the limited mandate, Nardello & Co.’s recommendations about strengthening compliance procedures were necessarily based only on the investigation into the veracity of media and NGO reports, not based on a general review of the compliance program according to due diligence standards or an investigation into legal compliance.
What information did Nardello & Co. use?
Nardello & Co. took a thorough look at several sets of documents: the executed contracts between Key Parties and subcontractors, questionnaires, minute meetings, and several types of records and monitoring reports. It also reviewed correspondence and memoranda drafted by Key Parties and conducted interviews with several groups of people: laborers, management for contractors on the NYUAD campus project, representatives of the monitors, senior government representatives from the agencies responsible for the management and delivery of the NYUAD campus project, administrators, compliance personnel, faculty and students of NYU and NYUAD, and journalists and representatives of NGOs.

Was the report independent?
The Nardello Report was independent in two ways. Nardello & Co. implies the report was independent because Tamkeen gave Nardello & Co. “sole authority to make all investigative decisions, including with respect to staffing, strategy, areas of emphasis and investigative techniques. At no point in [their] investigation did any party attempt to dictate [the] strategy, tactics or conclusions.” However, according to the Nardello Report, “to solicit their comments prior to releasing this report, we agreed to let representatives of Tamkeen and NYU review hard copies of the final draft of the report subject to the explicit understanding that we retained exclusive authority over the content, conclusions and recommendations in the report.” It is not known whether Tamkeen or NYU comments after review were reflected in the draft that was released.

3.1 LABOR STANDARDS
There were three sets of standards on the NYUAD project before May 2014. These standards were made in reference to UAE law. Below, we present the standards and also present how they compared to UAE law. Though the standards have been hailed as “ambitious” and “innovative,” it is worth noting that except for wages and housing, they were primarily based on UAE law and in many instances appear to have replicated UAE law. Note that without access to the full text of the Supplementary Specifications it is not possible to fully assess the extent to which the Statement of Labor Values and 14 Points adopted UAE law, but the assessments below are based on those parts of the Supplementary Specifications that were reproduced in the Nardello Report, references to UAE law in the standards themselves and knowledge of the content of UAE law, which often parallels the labor standard.

STATEMENT OF LABOR VALUES
The Statement of Labor Values was a document that “expressed[d] the shared values of NYU and the Executive Affairs Authority (EAA) of Abu Dhabi (the Parties) for the construction and operation of NYU Abu Dhabi, which are based on the existing laws of the United Arab Emirates (UAE).” Both parties committed to the Values’ enforcement “in the construction, operation, and maintenance of the NYU Abu Dhabi campus.” It stated, “The EAA, through The Authority Campus Entity (ACE) and NYU, through NYUAD, shall ensure that: (a) this Statement of Values is included in all tendering materials for vendors and service providers; and (b) each prospective contractor or service provider is contractually obligated to comply with this Statement of Values.”

Below are the Statement of Labor Values and a comparison to UAE law, based on publicly available information. Note that UAE law referenced has already been introduced unless a citation has been provided below.

1. Wages and Benefits. The Parties providing services to NYU Abu Dhabi will be paid wages and benefits which comply with all applicable UAE laws and regulations and which provide for their essential needs and living standards.
   - NEW
   - Based on EAA commissioned study that found for “unskilled workers” in the UAE that average wage was AED 650 ($177) excluding food, housing transportation and medical insurance. The minimum wage on the NYU project was AED 800 ($217), roughly 120% of the average wage as measured by the EAA.

2. Working Hours. Hourly and/or quota-based wage workers shall (i) not be required to work more than (a) 48 hours per week or (b) the limits on regular hours allowed by UAE law, and (ii) be entitled to at least one day off in every seven day period, as well as holidays and vacations. Daily working hours shall be such that no worker shall work for more than five successive hours without breaks, amounting in aggregate to not less than one hour.
3. **Overtime Compensation.** As required by UAE law, overtime hours must be worked voluntarily. In addition to their compensation for regular hours of work, hourly and/or quota-based wage workers shall be compensated for overtime hours at such a premium rate as is legally required by UAE law. **UAE LAW**

4. **Child Labor.** As required by UAE law and the International Labor Organization Minimum Age Convention ratified by the UAE, no person younger than 15 years old will be employed to provide services in connection with NYU Abu Dhabi. **UAE LAW**

5. **Forced Labor.** As required by UAE law, there shall not be any use of forced prison labor, indentured labor, bonded labor, or other forced labor. **UAE LAW**

6. **Health and Safety.** As required by UAE law, a safe and healthy working environment shall be provided to workers providing services to NYU Abu Dhabi to prevent accidents and injuries to health arising out of, linked with, or occurring in the course of work. The direct operations of NYU Abu Dhabi and its subcontractors will comply with all workplace safety and health regulations established by the UAE government and ensure regular health and safety worker training systems to detect threats to health and safety, access to bathrooms, and potable water. **UAE LAW**

7. **Nondiscrimination.** No person shall be subject to any discrimination in employment, including in relation to hiring, salary, benefits, advancement, discipline, termination, or retirement. **NEW**

8. **Harassment or Abuse.** Every worker shall be treated with dignity and respect. No employee shall be subject to any physical, sexual, psychological, or verbal harassment or abuse, nor will any form of corporal punishment be used or tolerated. **NEW**

9. **Resolution of Work Disputes.** As required by UAE law, the right of workers to seek resolution of labor disputes shall be recognized and respected. No worker shall be subject to harassment, intimidation, or retaliation in their efforts to resolve work disputes. **UAE LAW**

   a. **UAE law plus – as written – but UAE law in practice.** As discussed below, this was interpreted only to permit lawful resolution of work disputes, and workers employed on the NYUAD campus who were striking were detained and deported. As discussed below, it is unknown whether the government followed relevant laws in the resolution of the dispute.

10. **Women’s Rights** **UAE LAW+**

    a. Women workers will receive equal remuneration, including benefits; equal treatment; equal evaluation of the quality of their work; and equal opportunity to fill all positions open to male workers. **UAE LAW**

    b. Pregnancy tests will not be a condition of employment, nor will they be demanded of employees.

    c. Workers who take maternity leave will not face dismissal or threat of dismissal, loss of seniority or deduction of wages, and will be able to return to their former employment at the same rate of pay and benefits.

    d. Workers will not be forced or pressured to use contraception.

    e. Workers will not be exposed to hazards, including glues and solvents, which may endanger their safety, including their reproductive health. **UAE LAW**

    f. Appropriate services and accommodation will be provided to women workers in connection with pregnancy.

11. **Compliance with Laws.** The labor inspection and remediation requirements of the UAE Labor Law and regulations will be implemented and comprehensively enforced in the construction, operation, and maintenance of the NYU Abu Dhabi Campus. **UAE LAW**

14 POINTS

1. Employers will fully cover or reimburse employees for fees associated with the recruitment process, including those relating to visas, medical examinations, and the use of recruitment agencies, without deductions being imposed on their remuneration. **UAE LAW**

   a. **UAE law plus as written – but UAE law in practice.** As discussed below, few workers were compensated for recruitment fees because of the

   b. **UAE law plus as written – but UAE law in practice.** As discussed below, few workers were compensated for recruitment fees because of the
reading of the rule by monitors and NYUAD, which was contrary to earlier commitments and a significant error that subverted compliance with UAE law. It is unknown whether parties audited employer compliance with covering recruitment costs and fees.

2. Employees will retain all of their own personal documents, including passports and drivers’ licenses. **UAE LAW**

1. Individuals employed in connection with NYU Abu Dhabi will be a minimum of 18 years of age. **UAE LAW**

2. Employees will work no more than eight hours a day, five days a week, except for those working in construction-related activities, who will work no more than eight hours a day, six days a week. Overtime will only be worked voluntarily, and will be compensated at premium rates. **UAE LAW**

3. Employees shall receive their full wages or basic salary via electronic bank transfers and on a pre-agreed upon schedule. **UAE LAW**

4. Employers will not impose or request employment bans on employees seeking to change jobs. **NEW**

5. An employee who completes one or more years of continuous service will be entitled to severance pay at the end of their employment. **UAE LAW**

6. Employees will receive employer-provided medical insurance. **UAE LAW**

7. Employees will receive employer-funded transport to and from their job sites or an equivalent allowance. **NEW**

8. Employees are entitled to thirty calendar days of paid annual leave each year. **UAE LAW**

9. Employees shall receive leave with full pay for ten UAE public holidays each year. In addition, employees will be granted two additional days per year for other religious holidays to be taken at their discretion. **UAE LAW**

10. Female employees shall be entitled to maternity leave, with full pay, for a period of up to 45 days. **UAE LAW**

11. Foreign employees shall receive employer-funded air travel between the UAE and their country of origin for expatriation at the beginning of their employment, for repatriation at the end of their employment, and one additional trip, either annually or biannually, to be used in conjunction with vacation leave. **UAE LAW**

12. In circumstances when contractors provide housing accommodation to those working on the NYUAD project, the following requirements must be met. **NEW**
   a. No more than four individuals in any bedroom.
   b. All rooms must be equipped with ventilation systems and central air conditioning units.
   c. All workers are provided with secure wardrobes and/or lockboxes for safeguarding valuables, including personal documents.
   d. Accommodation specifications vary by job classification, but at a minimum, construction operatives must have a minimum of 4.5 square meters of personal living area.

**SUPPLEMENTARY SPECIFICATIONS**

The Nardello Report revealed that Key Parties had drafted a non-public document called the Supplementary Specifications, which was a 59-page set of terms further detailing requirements the Statement of Labor Values and 14 Points had established. The Supplementary Specifications were provided only to Key Parties and subcontractors involved with the construction of the NYUAD campus project and to companies involved in the operation of the Interim Campus. Tamkeen refused to release the Supplementary Specifications as part of the Nardello Report, citing “commercial sensitivity,” which is a standard exemption to disclosure requests. It appears NYU also has access to the Supplementary Specifications through its own contracts with operational contractors during the operation of the interim campus. It could decline to release the Specifications for the same reason.

**3.2 CONSTRUCTION**

This section explains several findings about the compliance program as it applied to the construction of the NYUAD campus on Saadiyat Island. The campus was a $1 billion project covering nearly 40 acres.

Analysis is based on the Nardello Report but is complemented in several instances with new analysis.
BACKGROUND: CONSTRUCTION CONTRACTORS

NYU and the Government of Abu Dhabi announced plans for its main campus on Saadiyat Island in November 2007, about a month after first announcing the NYUAD project in October 2007.\(^407\) Construction began in June 2010 and the Campus opened fully in Fall 2014.\(^408\) Saadiyat Island is a 20 minute drive from the Interim Campus (roughly the distance from Downtown Brooklyn to the Upper East Side). Saadiyat was an unoccupied natural island, one of several undeveloped islands bordering the peninsula on which downtown Abu Dhabi is built. As part of its economic diversification, Abu Dhabi has invested in major developments on these islands, such as Al Sowwah square on Al Maryah Island, Al Reem Island (mixed-use residential development), and Yas Island (destination for F1 Racing, Ferrari World, and IKEA). Saadiyat Island had been announced as a cultural district in February 2007.\(^409\) It had attracted the Guggenheim, Louvre, British Museum to build branch museums on the island; the Louvre Abu Dhabi opened in November 2017.\(^410\)

Mubadala Infrastructure is the BOOT (build-own-operate-transfer) developer for the NYUAD campus.\(^411\) Mubadala operates several UAE universities (Paris-Sorbonne University, Abu Dhabi, UAE University, Zayed University) major real estate developments (Al Maryah Island, incl. Al Sowwah Square) hotels (Four Seasons, Rosewood and Viceroy Hotels), construction companies (Arabtec Holding), real estate companies (Aabar Properties), and public projects (Zayed Sports City).\(^412\)

In April 2010, Mubadala Infrastructure announced Al Futtaim Carillion (AF Carillion) as the Design and Build Contractor for the NYUAD campus.\(^413\) AF Carillion is a Dubai-based and registered organization jointly owned by Al Futtaim (Private) Limited of Dubai (51%) and Carillion Construction Overseas Limited (49%).\(^414\) Al Futtaim Group is one of the oldest and largest family-owned conglomerates in the Middle East.\(^415\) Carillion is the UK’s second largest facilities management and construction services company and built London’s Tate Modern Gallery and the Channel tunnel. Carillion went into bankruptcy in January 2018.\(^416\)

Check-Circle Honest attempt at implementation of labor guidelines and success with higher wages and safety (N)

No bad faith (N)

Nardello & Co. found that Key Parties made a good faith effort to implement the labor standards.\(^417\) They investigated whether Key Parties had made a good faith effort because they observed the several allegations against Key Parties formed the basis for an inference NYU and its government partners had not acted in good faith, writing “the allegations in media articles and NGO reports called into question whether the Labor Guidelines were a good faith effort to improve worker conditions or merely an exercise in public relations to address criticisms of labor standards in the UAE and NYU’s decision to establish a campus there.”\(^418\)

Good faith is a legal term of art in that means that a party or parties did not intend to make a mistake or violate a legal duty. It does not mean that the party did not in fact act incorrectly or violate a legal obligation.\(^419\) The good faith finding is distinct from the question of whether Key Parties made mistakes and “significant errors” in their compliance program, which Nardello & Co. found they did, and what legal implications result.\(^420\)

Compliance with wage and safety (N)

Wages for construction of the NYUAD campus were set based on a government survey of nine construction companies, which found the average wage for construction workers was AED 650, roughly $177 a month, excluding food, housing, transportation and medical insurance, as well as other entitlements.\(^421\) Key parties established a minimum wage for the project of AED 800, roughly $218 a month, also exclusive of entitlements listed above.\(^422\) Key parties appear to have complied with requirements regarding electronic payment and timing, working hours, and overtime compensation.\(^423\) Health and safety standards on the campus construction site were governed by the 14 Points, which required compliance with UAE law.\(^424\) Saiful Islam, who had migrated to Abu Dhabi from Bangladesh, died on the NYUAD campus project when he was crushed by a half-ton pillar; he was 31.\(^425\) Because media reports did not allege violations of UAE law on health and safety, Nardello & Co. did not investigate this issue. However, the safety record for the NYUAD campus project was apparently better than that of the London
Olympics site, though there are no public records on this point except a statement from then NYU President John Sexton stating the same.426

⚠️ CREATING AMBIGUOUS AND CONTRADICTORY STANDARDS (N+)

Confusion over relationship between Statement of Labor Values and 14 Points (N+)

Key Parties provided different descriptions of the relationship between the Statement of Labor Values and the 14 Points. In its 2011 report, Mott MacDonald said the 14 Points provided further details on measures to be taken in application of the Statement of Labor Values.427 Similarly, according to NYUAD, the 14 Points “operational[ized]” the Statement of Labor Values.” However, in its 2012 and 2013 reports, Mott MacDonald wrote the 14 Points “measures how [t]he Statement of Labor Values is being implemented.”428 As seen from the above description of the Statement of Labor Values and 14 Points, it does not appear that the 14 Points were a set of measurements. In certain cases, it is true that the 14 Points provided additional requirements that furthered the Statement of Labor Values (like requiring employers to pay back or reimburse recruitment fees), but they were not indicators (or at least were not a full set) to measure the Statement of Labor Values.

Drafting conflicting requirements with regard to voluntary work and passport retention (N)

Key parties drafted inconsistent requirements with regard to voluntary work and passport retention.

With regard to voluntary work, the 14 Points stated “overtime hours must be worked voluntarily,” while the Supplementary Specifications stated that overtime would be worked “where work circumstances require it.” Nardello & Co. identified the provisions as being inconsistent.429

Key parties also drafted inconsistent requirements with regard to passport retention. The 14 Points read “Employees will retain all of their own personal documents, including passports and drivers’ licenses.” The Supplementary Specifications read, “The EMPLOYER shall not confiscate or restrict access to EMPLOYEES’ passports or any other personal documents (e.g. driving license, etc.).” Nardello & Co. writes that “it is evident that the two citations are inconsistent.”430 Mott MacDonald relied on the Supplementary Specifications, but its report cited the 14 Points as its working standard.431 Nardello & Co. writes, “Mott MacDonald’s statement in its 2013 annual report that ‘Workers are given the choice to keep the documents themselves or they can have access at short notice,’ is completely inconsistent with the 14 Points directive it cites.”432 Nardello & Co. goes on to point out inconsistencies in the public reporting Mott MacDonald provided. Nardello & Co. notes that Mott MacDonald’s compliance chart read “No findings that workers were denied their passports,” which was compliant with the Supplementary Specifications, but not the 14 Points.433 But in the same chart, it notes “every month on the chart is coded as “Issues detected and not resolved within reporting period,” a classification that would suggest that these were violations of the 14 Points.434 Nardello & Co. concludes “It is evident that Mott MacDonald, charged with being the ‘independent third-party verifier, was apparently not sure, at least in this instance, what it was verifying.”435

This provision permitting employers to hold passports was arguably contrary to UAE law, and was clearly contrary to prevailing practice for due diligence on forced labor. Further below we discuss interpretations of the rule on recruitment costs and fees and the prohibition on forced labor, both of which were interpreted in a way that undermined compliance with applicable law on forced labor.

Leaving undefined terms (N+)

Recruitment fees was left undefined in the labor standards insofar as publicly available documents indicate. The 14 Points only described recruitment fees as “fees associated with the recruitment process, including those related to visas, medical examinations and use of recruitment agencies.”436 The title of the provision was “recruitment fees and commission.”437 It did not further specify recruitment costs and fees that employers were obligated to cover in the first instance or remidate. Recruitment payments usually also cover the cost of travel to the UAE. However, this was dealt with in a separate provision in the 14 Points, which stated, “Foreign employees shall receive employer-funded air travel between the UAE and their country of origin for expatriation at the beginning of their employment…”438 The relationship between these two provisions was not identified, nor was the scope of the recruitment fees provision. As discussed below, interpretation of the 14
Points rules on recruitment fees undermined compliance with applicable law on forced labor.

Nardello & Co. did not reach this issue because it was not commissioned to conduct an overall assessment of the compliance program.439

The paid leave requirement in the labor standards was unclear. The paid leave standard effectively was the same as UAE law. It stated that employees are entitled to thirty calendar days of paid annual leave every year.440 Mott MacDonald interpreted this as meaning either that workers get a two month leave every two years or one month every year, accompanied by a roundtrip ticket home in conjunction with their entitlements under “Travel to the UAE.”441 More information about how this provision was implemented is required. Workers’ contracts are often two years subject to renewal. If workers’ contracts are renewed, then a two-month break every two years is meaningful. However, if workers’ contracts are not renewed, then deferring a break until the next year has finished means they do not get to use their paid leave, in which case under UAE law they are owed compensation in respect of the days worked.442 It is unclear who received breaks every one year and who received breaks every two years; the “majority” received two years.443 Furthermore, workers were entitled to airfare for expatriation, going to the UAE, repatriation, going back home, and for the vacation leave they were granted. If workers were granted their leave every two years but then their two year contract was not renewed, they would not have had a chance to use one of the round-trip fares – either the repatriation fare or the vacation fare – to which they are entitled under this provision.444

Nardello & Co. did not reach this issue because media allegations did not make any claims regarding paid leave.445

Excluding a third of the workforce from the compliance program (N)

The Statement of Labor Values required that each prospective contractor or service provider was contractually obligated to comply with it and the 14 Points stated it applied to “all companies involved in the construction and operation of the NYU Abu Dhabi campus on Saadiyat Island.”446 Early, Key Parties clarified that “all companies involved” did not include companies delivering goods to the Campus construction project, like those providing concrete or delivering beams.447 It did include workers that contractors hired to actually work on the site, such as builders, welders, masons, etc.448 This policy had a clear principle underlying it and was a clear rule – if employed on the campus, then the labor standards would apply, but if only delivering goods to the campus, the labor standards would not apply.449 However, “some of the parties believed that specific thresholds in terms of time on the project or contract value were required to ensure that compliance would not become, in their view, unduly burdensome.”450 The construction companies and construction monitor – Mubadala, AF Carillion and EC Harris – who were the parties involved in construction most directly, decided to exempt what became a third of otherwise covered contractors from the compliance program – roughly 10,000 of 30,000.451 The rule was that contractors would be covered if and only if they worked 1) longer than 31 cumulative days, and 2) less than 30 days between each visit, and 3) where the subcontract package value exceeded AED 3.67 million ($1 million).452 The clients – the EAA, Tamkeen and NYU – as well as the compliance monitor Mott MacDonald, either did not know about the policy or thought it would be granted on a case by case basis;453 the construction companies and monitor thought the clients and client monitor did know. Nardello & Co. called the standards “arbitrary,” arguably because they had no basis in the labor standards or in an otherwise permissible reason for policymaking.454 Addressing “logistical difficulties in implementing” the labor standards does not justify covering only 65 to 70% of the workers; the compliance program, as Nardello & Co. writes, “fell far short of the publicly stated commitment to extend the labor standards’ protections to all workers on the Main Campus Project.”455 NYU personnel were aware of an exemption policy. Some interviewed knew there was a time threshold. None knew about the additional requirement of a financial minimum.456

Inadequate public communication (N+)

Nardello & Co. did note that there was not adequate transparency for media and NGOs to identify the extent of violations correctly.457 Note that the Guiding Principles require that communication be adequate for the public to be able to assess compliance.458

Note also that had the Supplementary Specifications been public, arguably several of the clear errors Nardello & Co. identified would have been more likely to have been corrected.
Part 3.2: Construction

⚠️ INTERPRETING THE LABOR GUIDELINES CONTRARY TO RELEVANT LAW (N+)

Making “significant erro[r]” of judgment in interpretation re: recruitment fees (N)

The 14 Points stated “Employers will fully cover or reimburse employees for fees associated with the recruitment process, including those relating to visas, medical examinations, and the use of recruitment agencies, without deductions being imposed on their remuneration.”

The Supplementary Specifications read:

“No licensed employment agent or supplier of labor shall demand, accept from any EMPLOYEE, either before or after his/her recruitment, any commission or material reward in return for arranging such recruitment or charge him/her for any expenses thereby incurred, except as may be ordered or approved by the Ministry of Labor and Social Affairs.

The EMPLOYER shall fully cover or reimburse the EMPLOYEE for all fees that might be associated with the recruitment process (mobilization, visas, medicals, recruitment agents, etc.) without imposing deductions on the EMPLOYEE’s remuneration as specified in the employment contract. For any fees related to penalties associated with the EMPLOYEE’s previous employment residency conditions, the EMPLOYER might wish to cover such fees subject to his/her own discretion.

Note that the first paragraph mirrors Article 18 of the Federal Law No. 8 of 1980, while the second paragraph mirrors (if less closely) the UAE Ministerial Decree No. 52 of 1989.

However, the monitors interpreted this to include two additional requirements: 1) that the project would only pay for recruitment fees that were specifically paid in order to work on the NYUAD project, and 2) only in cases where workers could provide proof of payment.

There are several areas of concern:

First, Nardello & Co. observed it had a significant harmful effect. Nardello & Co. stated “this interpretation eviscerated the pool of workers eligible for reimbursement and undermined the stated intent of the Labor Guidelines … if the intention of the Labor Guidelines concerning

![FIGURE 3: MOTT MACDONALD MONITORING REPORTS RE: RECRUITMENT FEES AND COMMISSION]

- **Point 1 – Recruitment Fees and Commission**
  - Employers will fully cover or reimburse employees for fees associated with the recruitment process, including those relating to visas, medical examinations and the use of recruitment agencies without deductions being imposed on their remuneration.
  - The payment of fees or commissions to attain employment has been part of the UAE employment culture for the majority of foreign workers, particularly those from India, Pakistan, Bangladesh, Nepal and some parts of Asia Pacific. When employees join the Project, employers are requested to ask them if a fee or commission had been paid or promised to secure the job.

2011

When employees join the Project, employers have been advised to ask them if a fee or commission had been paid or promised to secure the job. As a result, one service provider informed Mott MacDonald that their own management identified four cases where employees who had specifically been recruited for the NYUAD Project had paid fees. The four employees provided supporting documentation indicating they had paid fees to secure their jobs specifically on the NYUAD Project.

- **Point 1 – Recruitment Fees and Commission**
  - Employers will fully cover or reimburse employees for fees associated with the recruitment process, including those relating to visas, medical examinations and the use of recruitment agencies without deductions being imposed on their remuneration.

2012

The payment of fees or commissions to attain employment has been part of the UAE employment culture for the majority of foreign workers, particularly those from India, Pakistan, Bangladesh, Nepal and some parts of Asia Pacific. When employees join the Project, employers are requested to ask them if a fee or commission had been paid or promised to secure the job.

In March one employee who had come from India specifically to work on the NYUAD Project was found to have paid a recruitment fee in order to gain employment. He has been reimbursed the sum of money that he was charged. This is the only instance that has been identified of workers having to pay agent fees to work on the NYUAD project in 2012.

- **Point 1 – Recruitment Fees and Commission**
  - Employers will fully cover or reimburse employees for fees associated with the recruitment process, including those relating to visas, medical examinations and the use of recruitment agencies without deductions being imposed on their remuneration.

2013

The payment of fees or commissions to attain employment has been part of the UAE employment culture for the majority of foreign workers, particularly those from India, Pakistan, Bangladesh, Nepal and some parts of the Asia Pacific region.

NYUAD and Tamkeen are committed to ensuring that no operative employed on the construction project or in an operations capacity has paid a fee to join the project.

The payment of fees or commissions to attain employment has been part of the UAE employment culture for the majority of foreign workers, particularly those from India, Pakistan, Bangladesh, Nepal and some parts of the Asia Pacific.

Service Providers:

NYUAD compliance monitors identified 18 workers who had come to the UAE specifically to work on the NYUAD project and paid recruitment fees in order to gain employment. All 18 have been fully reimbursed for those fees by the Employer and the payments verified by Mott MacDonald.

Construction Activities:

In order to ascertain if recruitment fees have been paid by workers to join the NYUAD Project, case-to-one interviews, HR record and payroll checks have been conducted throughout 2013. All require the compliance monitor to confirm if fees have been paid by an individual worker.

We found no evidence that any worker paid recruitment fees in order to join the NYUAD project in 2013.
recruitment fees was to release workers from the debt that effectively bound them to their UAE employers, then reimbursement should have been provided under guidelines that reflected the complexities of the situations … Interpreting the policy in a way that effectively disqualified all workers from being reimbursed supports the conclusion that addressing an issue as complex as recruitment fees on a per-project basis, though admirable, requires far greater consideration than was given here.” Note it is not clear on what basis Nardello & Co. could make the claim that the effort was “admirable,” not simply part of University obligation to aim to comply with law, given that 1) UAE law requires employers pay for recruitment costs and fees, 2) UAE law prohibiting forced labor implies a requirement to eliminate recruitment debt 2) best practice by 2010 had settled on employers at least auditing employer contribution of payment and employers paying all costs or at least splitting costs up to one month salary or other reasonable amount (which then consolidated into the “employer pay and reimburse policy.”

Second, Nardello & Co. traces NYU’s reversal from its public commitment to the plain meaning of the 14 Points and Supplementary Specifications – which was consistent with due diligence regarding the risk of forced labor and with prevailing practice – to NYU adopting a non-public policy that had the harmful effect described above, further critiqued below. Nardello & Co. writes, “In its March 2012 report entitled ‘The Island of Happiness Revisited,’ Human Rights Watch included a letter it received from NYU on March 27, 2011. In the letter, NYU stated, ‘[o]n the question of employment agency fees, as we discussed in January, workers hired to work on the NYUAD Project who have remaining debt on a previously paid employment agency fee assessed for prior work in the UAE will be eligible to have those remaining costs reimbursed.’ … In contrast to the 2011 letter, which cites reimbursement of previously paid fees, NYU released a statement in May 2014 that said that the labor standards called for reimbursement of “employment fees to those specifically recruited to our job site.”

Third, in its monitoring reports, in keeping with its narrower interpretation Mott MacDonald claimed “payment of fees or commissions to attain employment has been part of the UAE employment culture.” Fees or commissions for the specific benefit of securing work at a particular workplace are a narrower category than the costs and fees that the Supplementary Specifications, UAE law, US law, and standards regarding eliminating the risk of forced labor refer to, such as visa and plane ticket costs, and the service fee recruitment agency charges for their services. However, it is not clear why Mott MacDonald mentioned these particular fees or commissions rather than the broader category of costs and fees, except to be in keeping with its interpretation of the Supplementary Specifications. As the Nardello Report noted, almost no construction workers had paid quid-pro-quo fees for specific work in the UAE because doing so is not a common practice.

Fourth, it is unknown whether parties ever monitored the requirement in the 14 Points that “employers will fully cover …. fees,” which also appears to be a requirement of UAE law. Although the 14 Points allow employers to either cover or reimburse employees, the need to reimbursement of costs and fees is linked to whether employers paid those costs and fees in the first place – if employers cover costs and fees, as required by UAE law, then the need to reimburse costs and fees is significantly reduced, and the possibility that workers have borne costs and fees because of employer failure to abide by law is reduced; it is especially inequitable if employees bore costs and fees because of employer failure to pay them in the first instance, but then are unable to get them reimbursed. It is unclear whether parties audited whether employers complied with law. Nardello & Co. notes that “In practice [eliminating recruitment fees] would have involved providing a lump sum amount – without requiring proof of payment – to all workers on the Main Campus Project because the practice of paying recruitment fees to obtain work in the UAE and the wider region is so prevalent that it supports a presumption that all workers paid such fees.” Given the way that the provision is written, it was strictly possible not to audit this provision, but doing so would have been concerning for the reasons explained.

Fifth, the provision appears to have been interpreted without reference to law or best practice, as explained in the prior two points. Nardello & Co. says, without further detail, that “the difficulty in implementing the Labor Guidelines as drafted was why the Key Parties adopted a more narrow interpretation.” Nardello & Co. notes that this interpretation “was based on considerations that do not appear in the 14 Points and Supplementary Specifications.” It does not appear that any multinational facing forced labor risks in its supply chains and aiming to respond to those risks consistent with best practices has implemented a policy that only takes responsibility for
recruitment specifically for work on a certain project, even in the context of GCC construction. Difficulty is not a legal justification for failing to implement due diligence consistent with prevailing practices in comparable circumstances.

Sixth, it is unknown who was responsible for interpreting the labor standards provision on recruitment fees, though it appears from the Nardello Report that the best suggested reading is that EC Harris and Mott MacDonald interpreted the provisions and all Key Parties followed the interpretation. At one point, Nardello & Co. writes, “EC Harris … [and] Mott MacDonald interpreted the requirements of the 14 Points and the Supplementary Specifications concerning the reimbursement of recruitment fees as applying: (i) only to recruitment fees that were paid specifically to work on the Main Campus Project; and (ii) only in cases where workers could provide proof of payment. The Labor Guidelines made no such distinction” (emphasis in original).

At another, it suggests that while the monitors interpreted the requirements, the Key Parties all adopted the same position. As discussed below, no lawyers were part of the Mott MacDonald teams; EC Harris was a team of engineers and one specialist in certain social standards auditing; it is unknown if or if not, why not, counsel for NYUAD or Tamkeen did not catch the problem with the relevant provision and address it.

Seventh, throughout the Nardello Report, Nardello & Co. makes claims about recruitment fees, despite not having done outside research about best practices in recruitment fees or the connection between recruitment and forced labor as part of its methodology. Based on its methodology, these claims appear to come from its interviews with Key Parties. Nardello & Co. states, “the long-term solution to the serious issues posed by recruitment fees is not a commercial one as it requires the multilateral actions of governments within the relevant jurisdictions where the recruitment fees were paid.” It continues, “Indeed, it is beyond our mandate, and indeed our expertise, to offer a comprehensive solution to a problem that will require the cooperation of numerous countries that supply workers to the UAE and the wider region, including Bangladesh, India, Pakistan, Nepal and the Philippines.”

To the extent that Nardello & Co. is referring to the long-term solution to recruitment costs and fees for GCC migration generally, it is true that a long-term solution involves governments, but the long-term solution also requires commercial actors to pay recruitment costs and fees. More importantly, statements about the long-term solution have limited to no relevance for the question of what is necessary for compliance for an individual project. The dominant practice in due diligence on forced labor makes clear that the commercial role of employers in eliminating recruitment debt for an individual project is essential.

**Interpretations contrary to law regarding forced labor (N+)***

Mott MacDonald, the appointed independent compliance monitor, monitored compliance with the prohibition on forced labor. In its 2012 and 2013 compliance reports, it briefly defined forced labor using the definition in the Forced Labor Convention, 1930 (No. 29) then stated “there has been no evidence from interviews and site visits of forced labor being employed on the NYUAD Project. Mott MacDonald is of the opinion that it would be highly unlikely for such labor to be used on the Project due to the regular monitoring of employees’ activities.”

The first report in 2011 did not refer to the international definition and directly stated the above conclusion.

The claim that “there has been no evidence from interviews and site visits of forced labor being employed on the NYUAD Project” was incorrect. There was, at minimum, such evidence, given that Mott MacDonald allowed employers to hold workers passports and did not compensate for recruitment fees, in addition to other risk factors.

First, Mott MacDonald had notice of the risk. As discussed in Part 1, several common labor practices in the UAE create a serious risk of forced labor for certain noncitizens, a risk which had been identified on Saadiyat Island.

Second, Mott MacDonald had notice that the determinants of forced labor were present, apparently being familiar with the standard practice for due diligence on forced labor. For example, the Social Accountability International 8000 certification is a very widely used set of standards for compliance with human rights in supply chains with which Marielle Rowan, Mott MacDonald’s labor specialist for the purposes of the project, has claimed familiarity.

The SA8000 standard clearly states in its forced labor standard, which is based on the ILO definition of forced labor, requires that “The organisation shall ensure that no employment fees or costs are borne in whole or in part by workers.” The SA8000 certification standard also
requires under its forced labor certification that employers “shall not retain original identification papers.”

Third, Mott MacDonald’s claim that regular monitoring made forced labor “highly unlikely” was incorrect. As the ILO notes, “forced labor is not characterized by the nature of the work performed, rather by the relationship between the worker and his or her employer, supervisor or other person in control. It is therefore not ‘visible’ through observation alone.” Implementing due diligence regarding forced labor requires identifying the correct indicators and monitoring their incidence or risk thereof.

Note Nardello & Co. did not reach this issue because compliance with laws and the overall competency of the monitors was outside its mandate.

⚠️ MAKING APPARENT GOAL OF COMPLIANCE PROGRAM “BENEFIT” TO WORKERS (N)

The Nardello Report made claims regarding the success of the NYUAD compliance program. Because a comprehensive review of the compliance program and a legal review of the program was outside the Nardello Report mandate, Nardello & Co. could not make claims about the success of the compliance program vis-à-vis law, prevailing practice, or some other external standard. Instead, Nardello & Co. proceeded in two steps. First, based on its interviews, it stated NYUAD and Tamkeen’s professed goal. It states, “NYU and its government partners’ goal was that all workers benefit from the Labor Guidelines.”

Second, it then based its assessment of success against that stated goal. It continues, “Based on our review, we believe that by adopting the Labor Guidelines, their attempt succeeded in improving the working conditions of thousands of workers on the Main Campus Project.”

Nardello & Co. specifically points to wages and housing as benefits. Benefit strictly defined means that workers were better off than they otherwise would have been on another project in the UAE.

First, it is not clear that “benefit” to workers is the appropriate metric for a compliance program that does not also take due diligence with regard to applicable laws, given the NYU commitment to compliance with laws. The question of benefit to workers did not include an analysis of whether they were granted all that was owed to them or whether they were treated in compliance with law.

Second, if “benefit” to workers, not compliance with laws, was the goal of the compliance program, it is not known whether this goal was stated from the outset of the program. The Nardello Report refers to a different idea of success earlier in the report, stating, “NYU and its government partners sought to take responsibility to protect workers by adopting principles to ensure fair working conditions for those involved in the construction and operation of the NYU campus and by implementing a compliance monitoring regime.”

Fair working conditions, though undefined, would appear to clearly exclude violations of law like forced labor.

Third, Nardello & Co. framed the errors it identified only in terms of the parties’ stated goal of benefit. Nardello & Co. claims NYUAD “succeeded” and that regarding the significant errors of judgment committed by monitors, they prevented NYU from being “even more successful.” Nardello & Co. wrote, “This effort would have been even more successful if it had not been undermined by the monitors’ interpretation of the Labor Guidelines regarding passport retention and reimbursement of recruitment fees.” It was outside Nardello & Co.’s mandate to assess whether such so-called success still resulted in violation of relevant laws or risk thereof.

In a May 30, 2014 letter from the NYU Faculty Senators Council to then NYU President John Sexton, the Faculty Senators Council rejected this changing of the goal as being an acceptable approach for the University. As discussed below, it stated that the fact that the Statement of Labor Values was better than the UAE standards does not “absolv[e] the University of its abiding obligation to ensure that every effort has been taken to ensure compliance with the agreed Statement of Labor Practices” and argued a failure in that regard would be “substantially damaging” for the GNU mission and the “core humanistic principles of our educational mission.”

⚠️ STRIKES RESPONDED TO WORK CONDITIONS, NOT LABOR VIOLATIONS (N+)

Nardello & Co. investigated the two known strikes that occurred in connection with the NYUAD campus project: the BK Gulf strike in 2013 and the Al Reyami strike in 2012.
**BK Gulf (N+)**

In October 2013, roughly 4000 employees of BK Gulf struck work, an estimated 1500 of whom worked on the NYUAD project.\[63\] In connection with the strike, roughly 40 workers were arrested in Dubai, where BK Gulf is based, and 200 to 250 were dismissed and deported. Nardello & Co. says “more than 75%” of the dismissed and deported workers worked on the NYUAD campus;\[487\] it then goes on to say that 200 workers were identified as workers on the NYUAD campus project who were dismissed or deported, which is actually 80 to 100% of the 200 to 250 who they estimated to have been deported.\[548\] Workers reported that police slapped, beat, and tasered certain among them in connection with the arrest.\[549\]

Nardello & Co. makes several factual findings about the strike:

1. Among the 200 workers who were deported, more than 85% had been paid the minimum wage for the NYUAD project.\[490\] Failure to pay owed wages would have been a violation of the labor standards.

2. Workers on the NYUAD campus project observed that the setting of wages on the BK Gulf project had been done arbitrarily. BK Gulf mapped some workers who earned AED 780 ($212) to a new rate of AED 800 ($217), but mapped others making the same amount to a much higher rate of AED 1200 ($325).\[491\] Nardello & Co. does not identify why BK Gulf did so. Workers felt the mapping was unfair, and some workers getting the $5 raise refused it in protest. It is unknown whether the disparity would have constituted a violation of the labor standards prohibition on discrimination, which states “no person shall be subject to any discrimination in employment, including in relation to hiring, salary, benefits, advancement, discipline, termination, or retirement.”\[492\]

3. Long-term workers identified disparate treatment by ethnicity as present on the BK Gulf site, noting Indian workers had been paid more than Bangladeshi workers, who had been paid low rates over several years. It is unknown whether this related to workers on the NYUAD project, though Bangladeshi and Indian workers comprised 88% of BK Gulf workers on the NYUAD campus project.\[493\] If this had been identified as existing on the NYUAD campus project, it may have been a violation of the labor standards prohibition on discrimination.

4. Long-term workers expressed frustration with BK Gulf treatment apart from the NYUAD campus project. There had been broken promises of pay raises and improved working conditions.\[494\] Nardello & Co. notes that workers faced a 40% pay reduction when they were transferred off the NYUAD campus project,\[495\] and that some workers felt that the raises offered for the NYUAD project suggested that this was the time for them to do something to try to be paid more. Workers’ ability to complain according to certain procedures may have been protected under UAE law.\[496\]

It is reasonable to draw several inferences from these facts:

1. It does not appear that workers failing to be paid in accordance with the labor standards, a violation of the labor standards, was a primary cause of the strike.

2. Without more facts, it is not possible to assess whether the mapping of wages on the NYUAD project by BK Gulf was discriminatory; if it was, it may have been a violation of the labor standards. Workers cited this as was one of the primary causes of the strike.

3. Long-term frustration over pay and working conditions was not a violation of the labor standards but was a primary cause of the strike.

4. Without more facts, it is not possible to assess whether there was disparate treatment by ethnicity on the NYUAD project; if there was, it may have been a violation of the labor standards. Workers cited this as one of the causes of the strike.

From these findings, Nardello & Co. draws the conclusion that “it did not appear that the strike was ultimately caused by working conditions on the NYUAD campus project.” Working conditions are distinct from and broader than violations of the labor standards. We agree that Nardello & Co. could reasonably conclude that the strike was not caused by a confirmed violation of the labor standards, though there are several conditions that did cause the strike that may have been violations of the labor standards. However, we are of the opinion, given the evidence above, that Nardello & Co. could not reasonably conclude that the strike was not caused by work conditions on the NYUAD campus project more generally.
Furthermore, several deported workers said they were unassociated with the strike. BK Gulf stated they gave workers a choice as to whether to continue work for BK Gulf or whether to be dismissed and deported; workers Nardello & Co. interviewed all said they were not given such a choice.

The procedures through which BK Gulf, a contractor on the NYUAD project, dismissed workers, allegedly in connection with the strike, may not have complied with UAE law. First, it is unknown whether workers ever were given an opportunity to follow the collective labor dispute procedures provided for under UAE law. Furthermore, it is not clear that BK Gulf followed procedures for lawful firing. Federal Law No. 8 (1980) Article 112 states, “a worker may temporarily be suspended from work if he is accused of committing a deliberate offence against life, property, honour or honesty or an offense associated with strike. The period of suspension shall run from the date the incident is reported to the competent authorities until the latter renders a decision on the matter. The worker shall not be entitled to wage in respect of the period of suspension. If it is decided that a worker is not to be prosecuted or is acquitted, he shall be reinstated and paid his full wage for the period of such suspension if the employer maliciously contrived it.”

Article 112 suggests that some decision-maker is responsible for reviewing facts and making a judgment; it is unknown whether this occurred and whether workers were able to make a submission regarding their version of facts.

In addition to Article 112, UAE law does provide for firing without notice for one of the several enumerated reasons in Article 120 of the same law; arguably, some of these could be read to permit firing without notice for strike action, while others would permit firing for striking only if certain warnings are given or a worker is given a final conviction by a court of law. If one of the enumerated conditions under Article 120 is not met, then Article 110 requires that disciplinary measures including dismissal, be executed only after written notice to a writer of the charges against them, a hearing in which the worker is allowed to speak and have their claim investigated, and the creation of a record documenting the above and the resulting penalty, entered into the worker’s personal file.

Note that compliance with the above laws would have arguably been part of compliance with the Labor Guideline that “As required by UAE law, the right of workers to seek resolution of labor disputes shall be recognized and respected. No worker shall be subject to harassment, intimidation or retaliation in their efforts to resolve work disputes.”

Al Reyami

Workers at subcontractor Al Reyami struck in June 2012. Prior to strike, Al Reyami workers made complaints to company management. Their complaints were ignored and Al Reyami told workers “to keep quiet,” as Nardello & Co. writes. In later interviews between five of the workers and Nardello & Co., all five workers stated there were pay-related violations on the NYUAD project, about which workers were complaining. After their complaints were not met, 145 workers held a one-day strike.

There were two management responses to the strike. First, in response to the strike, according to the five workers Nardello & Co. interviewed, three workers were paid and compensated for wages owed, but two were not. Second, in response to the strike, Al Reyami asked the strikers to elect four representatives to negotiate with company management. Al Reyami then dismissed those workers and “threatened all the workers with the same punishment [dismissal and deportation] if the strike continued, or if they made further complaints” (bracketed content mine).

Mott MacDonald, EC Harris and AF Carillion investigated and determined that this action was not a violation of the labor standards because the workers had “unsatisfactory performance” during their three-month probation period on the project, during which at-will firing is permitted. It is not known whether workers were actually still in the three-month probation period; if not, it seems that at-will firing after the end of the probation period, after which firing is explicitly allowed only for certain conduct, may be inconsistent with UAE law.

Beyond the question of whether workers were treated in compliance with laws, the Al Reyami strike further called into question monitors’ judgment. Nardello & Co. notes that threatening all workers with dismissal and deportation for making complaints short of striking is clearly a violation of the labor standards’ requirement that “No worker shall be subject to harassment, intimidation or retaliation in their efforts to resolve work disputes.”

Nardello & Co. noted that the Mott MacDonald finding that there was no harassment, intimidation or retaliation “obviously does not square with worker claims of threats and retaliation.”
Nardello & Co. could not assess the merits of the Mott MacDonald decision because doing so was outside its mandate.\textsuperscript{510}

\textbf{COMPLIANCE SCHEME (N+)}

Nardello & Co. did identify some underlying causes of mistakes in the compliance program. It found “flawed execution” and “diminished … effectiveness” were caused by:\textsuperscript{511}

\begin{itemize}
  \item Miscommunication\textsuperscript{512}
  \item Overly complex monitoring scheme\textsuperscript{513}
  \item Significant problems with accountability\textsuperscript{514}
  \item Failure to obtain clarity on key issues\textsuperscript{515}
  \item Significant problems with transparency\textsuperscript{516}
  \item Significant problems with consistency\textsuperscript{517}
  \item Overreliance on third parties to implement and monitor adherence to the guideline.\textsuperscript{518}
\end{itemize}

\textbf{Overview of compliance program}

Above is an organizational chart of Key Parties in the compliance program. The chart presents only the reporting structure of the organization. It does not explain the roles and responsibilities of each party or their authority and powers to execute those roles and responsibilities.\textsuperscript{519}

It is unknown who hired Mott MacDonald. From the compliance reports, it appears Tamkeen hired or “appointed” Mott MacDonald as “the independent third-party verifier” requiring Mott MacDonald to confirm that the requirements of the \textit{Statement of Labor Values} and the \textit{14 Points} are being applied to workers employed on the NYUAD project.\textsuperscript{520} However, the compliance reports also state that “NYUAD-TAMKEEN have commissioned” the annual report.\textsuperscript{521}

NYUAD-specific counsel and monitors were hired after contractors and the construction monitor, EC Harris. When construction began in June 2010, the contractors and construction monitor EC Harris had been hired.\textsuperscript{522} The NYUAD Chief Compliance Officer was hired at the same time in June, Associate General Counsel for NYUAD was hired in July, and Mott MacDonald began submitting monthly reports to Tamkeen in October but was not officially appointed until December.\textsuperscript{523}

It is unknown who wrote the \textit{Supplementary Specifications} or the initial compliance budgeting, the amount that would be added to each contract for compliance.\textsuperscript{524} It is unknown when that decision occurred, though it may have occurred before the monitors or NYUAD counsel were hired. We also do not know whether the amounts provided for covered employers covering recruitment costs and fees or reimbursing recruitment costs and fees.

The roles of AF Carillion, the project contractor, EC Harris, the compliance monitor, and Mott MacDonald, the overall project monitor, were presented in the \textit{Nardello Report}.\textsuperscript{525} AF Carillion was the only party that was involved in briefing potential subcontractors about the requirements of the labor standards during the tender process.\textsuperscript{526} Together with EC Harris, AF Carillion approved appointment of all subcontractors on the project and...
their exemption status. EC Harris appears to have solely to have reviewed contracts to confirm subcontractors contractually obligated to comply with labor standards, conducted initial audit of subcontractors to verify that they were compliant with the labor standards, and reviewed AF Carillion reports. During construction, both Mott MacDonald and EC Harris largely both conducted paper audits and interviews and inspections.\(^{527}\)

It is unknown what role NYUAD and Tamkeen had in supervising construction, if any. Note that the entity that hired Mott MacDonald would have had ultimate authority over the compliance program.

**Identified governance concerns: complexity, accountability, communication, decision-making procedures**

Nardello & Co. writes that the compliance system “had the effect of not vesting ownership of compliance monitoring with one accountable party” and called the compliance system “overly complex.”\(^{528}\) “As set forth in our recommendations in Section 6.1.3 below,” Nardello & Co. wrote, “there should only be one monitor with sole responsibility – and accountability – for compliance. Further, that monitor should regularly report to all Key Parties including NYU and its government partners.”\(^{529}\) Nardello & Co. notes instances in which NYU and its government partners failed to clarify standards despite being notified about concerns.\(^{530}\) Nardello & Co. documents one instance in which Mott MacDonald did make a recommendation asking for clarity regarding the passports standard, but NYUAD and Tamkeen never followed it.\(^{531}\) Similarly, Mott MacDonald recommended that the list of exemptions for the *Supplementary Specifications* be clarified so that all of the Key Parties would work with the same understanding regarding coverage, but it never was.\(^{532}\)

Though Nardello & Co. reviewed the construction compliance program, any compliance system should create clear lines of accountability, as the *Guiding Principles* note.\(^{533}\)

⚠️ **EXPERTISE (N+)**

Nardello & Co. noted “overreliance on third parties” as a cause of failures in the compliance program.\(^{534}\) Nardello & Co. does not explain this point further. However, having reviewed the professional backgrounds of the firms and the specific persons involved, it is noticeable that the third parties on which parties “overreli[ed]” – resulting, *inter alia*, in “significant errors” were almost exclusively engineers.\(^{535}\) The person working on the project from Mott MacDonald with labor experience did not have a legal background, a legal background in the substantive areas of underlying law, or other qualifications that would suggest ability to interpret the labor standards consistent with law.

Below we profile each of the monitors involved in the construction of the NYUAD Interim Campus – Mott MacDonald and EC Harris. Profiles of the personnel hired by NYUAD are discussed in the section on operations, since the NYUAD compliance office has only been confirmed to have had a role in certain operations contracts; their role in construction, as mentioned above, is unknown.

**Mott MacDonald**

Mott MacDonald was the independent third-party verifier for NYUAD – both operations at the Interim Campus and construction of the Saadiyat Island campus.\(^{536}\) Mott MacDonald produced monthly and quarterly compliance reports internal to the Key Parties and produced yearly annual compliance reports of those violations that were not resolved within 30 days of a contractor being notified of the violation.\(^{537}\)

Mott Macdonald is “a global engineering, management, and development consulting firm” based in the UK and with substantial international business.\(^{538}\) Mott MacDonald services include “environmental and social due diligence” as part of its broader consulting services on project delivery, commercial performance and operation.\(^{539}\) This program conducts audits for social impact, due diligence, Equator Principles (environmental and social standards for International Finance Corporation and World Bank), labor audits and labor management planning, resettlement policy and frameworks, initial poverty and social assessments, indigenous peoples, gender and livelihoods assessments.”\(^{540}\)

Arguably, the labor standards for the NYUAD project required much more than the standards with which Mott MacDonald typically audits. To provide one brief example, principles for IFC and World Bank projects are audited in a context of immunity from suit in several major countries, and do not incorporate any human rights policy. Projects passing Equator Principles or IFC audits
have still been found to have major abuses that could constitute violations of law.\textsuperscript{541}

The composition of the Mott MacDonald teams that monitored the NYUAD campus highlights that their expertise was not always matched with the task at hand. According to the 2011 Compliance Report, “the compliance monitoring team in Abu Dhabi consists of Simon Dove as Project Director and Howard Winfield as Project Manager and Lead Auditor” with additional support staff.\textsuperscript{542} Jay Danielson is later listed as part of the compliance monitoring team.\textsuperscript{543} It appears these were the compliance monitors responsible for monitoring on a monthly basis, according to Nardello & Co..\textsuperscript{544} Dove, Winfield, and Danielson are trained and had professional experience exclusively as engineers and construction project managers, even though many of the standards they were monitoring were legal.\textsuperscript{545} The “International Labor Specialist” was Marielle Rowan, a “senior member of Mott MacDonald’s social sustainability team,” which \textit{inter alia} provides labor auditing and labor accommodation planning services.\textsuperscript{546} Rowan in her capacity appears to have consulted the Project Manager and Lead Auditor and to have filed quarterly reports since January 2011.\textsuperscript{547} According to her own biography, Marielle Rowan, as of 2017 Principal Social Scientist – Energy Unit for Mott MacDonald,\textsuperscript{548} described the role of Mott MacDonald as “to provide labor and human rights advice and monitoring for some building construction.”\textsuperscript{549} She described her own role as to “prepared the standards for protecting the labor rights of the third party workers. The standards include commitments and implementation guidelines contractors must meet as well as monitoring checklists.”\textsuperscript{550} Rowan had an undergraduate degree in applied English and a masters in rural extension studies; she had spent ten years working in development in Mozambique before joining Mott MacDonald in the energy unit, apparently with a focus on “social sustainability.”\textsuperscript{551} Marianne Lupton also was involved in the quarterly reports during 2012.\textsuperscript{552} Lupton was Senior Social Scientist at Mott MacDonald from 2011 through present and had previous experience in Asian Development Bank, IFC, European Bank of Reconstruction and Development and World Bank standards.\textsuperscript{553}

The pattern of behavior that Nardello & Co. documents is consistent with the expertise level of the Mott MacDonald team. The so-called “International Labor Specialist” did have competency regarding wage and hour, grievance mechanisms, monitoring large projects’ records, and worker accommodation.\textsuperscript{578} She did not apparently, as recorded in the work product of three compliance reports, have the knowledge that the forced labor standard that she cited and against which she claimed to monitor compliance was being read contrary to law – both contrary to authoritative readings of the ILO provisions and contrary to UAE law.\textsuperscript{554}

**EC Harris**

EC Harris was a UK international built asset consultancy firm serving as cost consultant and project manager for the NYUAD campus project.\textsuperscript{555} Project or program management is specialized professional service typical of construction and other large projects. After a 2011 merger, EC Harris is part of Arcadis NV.\textsuperscript{556} Program management can involve cutting costs, streamlining processes, and managing risks, often with a focus on on-budget and on-time project delivery. Paul Maddison, engineer and partner at EC Harris, was the Project Director for NYUAD.\textsuperscript{557} He was accountable for “development and delivery of cost and commercial management across all clients in UAE” and notes was “successfully delivered.”\textsuperscript{558}

EC Harris was charged with making the project come in on time and on budget.\textsuperscript{559} EC Harris was a key player making the subcontracting exemption policy, which reduced the cost of compliance on the project.\textsuperscript{560} It is unknown whether EC Harris also had decision-making power over the amount for compliance for each contract, which would have varied significantly based on whether recruitment fees were to be reimbursed.

Nardello & Co. “found no evidence to suggest that EC Harris’ monitoring activities were compromised by its dual role as both Project Manager and compliance monitor,” though recommended avoiding the appearance of such conflicts.\textsuperscript{561} It is not clear that it was part of Nardello & Co.’s mandate to fully investigate the scope of potential conflict.\textsuperscript{562}

### 3.3 OPERATIONS

**BACKGROUND: OPERATIONS CONTRACTORS**

Before moving to Saadiyat, NYUAD operated out of its Interim Campus, which was comprised of three facilities. Two were within a ten-minute walk of each other in downtown Abu Dhabi – Sama Tower and the Downtown
Campus, known as DTC. DTC had classrooms, faculty offices, study spaces, a library, cafeteria, large event space, garden, courtyard and bookstore. Sama Tower is a skyscraper that housed NYUAD classrooms, offices, dorms and apartments. The third facility was the Center for Science and Engineering, known as CSE, which was about thirty minutes from Sama or DTC by car, in Musaffah, an area outside downtown Abu Dhabi that is home to both a major industrial zone and also newly developed suburbs. NYUAD provided frequent shuttle service between the three facilities.

NYUAD hired several service contractors to provide services at NYUAD. Contracts were made with both NYUAD and Tamkeen. Tamkeen held the contracts with Emirates Landscaping (landscaping), Berkeley GS (cleaning), MAF Dalkia (maintenance). Arguably, these Tamkeen-held contracts for landscaping, cleaning and maintenance – roughly 60 each year, including management – had presented the highest risk of labor violations including forced labor, since such workers were hired at the lowest wage rates in the UAE. NYUAD held the contracts with Macgrudy (bookstore), Fast Car Rental (transport), ADNH Compass (catering), and G4S (security). These sectors are at relatively lower but still significant risk of forced labor.

THE NARDELLO REPORT MADE FINDINGS THAT NECESSARILY HAVE CONSEQUENCES FOR OPERATIONS (N+)

In December 2016, NYUAD wrote in a public statement “The Nardello & Co. report – which focused on construction – did not raise any concerns about the treatment of individuals working on NYUAD’s operational contracts.” As discussed above, the scope of the Nardello Report was to cover media and NGO allegations. Because no media or NGOs investigated the operations of the campus, Nardello & Co. did not have within its mandate to investigate and report the conditions of operational workers.

However, that does not mean that the Nardello Report did not have implications for operations. The Nardello Report findings covered two components of the compliance program that appear to have impacted the operations of the Interim Campus:

1. **Supplementary Specifications.** The Nardello Report writes the Supplementary Specifications were “provided only to the Key Parties and subcontractors involved with the construction of the Main Campus Project and the companies involved in the operation of the Interim Campus.” To the extent that they did, findings in Nardello & Co. about the Supplementary Specifications and their interpretation are relevant.

2. **Mott MacDonald.** Mott MacDonald was the independent monitor both for the construction of the Saadiyat Campus and for the NYUAD-monitored operations contracts. However, Mott MacDonald was also the direct compliance monitor for Tamkeen held contracts – Emirates Landscaping, Berkeley GS (cleaning), and MAF Dalkia (maintenance). Therefore, findings in the Nardello Report about Mott MacDonald’s interpretation of standards – as reflected in its understanding of the Supplementary Specifications and its assessments in its Annual Monitoring Reports – would appear to have been relevant to certain operational contracts.

Findings from this report and the Nardello Report about the above indicate that there likely were significant concerns regarding the compliance program that impacted operations.

CREATING AMBIGUOUS AND CONTRADICTORY STANDARDS AND INTERPRETING LABOR GUIDELINES CONTRARY TO APPLICABLE LAW APPEAR TO HAVE IMPACTED OPERATIONS (N+)

Creating ambiguous and contradictory standards (N+)

Nardello & Co. found that Key Parties had drafted inconsistent requirements with regard to voluntary work and passport retention in the Supplementary Specifications. It also found that Mott MacDonald, the overall compliance monitor for all NYUAD operations, demonstrated it applied the conflicting standard inconsistently such that Nardello & Co. observed that in the instance it reviewed, Mott MacDonald “was apparently not sure, at least in this instance, what it was verifying.” The instance in question was the drafting
of Annual Reports that had covered both operations and compliance.\textsuperscript{574}

Based on this finding, a reasonable inference would have been to investigate and to be able to identify which standard NYUAD applied and its consequences for worker overtime and passport retention. It is less reasonable to argue “The Nardello & Co. report – which focused on construction – did not raise any concerns about the treatment of individuals working on NYUAD’s operational contracts.”\textsuperscript{575}

**Interpreting labor standards contrary to applicable law (N+)**

As we have found in this report, Mott MacDonald appears to have interpreted the prohibition on forced labor contrary to applicable law. This suggests that monitoring of forced labor by Mott MacDonald for operational workers did not accurately capture or assess the legal risk. As discussed above, Mott MacDonald also made a “significant error of judgment” in its interpretation of the Supplementary Specifications regarding recruitment fees.\textsuperscript{576}

This creates three consequences for operations:

1. Mott MacDonald was also the compliance monitor for operations contracts held by Tamkeen: Berkeley (cleaning), which employed 7 to 9 people from 2011 to 2013, and MAF Dalkia (maintenance), which hired 37, 51, and 41 people in 2011, 2012, and 2013, respectively.\textsuperscript{577}
   It is not clear how Mott MacDonald interpreted the Supplementary Specifications with regard to these workers but given its role both as overall project monitor and most immediate compliance monitor, the fact that it made a “significant error of judgment” in its interpretation of the standard with regard to construction is concerning.\textsuperscript{578}
   Workers in these sectors are among the lowest earning in the UAE and among those at the highest risk for forced labor.

2. Mott MacDonald was the overall compliance monitor for the entire NYUAD project.\textsuperscript{579}
   In its Annual Compliance Reports, it reported publicly regarding both construction and operations. Given throughout Part 3 about Mott MacDonald’s errors in this regard, it appears that Mott MacDonald was also monitoring operations with the same errors in place, leaving a vacuum of accurate public information about operations and the risk of forced labor (including with regard to determinants like passport retention and recruitment costs and fees, discussed below), before May 2014.

3. There is evidence that NYUAD adopted the Mott MacDonald interpretation of the policy on recruitment fees for its operational workers. NYUAD reimbursed 20 workers for recruitment fees they were found to have been paid – 10% of the 200 it employed.\textsuperscript{580} We also know that Mott MacDonald reported “in 2013, “NYUAD compliance monitors identified 19 workers who had come to the UAE specifically to work on the NYUAD project and paid recruitment fees in order to gain employment. All 19 have been fully reimbursed for those fees by the Employer and the payments verified by Mott MacDonald” (emphasis mine).\textsuperscript{581} The match between those who were identified to have paid fees specifically to join NYUAD and those reimbursed suggests that the rule that workers must have been recruited specifically for the NYUAD Campus project was the one that operated in operations until early 2014, when NYUAD reports it created a new non-public code that according to meeting minutes “does not require that an individual must have been recruited specifically for the NYU project—as long as recruitment occurred within 12 months, the supplier is obligated to repay the recruitment fee.”\textsuperscript{582} Even after the change, by May 2014, NYUAD was still reporting that it had reimbursed only 20 of 200 operational workers.\textsuperscript{581}

Note that the reimbursement rule adopted in early 2014, still fell short of prevailing practice on recruitment fees. It was adopted before NYU acknowledged alleged lapses in its compliance program, committed to investigation, and found out the results of the investigation. Yet still, at time of publication, the rule remains in place in the current NYU Supplier Code of Conduct.

**THE NARDELLO REPORT MAKES SEVERAL FINDINGS THAT SUGGEST THAT NYUAD MADE RELEVANT FAILURES OR OMISSIONS IN ITS COMPLIANCE PROGRAM (N+)**

First, NYUAD does not appear to have identified Mott MacDonald’s interpretation of forced labor as being contrary to law, or if they did, it does not appear that they
notified Mott MacDonald such that Mott MacDonald changed its definition during the period it wrote public compliance reports. Given the serious risk of forced labor that both operations and construction presented, and the connection between the prohibition on forced labor and other labor standards, like rules about passports and recruitment fees, failure to correct this during the three-plus years that NYUAD operated while Mott MacDonald was compliance monitor is serious.

Second, NYUAD also appears not to have caught discrepancies that Nardello & Co. critiqued Mott MacDonald for failing to catch. Nardello & Co. flags that Mott MacDonald did not catch the inconsistencies between the Supplementary Specifications and Statement of Labor Values and 14 Points with regard to voluntary overtime and passports. NYUAD counsel also does not appear to have caught the inconsistencies to these provisions it was supposed to monitor and enforce, at least such that it resulted in their correction.

Third, NYUAD has confirmed it did not monitor whether workers actually used their entitlements, including paid leave. It was essential to have actually monitored leave taken because under UAE law, employers are required to pay employees for leave days owed but not taken. If NYUAD or contractors did not monitor leave taken it would have been highly unlikely they complied with UAE law in this regard and may owe further backpay to certain workers. Nardello & Co. did not reach this because media and NGO reports did not make any claims regarding paid leave.

EXPERTISE (N+)
Below we profile the lead counsel for NYUAD and Tamkeen and highlight the role staff and faculty have been given in compliance assessments.

None of the persons below appear to have had any relevant professional training or experience in labor, immigration, civil or human rights law, or monitoring risks of violating such laws in supply chains. If they consulted expertise while in their positions, the pattern of conduct described above does not suggest it was adequate.

NYUAD
Caroline Dimitri has been Associate General Counsel, NYU and Chief Legal Advisor, NYU Abu Dhabi, from July 2010 to present. Immediately prior to joining NYUAD in 2010, Dimitri was General Counsel for General Motors in the Middle East, whose corporate headquarters are in Dubai. Dimitri’s areas of expertise “pertain to the Middle East Laws” particularly “commercial agencies laws, contract and corporate law, business law, dispute resolutions, real estate, offshore jurisdictions and free zone regulations, banking, financing, insolvency and bankruptcy.” Dimitri is a French trained lawyer with a J.D. equivalent in Business Law from University of Aix-Marseille, an LLM in Economic law from University of Nice Sophia-Antipolis, and an LLM/MA in Management in Law and Management for International Law from Hamline Law School in Minnesota.

Maggie Bavuso had been Chief Compliance Officer, NYU Abu Dhabi, from June 2010 to either July 2012 or August 2013 (explained below). Bavuso spent nine years prior to joining NYUAD as Senior Associate at Compliance Systems Legal Group, a law firm specializing in corporate compliance and ethics. Beforehand, Bavuso was Executive Director - Integrity Security & Compliance at Verison Wireless, where she also was responsible for the corporate ethics and compliance program.

According to her LinkedIn profile, Bavuso was responsible for all NYUAD compliance, including NYUAD compliance with its “labor and human rights standards,” as Bavuso referred to them. Bavuso states that she developed the monitoring program for the implementation and enforcement of the labor standards. In her LinkedIn profile, in a section subsequently taken down but moved to another public post dated August 4, 2015, Bavuso stated that “responsibilities of my initial position, at NYUAD, enhanced my portfolio and included the human rights obligations NYUAD and NYUNY committed to contract workers.”

Bavuso’s previous experience was exclusively focused on corporate law. She has stated online with regard to the labor standards that “These responsibilities are generally not commonplace compliance areas in US organizations operating domestically or internationally.” This is arguably incorrect. According to a 2006 survey, almost all Fortune 500 companies have human rights policies in place. Eight out of ten Fortune 500 companies have standards prohibiting forced labor, which is also a civil prohibition in US law and with which companies in the United States also need to exercise due diligence.
Note that it is unknown who served as Chief Compliance Officer between July 2012 and September 2013; in her LinkedIn profile in September listed her end date as August 2013, but an edit in November had changed it to July 2012.\textsuperscript{596}

Erum Raza has been Chief Compliance and Risk Officer, NYU Abu Dhabi, from September 2013 to present. From February 2011 until she started at NYUAD, Erum Raza worked in Abu Dhabi at Deloitte Middle East, where she was Project Manager for Corporate Governance and Enterprise Risk Management, and Legal Advisor for Risk Management.\textsuperscript{597} Prior to working at Deloitte, Raza spent almost three years as a corporate attorney at Fox Rothchild LLP in New Jersey.\textsuperscript{598}

Other NYU Abu Dhabi Office of Compliance and Risk Management

Bavuso and Raza have been Chief Compliance (and Risk Management) Officer, but there are several other counsel and personnel who have worked or are working in the compliance office. We have reviewed the professional backgrounds of the additional counsel and personnel have their profiles on background.

Tamkeen

Caroline Depirou has been Senior Risk and Compliance Manager from June 2016 through present.\textsuperscript{599} According to her LinkedIn profile, she “lead[s]” the risk management activities of Tamkeen including enterprise risk management, insurance, compliance, business continuity and information security” and “oversee[s] the risk management activities of NYUAD.”\textsuperscript{600} She also “lead[s] special strategic project assignments for Tamkeen.”\textsuperscript{601} From January 2014 until joining Tamkeen, Depirou was Head of Enterprise Risk Management for Qatari Diar, a real estate company wholly owned by the Qatar Investment Authority.\textsuperscript{602} Depirou graduated with an MSc in Management and International Business from ISC Paris Business School in 2001.\textsuperscript{603}

Mohamed Tohide has been Risk and Compliance Manager from March 2013 through present.\textsuperscript{604} He is pursuing an undergraduate degree from Indira Gandhi National Open University, an online distance learning national university.\textsuperscript{605} His LinkedIn profile states his work is “undertaking activities to conduct worker interviews and reporting of findings on a daily basis.”\textsuperscript{606}

AJ Ahad was Head of Risk and Compliance from March 2013 to February 2016. Ahad reported to the CEO of Tamkeen and was “a member of the Senior Leadership Group, preparing reports to the Board, leading internal audit planning, champion UAE Labour Law, Health & Safety and other regulatory requirements.”\textsuperscript{607} Ahad had oversight of compliance and was “Lead Internal Investigator on media allegations, conducting investigations into irregularities and allegations of non-compliance.”\textsuperscript{608}

Ahad had previously worked for EC Harris in the UAE for Mubadala and Aldar (in which Mubadala has some ownership), and was Manager of Enterprise Risk Management from June 2009 to February 2013 at Masdar, a Government of Abu Dhabi owned clean energy company.\textsuperscript{609} Ahad held a BEng. from City University of Lond, and Executive Masters in Business Administration from London Metropolitan University, and a diploma in risk management from the Institute of Risk Management.\textsuperscript{610}

Muhammad Abdullah Al-Harith Sinclair has served as General Counsel at Tamkeen since October 2014.\textsuperscript{611} He was previously Group Head of Legal and Compliance at a UAE and UK banking and asset management group and spent several years in private practice in London but with several Gulf clients and in doing work that required frequent travel to the Gulf.\textsuperscript{612} Al-Harith Sinclair has a bachelor’s degree in law and Arabic from the University of London School of Oriental and African Studies, and further qualifications as a lawyer.\textsuperscript{613}

Finally, note that Tamkeen appears to have had outside counsel Clifford Chance through the construction period managing their contracts.\textsuperscript{514} Tamkeen also appears to have hired Ernst and Young as “external risk consultants” and Oliver Wyman on “Value Risk Management” for Enterprise Risk Management overall.\textsuperscript{615}

It is unclear who was responsible at Tamkeen prior to these appointments.

Interviewers

The NYUAD compliance program incorporates interviews with contracted employees. In 2012, NYUAD interviewed 132 of 170 or 77% of the operations workforce.\textsuperscript{616} In 2013, NYUAD interviewed 189 contracted employees, or 97% of contracted employees.\textsuperscript{517}
In order to conduct monitoring interviews at a higher rate, NYUAD enlisted staff and faculty to conduct the interviews. As of October 2014, 22 staff and 11 faculty had been trained to help conduct compliance monitoring interviews — 20 to 30 per month. NYUAD Vice Chancellor Al Bloom stated that for contracted workers “all of our workers [are interviewed] once a month to make sure that they are treated in line with our expectations, that the workers perceive us living up to those values.”

Having non-professionals conduct compliance interviews is not a best practice, not least when such persons are also employees of the ultimate employer, here NYUAD. While compliance personnel are hired to conduct necessary compliance activities and for their independent and honest counsel in doing so, consistent with professional responsibility standards, staff and faculty are not hired for such purposes and face a positional conflict of interest in wanting the reputation of the University to be positive but possibly making findings that are would risk the reputation of the University. Furthermore, it is not clear if staff and faculty received any legal training about the substantive legal areas with which they were supposed to monitor compliance, though for reasons described above, their non-professional status in this regard would still mean that training would likely not be adequate to make them competent to conduct these interviews, and even if it was, their position vis a vis NYUAD makes their role in compliance not a best practice. Indeed, it is worth noting that there is no indication that any of the staff or faculty involved in compliance monitoring observed the apparent risk of forced labor that NYUAD policies maintained, as discussed below.

In 2014, NYUAD represented to the Faculty Senators Council that such interviews were essential to the compliance program, and in response the Faculty Senators Council asked for specific information about how the interviews were conducted. The status of public answers to the questions the Faculty Senators Council posed are discussed in Part 4.5 – Institutional Reporting.

### 3.4 FORCED LABOR RISK

The total number of workers employed in the construction of the NYUAD campus was roughly 30,000. There are three groups of workers who were employed in the construction of the NYUAD campus: those included in the compliance program, those included but who were part of a work dispute that resulted in strike, and those excluded from the compliance program.

Below we present the forced labor analyses for each group, based on available information. Where there is information about the work conditions from the Nardello Report they are discussed below the chart. In the absence of such information the indicators default to the level of underlying risk, described in Part 1.

We have noted conditions as satisfied where the Nardello Report found a vast majority of workers faced conditions; certain subsets of workers may have experienced additional indicators, like withholding of wages, though in the absence of a vast majority we have not marked an indicator as being satisfied, though it may be at significant risk.

#### CONSTRUCTION CONTRACTS COVERED BY COMPLIANCE PROGRAM

- **Recruitment linked to debt.** It is reasonable to follow Nardello & Co. in this regard and adopt a presumption that all workers had paid recruitment costs and that a significant percentage did so by entering into debt unless there is affirmative proof from contractors that the employer did pay recruitment costs and fees.

- **Confiscation of identity or travel papers.** Nardello & Co. found most contractors held their workers’ passports — 87% of workers they interviewed. This giving them significant legal control over workers. In some instances, according to Nardello & Co.’s interviews, workers consented to have employers hold their passports. In others, they did not. Nardello & Co. documents 46 BK Gulf workers who had their passports taken as a condition of their employment, and 19 Robodh workers who had their passports taken involuntarily and were part of a group that was threatened with dismissal or were ignored when they complained about not having been paid.

- **Withholding of wages.** Workers in the compliance program had their wages provided according to the labor standards, except for relatively few cases.

- **Multiple dependency, isolation and surveillance.** According to Nardello & Co., 10% of the workers covered by the compliance program described living in housing conditions that were sub-
standard according to the compliance program. Some workers had “very positive things to say” about their housing, but others identified “unclean bathroom facilities and pest infestations” as problems. The roughly 20,000 who were housed at Yas Island labor camps do not appear to have been not guaranteed by the labor standards a degree of privacy or freedom of movement. It is not clear whether the Yas Island camps have the same high security as do almost all other labor camps in Abu Dhabi, though Nardello & Co. did note that “workers’ accommodation camps have security gates to restrict access.”

### CONSTRUCTION WORKERS COVERED BUT IN DISPUTE WITH EMPLOYER, ULTIMATELY RESULTING IN STRIKE

In addition to the above factors, construction workers covered by the compliance program but in dispute with their employer, ultimately resulting in strike, experienced additional indicators of forced labor.

- **Denunciation to authorities.** It is unknown whether BK Gulf followed all required procedures associated with lawful firing, which would indicate that workers faced threat of wrongful denunciation to authorities. Al Reyami workers were explicitly threatened with dismissal and deportation if they complained further after a strike.

- **Threat of employment ban.** Employment ban is a government penalty for certain conduct, but appears to turn on whether a worker was lawfully fired or given a deportation order. Given the above discussion of denunciation to authorities, workers arguably faced a threat of deportation ban without required process.
## FORCED LABOR RISK CHART 3/7: CONSTRUCTION WORKERS COVERED BUT IN DISPUTE WITH EMPLOYER, ULTIMATELY RESULTING IN STRIKE

<table>
<thead>
<tr>
<th>Indicators person does not offer themselves voluntarily</th>
<th>Indicators person works under menace of penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Recruitment linked to debt (+)</td>
<td>• Denunciation to authorities (+)</td>
</tr>
<tr>
<td>• Misinformation (regardless of intention) about nature of work</td>
<td>• Confiscation of identity or travel papers (+)</td>
</tr>
<tr>
<td>• Multiple dependency on employer</td>
<td>• Withholding of wages (+)</td>
</tr>
<tr>
<td>• Reduced freedom to terminate employment</td>
<td>• Isolation (+)</td>
</tr>
<tr>
<td>• No freedom to resign in accordance with legal agreements (+)</td>
<td>• Constant surveillance (+)</td>
</tr>
<tr>
<td>• Work for indeterminate period required to pay outstanding debt (+)</td>
<td>• Threat of employment ban (+)</td>
</tr>
<tr>
<td></td>
<td>• Financial penalties</td>
</tr>
<tr>
<td></td>
<td>• Physical violence (+)</td>
</tr>
<tr>
<td></td>
<td>• Punishment (+)</td>
</tr>
</tbody>
</table>

One strong and two medium indicators met. Two strong and one medium indicator at significant risk of being met.

Six strong and one medium indicator of forced labor met. Two strong indicators of forced labor at risk. Note withholding of wages was present at Al Reyami but not BK Gulf; BK Gulf but not Al Reyami workers were beaten.

Work conditions likely satisfy the definition of forced labor where one strong indicator satisfied for each element of forced labor definition, in context of significant risk of several other indicators also being present. Given the evidence presented here, indicators suggest work conditions likely satisfied definition of forced labor.

Key: ○ = not met, ◊ = at significant risk, ● = indicator met. (+) = strong indicator.

- **Physical violence.** BK Gulf workers faced slapping, beating, and tasing by police upon being arrested; many arrested working on the NYU project stated to media and to Nardello & Co. that they were not part of the strike.

- **Punishment.** As discussed above, Al Reyami workers were threatened with dismissal and deportation if they complained after strike.

### CONSTRUCTION CONTRACTS EXCLUDED FROM COMPLIANCE PROGRAM

- **Recruitment linked to debt.** It is reasonable to follow Nardello & Co. in this regard and adopt a presumption that all workers had paid recruitment costs and that a significant percentage did so by entering into debt unless there is affirmative proof from contractors that the employer did pay recruitment costs and fees.631

- **Withholding of wages.** When workers were excluded from the compliance program, they were not paid the wages required by the compliance program. Note this is distinct from whether even at the wages they were originally paid, workers also faced delayed payment or nonpayment. We do not know whether this occurred and so have marked the issue as at risk consistent with the underlying risk assessment.

- **Confiscation of identity or travel papers.** We do not know whether workers excluded from the compliance program had their passports held. However, it is likely they were in many cases. The practice is common in the UAE, as indicated by its occurrence among contractors that were covered by the compliance program.
Multiple dependency, isolation and surveillance. Workers who were not in the compliance program did not have any guarantee of adequate housing. Nardello & Co. interviewed 35 of the 10,000 workers they were able to access and found they described conditions that were “not ideal” but “better” than those cited in media reports, which reported rooms with no windows in which workers were housed nine or ten to a room or three to a stack, and where there were pests. It is unclear how the interviewees’ housing was “not ideal” or “better” than these reports; though as Nardello & Co. notes, the only conclusion to be drawn is that not all – meaning strictly fewer than 100% of workers – faced conditions in the media reports.

OPERATIONS

Recruitment linked to debt. It is reasonable to follow Nardello & Co. in this regard and adopt a presumption that all workers had paid recruitment costs and that a significant percentage did so by entering into debt unless there is affirmative proof from contractors that the employer did pay recruitment costs and fees. As discussed above, roughly 10% of operational workers had been reimbursed for recruitment costs and fees as of May 2014; 90% had not.

Confiscation of identity or travel appers. We note that the NYUAD compliance team does not appear to have identified a problem with the clear discrepancy between the 14 Points and Supplementary Specifications such that they resolved it. We do not know how they managed passports on the campus, though in his 2014 communication...
to NYU before the Nardello Report, Sexton stated that “all of our directly contracted employees hold their own passports;” it is not known whether this also included Tamkeen contracted employees and whether it was accurate.\(^{525}\)

**Multiple dependency, isolation and surveillance.** We do not know the exact locations at which operational workers were housed. Housing appears to have varied according to contractor; for example, some security guards were moved downtown, where they had much more opportunity to move freely than they did when at labor accommodation.

### 3.5 DUE DILIGENCE

Based on the analysis in Part 3, this assesses NYUAD conduct against the *Guiding Principles* guidance regarding due diligence. It shows a pattern of errors regarding due diligence. Note that interpretation of many of these standards is open to reasonable decision making – but the pattern of facts presented above, and the pattern of repeated noncompliance presented here, suggests that NYUAD falls below what might be considered to be reasonable achievement of the standards. Note that this is not a comprehensive account of what NYUAD did with regard to each of these points, but rather highlights areas of concern that suggest noncompliance.

#### \(\text{\textbf{\textcolor{red}{
\textbf{COMPLIANCE WITH LAWS}}}}\)

**Compliance with laws**

In implementation of the labor standards, evidence suggests Key Parties did not comply with applicable laws prohibiting forced labor and prohibiting retention of passports, among others; it is unknown whether NYUAD was auditing contractors for compliance with the legal
requirement in UAE law that employers pay recruitment costs and fees.

Conflicts
Given the apparent conflict in certain instances between certain human rights principles covered by the Guiding Principles (and arguably the NYU Code of Ethical Conduct) and UAE law, it would have been especially important for parties to ensure UAE law was followed to ensure fair treatment, including protection from forced labor conditions.

Legal compliance
Responsibility for the labor standards was lodged with the NYUAD Office of Compliance and Risk Management with apparent reporting power to NYU and NYUAD leadership, but it appears in certain instances, parties interpreted the labor standards contrary to law and as Nardello & Co. observed, NYUAD and Tamkeen overrelied on third parties.

Assessment of risk
If any risk assessment was made, it was not made public, though the ongoing pattern of errors, reliance on third parties and apparent error of laws calls into question whether such a risk assessment was one and whether it was adequate. In reporting on reforms, NYUAD stated that the NYUAD Office of Compliance and Risk Management “knows more about laborer population demographics (i.e. gender, which workers are most at-risk for abuse, etc.)” suggesting that such training or knowledge was not systematically established before May 2014.

Expertise
As discussed above, expertise on relevant laws and compliance with human rights in supply chains as a legal compliance issue either does not appear to be a skill that staff either brought to the project or — based on the pattern of conduct that occurred — that staff adequately informed themselves on from credible written sources and consultation with recognized experts.

Meaningful consultation
NYU has noted in the past that it met with concerned parties within NYU as well as certain NGOs.

It should be noted that despite NYU consultation, the UAE government, whose executive is led in part by the head of the Government of Abu Dhabi EAA, Sheikh Mohamed bin Zayed Al Nahyan, Crown Prince of Abu Dhabi and Deputy Supreme Commander of the UAE Armed Forces, banned or deported investigators who aimed to document conditions on Saadiyat Island — including the journalists who reported labor conditions at NYU. This plainly limited further access to information by stakeholders, limiting the ability to meaningfully consult.

Regional officers from Human Rights Watch and Amnesty were barred entry into the UAE after their as were several members of the Gulf Labor Coalition (Walid Raad, Ashok Sukumaran, and Guy Mannes-Abbott), a group of artists and writers who had been conducting and publishing field research in Abu Dhabi and Dubai labor camps. NYU professor Andrew Ross, who was part of the Gulf Labor group, was denied entry in March 2015 while en route to conduct labor research in Abu Dhabi. Because it affected an NYU faculty employee, the controversy over this incident raised many questions about the incapacity of NYU to protect the speech of its faculty and students, while it highlighted the power of the Abu Dhabi authorities to determine what kind of research would be impermissible. Several months after he co-authored the New York Times front-page story on labor abuses at the NYUAD campus, Sean O’Driscoll, a reporter on a Dubai weekly publication, was deported. In all of these instances, those targeted for exclusion were legitimate investigators conducting research on UAE labor conditions. Since these travel bans, no one—not even faculty and students based at NYUAD—has stepped forward to publish material directly based on on-site testimony about work standards in the UAE.

⚠️ POLICY THAT ELIMINATES THE RISK

Responsibility and expertise
The decisions to make labor standards were taken at the highest levels of NYU and there appear to have been certain lines of communication to the leadership of NYU. As discussed above, however, policy decisions do not appear to have been informed by relevant expertise.

Content
The labor standards did attempt to stipulate expectations of personnel, business partners, and other relevant parties. However, Key Parties do not appear to have
resolved apparent conflicts within the requirements that they wrote.

Scope
Policy did not ultimately cover impacts to NYU Abu Dhabi caused, contributed, or was directly linked through business relationships; Key Parties narrowed the scope of the compliance program to ultimately exclude an estimated third of the workforce.

Outcome
*Statement of Labor Values and 14 Points* would have mitigated impact consistent with prevailing practices and to the greatest degree possible, but labor standards as interpreted and implemented did not eliminate critical causes of forced labor.

Complexity
*Statement of Labor Values and 14 Points* were written at high level of generality, and their interpretation or implementation in practice on issues such as recruitment fees, passport retention, budgeting and contracting, and interpretations contrary to law were the result of policies that arguably were not designed at a level of complexity that matched a project of this size and risk.

Priorities
As discussed above, it is not clear that NYUAD ever conducted a risk analysis and identified areas of high risk. Furthermore, it was on issues most relevant to compliance with the prohibition in forced labor – passport retention and recruitment fees – on which Key Parties made errors of judgment, in part due to leaving critical decisions to parties that were not lawyers. Compliance successes on wages and housing were important for workers but were lower risk areas for compliance.

Implementation
Coherence between responsibility to respect human rights and relevant UAE laws and policies and procedures that governed business activities appears to have been attempted, but there are red flags concerning its adequacy. For example, it is unknown whether budgeting for the compliance project costs included recruitment costs and fees. Unless it expected contractors to pay such expenses, NYUAD knew or should have known that it would have had to include them to some extent in compliance packages in order to make good on its commitment that employers pay for or reimburse recruitment costs and fees and to be consistent with UAE law that all employers pay for recruitment.

Factual basis
As discussed, no evidence of an adequate risk or impact assessment. Therefore it is unknown whether the findings were incorporated across relevant internal functions and processes.

Timing
It appears parties did begin planning for compliance early — for example, agreeing to the labor standards before awarding construction subcontracts. However, the scope of compensation for recruitment costs and fees was changed between 2011 and 2014, strongly suggesting that estimated budgeting on recruitment costs and fees was not built into compliance packages that had been allotted at the outset and may not have been budgeted for adequately — if at all. Making a promise to reimburse roughly 30,000 workers for what would likely be up to several hundred dollars each in recruitment costs and fees if employers had not paid such costs and fees, in violation of UAE law, would have required appropriate budget planning. Failure to do so at all for recruitment costs and fees at the outset of the project would have plainly undermined the labor guideline from the beginning.

Internal communication
Nardello & Co. documented significant internal confusion over communication that resulted in significant errors, including the exclusion of a third of the construction workforce from the compliance program; we note also that NYUAD counsel does not appear to have caught several Mott MacDonald errors and discrepancies between the *Supplementary Specifications and 14 Points and Statement of Labor Values*. It is unknown whether there were internal policies and procedures that made clear the lines of communication and responsibility.
Expertise
See discussion of expertise regarding compliance with laws.

Relationship to enterprise risk management
NYU and NYUAD undertake enterprise risk management, a process that looks not only at potential legal violations but also broader risks that can be mitigated. It appears that the compliance program with regard to labor standards may have been built into ERM, but as discussed above, it does not appear that adequate risk assessment of risks to rights-holders was conducted.

⚠️ TRACKING IMPLEMENTATION

Tracking implementation
It is apparent that Key Parties were doing some tracking of compliance. Note that for operations, NYUAD has said that it was not monitoring whether workers actually were using certain entitlements, just that it had been granted them; in some cases, doing so was arguably essential for ensuring that persons were paid in accordance with laws.

Indicators
Nardello & Co. found monitors were confused about what they were monitoring, given the several contradictory or ambiguous standards that NYUAD and its partners wrote – making it impossible to have adequate indicators. Indicators used in the pre-May 2014 period are otherwise unknown.

Feedback
Tracking drew on feedback from several sources, including reporting from companies involved in construction of the site and from interviews with workers employed in operations. In construction, several grievance mechanisms at the contractor or subcontractor level were available. Note also that upon seeing media reports of labor violations, it appears from the Nardello Report that NYUAD and partners did attempt to rectify abuses, but it is unknown why they did not identify the loophole that had exempted an estimated third of the construction workforce from the compliance program.

⚠️ COMMUNICATION

Public access
The Supplementary Specifications were kept confidential from the public; having that document was essential to understanding the application of the labor standards and constituted part of the statement of policy regarding labor treatment in the construction, maintenance and operation of NYUAD.

External communication
NYUAD did commit to public reporting by Mott MacDonald.

Adequacy of communication
As Nardello & Co. repeatedly notes, external parties did not have adequate information to assess the adequacy of NYUAD’s response to the risk of forced labor. Though incomplete and inaccurate such that they could not be relied on to understand the adequacy of NYUAD’s responses, the form of Mott MacDonald reports, however limited, was of a form and frequency – an annual report – accessible to its audience. Because of the errors in its assessments, the Mott MacDonald reports did not accurately reflect the conditions at NYUAD, including the risk of forced labor.

⚠️ REMEDIATION

Grievance mechanisms
Workers had access to contractor, AF Carillion and UAE helplines or grievance mechanisms. It is unknown whether these were effective, according to the Guiding Principles.

Effective remedy
This is addressed below in Part 5.6 regarding remedy for forced labor at NYUAD.

Access to effective remedy
This is addressed below in Part 5.6 regarding remedy for forced labor at NYUAD.
4

KNOWN NYU ABU DHABI CONDUCT, MAY 2014 TO MAY 2018
Section 4, “Known NYU Abu Dhabi Conduct May 2014 to May 2018,” describes actions NYUAD has taken with regard to its compliance program since May 2014, based on the publicly available record.

This section is intended to depict NYUAD conduct in a period in which NYUAD was responding to media allegations of labor allegations and to the Nardello Report.

**OUTLINE**

In Part 4.1 Changes to Compliance Program and Standards, we review NYU reported changes to the compliance program that governs NYUAD and the new Supplier Code of Conduct, which replaces the previous labor standards.

In Part 4.2 Forced Labor Risk, we evaluate the current forced labor risk at NYUAD and find that based on the information available, the risk remains significant and below the risk if due diligence was enacted.

In Part 4.3 Due Diligence, we evaluate the changes that have occurred post-May 2014 against due diligence best practices.

In Part 4.4 Public Statements, we review several public NYUAD leadership and faculty statements and find certain statements are arguably inaccurate or only partly accurate.

In Part 4.5 Institutional Reporting, we outline all the reporting that has occurred through governance mechanisms at NYU and that is publicly available through meeting minutes.

In Part 4.6 Remedy, we explain the remediation process that NYUAD has taken to pay wages it still owed to workers and that NYUAD has not acknowledged or remedied the risk of forced labor having been used in its construction and operations.

**4.1 CHANGES TO COMPLIANCE PROGRAM AND STANDARDS**

**BACKGROUND: SAADIYAT OPERATIONS CONTRACTORS**

May 2014 marked the New York Times findings regarding NYUAD, but also marked the end of primary operations at the Interim Campus. Beginning in Fall 2014, NYUAD operated out of its new Saadiyat campus.

Currently the contracts are as follows: Serco for varied facilities management services, including IT and athletic facility staff but also cleaners, maintenance, landscaping, etc. (50%), ADNH for food services (21%), Securitas for security (19%), and another miscellaneous 10% comprised of Bright Beginnings Nursery for childcare, domestic workers, NYUAD staff and other unspecified workers.

Serco now provides the bulk of operational staff at NYUAD. In December 2010, Serco signed a preliminary services agreement with Mubadala Infrastructure, the subsidiary of Mubadala IC operating the NYUAD Saadiyat campus (as discussed below), for two sets of services: pre-operational services such as design
reviews, life-cycle optimization and procurement and operational development strategies, and full facilities management services for 25-years (apparently beginning in 2014, though unclear). Serco has significant business throughout the Middle East and UAE. Serco Middle East is self-described as “a leading provider of public services, supporting governments and others operating in the public sector,” and as “delivering essential services to customers on behalf of governments, semi-governments and large private corporations.” Serco ME operates in Transport (Dubai Metro, Saudi Arabian Railway), Aviation (Dubai Airports – world’s largest airport; busiest for international travel), Defense (appears to provide base support, including facilities management, to the UAE), healthcare (notably the Cleveland Clinic Abu Dhabi), and Integrated Facilities Management (Dubai Airports, NYUAD, UAE government departments).

It is unknown who between NYUAD and Tamkeen holds which contracts currently. In Summer 2014, NYUAD’s contracts with ADNH (catering) and Serco (facilities management, including maintenance, cleaning and landscaping) were transferred to Tamkeen, according to The Gazelle, the NYUAD student newspaper. However, by May 2015, it appears from the NYUAD chart of the compliance structure that NYUAD held the ADNH, Serco, Secuitas, Bright Beginnings and Magrudy’s (campus bookstore) contracts; NYUAD contracts appear to be marked in purple, Tamkeen contracts in green, and Mubadala contracts in navy.

REPORTED CHANGES TO THE COMPLIANCE PROGRAM

Several changes were made to the compliance program after May 2014.

Compliance structure

Beginning in July 2014 (third fiscal quarter of 2014), NYUAD changed compliance structures. All contracts are now monitored by the Labor Compliance Working
Part 4.1: Changes to Compliance Program and Standards

The entities presented in the chart above are explained before.

No information is available about each constituent entity’s mandate, their powers to achieve that mandate, (both within NYUAD and with regard to contractors), their day to day roles, their qualifications, or their decision-making procedures, and the relevant relationship between them.

This information is essential because a lack of communication, transparency and accountability may occur in any organization in which there are not well established and transparent mandates, goals, and decision-making procedures and powers. Consolidation into one group likely makes communication clearer – but it also makes the relationship between the relevant subsidiary of the Government of Abu Dhabi – Tamkeen – and NYUAD with regard to labor compliance totally opaque. For NYUAD and Tamkeen, Tamkeen, a subsidiary of an entity of the Government of Abu Dhabi, to be making compliance decisions on labor without decision-making processes with a institutional or structural basis of transparency, accountability or independence is concerning.

Labor Compliance Working Group

The Labor Compliance Working Group has two members of the NYUAD compliance team, two Tamkeen government partners, and one NYUAD faculty member. As shown in the chart above, the Labor Compliance Working Group reports to the University Affairs Leadership Group. It is unknown why it is considered appropriate to have a faculty member on a compliance committee, when there are no faculty at NYUAD with any relevant professional expertise with regard to labor, civil, or human rights compliance programs.

University Affairs Senior Leadership Group

The University Affairs Senior Leadership Group, comprised of the Vice Chancellor and Provost of NYUAD...
and the CEO of Tamkeen, to which the two advisory committees also have reported.569

NYUAD Audit Committee

There is no public information available about the makeup of the NYUAD audit committee.570

Faculty Advisory Committee and Taskforce on Adult Education

In Fall 2014, the Faculty Advisory Committee on Labor and Social Responsibility was announced. According to their description when first announced October 21, 2014:

The advisory committee will review and provide advice and recommendations to the Vice Chancellor and Provost with regard to working and living conditions and social welfare of contract staff, in addition to providing general advice on social responsibility. The committee is also charged with reviewing existing programmatic efforts and making recommendations within appropriate financial parameters on academic programming in the area of labor, migration and human rights. The committee will provide regular updates to the Faculty Council Steering Committee and Faculty Council.646

The Advisory Committee had advisory powers with the Vice Chancellor and Provost.647 The Faculty Advisory Committee was comprised on faculty members and also had all members of the compliance group sitting on it as non-voting members.648 As mentioned above, it is unknown why faculty with no professional expertise in the substantive areas of law or compliance in supply chains were considered appropriate consultants.

In Spring 2015, the Faculty Advisory Committee on Labor and Social Responsibility filed a final report, which was not publicly released but which was reported on to the Faculty Committee for the GNU on May 14, 2015 to the Faculty Advisory Committee on the GNU.649 Justin Stearns, Associate Professor of Arab Crossroads Studies (history) and Ramesh Jagannathan, Professor of Practice in Chemical and Biological Engineering, served as co-chairs of the committee, and Stearns gave the final report.

Stearns reported that the committee had made several recommendations. First, that the compliance team grow because the population NYUAD was now four times larger than it had been. Second, that there be a welfare initiative for domestic and contracted workers. Third, that there be a legal clinic for workers, which was still in the idea phase but which one committee member suggested NYU Law might be interested in being involved with. Fourth, that the English in the Workplace program be increased and strengthened. Fifth, the report also highlighted the importance of the role of Director of Social Responsibility, which had apparently been proposed. Sixth, according to the minutes Stearns mentioned the committee had “some ideas about the complicated problem of compensating workers for recruitment fees.”650

By Spring 2016, according to to Stearns’ report to the Faculty Advisory Committee on the GNU April 20, 2016, faculty concerns [had] changed “with the decrease in worker numbers.”651 The faculty are now more concerned with domestic workers and “structural labor issues.”652 He stated, “The Faculty Advisory Committee on Labor and Social Responsibility view themselves as a vehicle for sharing information between faculty on compliance; they have evolved from a body that produced a report to being an information intermediary.”653

Task Force on Adult Education and Domestic Employment Initiative

The Task Force on Adult Education and Domestic Employment Initiative was established immediately post-Times to “provide a strategic plan to deliver the appropriate adult education for contract staff brought to NYUAD through independent contractors. The task force will address needs, goals, selection process, and a number of students over a five-year period. Beyond a statement of strategic goals, the task force will develop an operational plan that balances resources with those strategic goals.”654 The Task Force appears to have been dissolved at the end of 2016.655 The co-chairs were Carol Brandt, Associate Vice Chancellor for Global Education and Outreach, and Cyrus Patell, Professor of Literature at NYUAD and Professor of English at NYU.656 The Domestic Employment Initiative sits within the Office of Compliance and according to the report to the GNU Faculty Committee on October 21, 2014, would establish standards that “specify living and working conditions for domestic workers based on guidelines from Human Rights Watch and other organizations, as well as guidelines provided by the US State Department to their own employees who employ domestic workers in the Middle East.”657 As discussed in Part 2, while work on adult education is an excellent
considered other firms for the position. At minimum, there were other qualified candidates. For example, in the past several years, the firm Verité has become a leader in monitoring supply chains with forced labor; it has worked with Patagonia to roll out industry leading Migrant Worker Employment Standards (that include industry standard employer pays requirements without the reimbursement provisions that NYUAD has), assessed forced labor in Nestle’s supply chain, and is a part of the multi-stakeholder Leadership Group for Responsible Recruitment, which is a group of multinationals, international organizations and NGOs working to promote best practices regarding recruitment. However, Impactt has been hired elsewhere in the Gulf. The State of Qatar’s Supreme Committee for Delivery & Legacy appointed Impactt to be the independent auditor for labor standards on construction sites involved in the Qatar 2022 FIFA World Cup. Impactt authors the Annual External Compliance Report of the Supreme Committee for Delivery & Legacy’s Workers’ Welfare Standards. While Impactt does have staff with experience auditing forced labor in the GCC, its contract with another sovereign state subsidiary with clear positions on labor that may differ from this client, another sovereign state subsidiary, could cause it to take contradictory stances. At least the risk of such a situation – and the comparative strengths of Impactt compared to competitors, like Verité, should have been taken into account. It is unclear whether they were.

As reported in meeting minutes, the Office “meets regularly with workers to inform them of their rights. These interviews are structured so that workers know that they are protected by the University’s policies, and can speak freely” and are increasingly conducted in workers’ native language. It is not clear if or how the University was informing workers who spoke no or very little English of their rights prior to this practice. The Office “meets regularly with suppliers about the results of compliance monitoring to deliver good and bad feedback.” The Office increased unplanned interviews with supervisors as well.

One component of monitoring to which NYUAD committed after the New York Times was an independent monitor. It was announced in May 2015 in the slide shown in Figure 6 that there would an annual public labor compliance report. NYUAD did not renew the contract for Mott MacDonald and appointed Impactt as the third-party monitor for the project, which began work June 14, 2015.

According to Figure 6, Impactt, as the independent monitor, would have been hired to provide quarterly external audits, provide advisory service, and produce a public annual compliance monitoring report.

There are three concerning points about the appointment of Impactt.

First, it is unknown how Impactt was selected. Impactt is an “ethical trade consultancy” that works on supply chain compliance. It is not known whether NYUAD initiative for NYUAD to undertake, it is not part of and does not mitigate obligation to comply with relevant laws.
Finally, while an independent monitor may provide some advisory services, it is essential that there be adequate expertise among full time compliance personnel as well.

THE SUPPLIER CODE OF CONDUCT AND STANDARDS FOR MONITORING

The Supplier Code of Conduct

The Supplier Code of Conduct was released in October 2016. It is a document with 26 points A to Z, which are paraphrased below. The Code states, “NYUAD and its government partner will ensure that each service provider and contractor whose employees work at the NYUAD campus is contractually obligated to comply” with the Supplier Code of Conduct; “all service providers and contractors who work at the NYUAD campus will be required to ensure that any subcontractors they engage to work on the NYUAD campus will also be contractually obligated to comply with this Supplier Code of Conduct.”

Below we have compared the Supplier Code of Conduct to UAE law, noted differences, and identified concerns. Concerns about the provision on recruitment are in the sidebar at right.

A. Employment contracts. UAE LAW+ requirement of written translation in native language if employee cannot read Arabic or English; documentation of higher NYUAD wage rate, and provision of SCC to each employee in a language they understand prior to starting work on the NYUAD Campus. Note that the latter provision was added only after the Coalition for Fair Labor, a student faculty group, suggested the same.

B. Wages. UAE LAW+ guarantee of reasonable payment and payslip receipt.

C. Working hours. UAE LAW+ employer must give permission to participate in NYUAD adult education and other programing so long as it does not interfere with work hours.

D. Overtime compensation. UAE LAW+ overtime must be worked voluntarily. No definition provided for “voluntary” overtime.

E. Paid annual leave, holidays and air travel. UAE LAW

F. Health insurance. UAE LAW

G. Paid sick leave. UAE LAW

H. End of service payments. UAE LAW+ end-of-service payment made no later than Employee contract termination date.

I. Accommodation. UAE LAW+ NYUAD reserves right of inspection, lockbox for personal items, and requirement accommodation provide “a suitable living environment for Employees, which ensures structural safety and reasonable levels of decency, hygiene, and comfort.” The latter requirement refers to the ILO Workers’ Housing Recommendation, 1961 (No. 115) and pulls from a paragraph recommending the competent state authority enact minimum housing standards and positing the quoted language as a “general principle.” According to this Recommendation, general principles are supposed to be guided by accompanying suggestions in the Recommendation, which provides several recommendations about housing standards which are not incorporated at all into the SCC – including relevant areas such as water, sanitation and privacy and raises concerns and highlights the particular need to comply with human rights in the event of employer-provided housing, which is also an overarching component of the recommendation.

J. Transportation. NYUAD standard. Requires employer provides transportation at reasonable safety, comfort, and licensing – or an appropriate transportation allowance if transportation is not provided.

K. Personal documents. Employer will reserve right of Employees to retain their own personal documents and will not retain such documents except for the purpose of obtaining, renewing or cancelling residency visas, and “UAE Law prohibits the seizure of any individual’s passport without a judicial order.” We did not see the word “seizure” in the relevant law on passports, but this is consistent with the circular discussed above that prohibits detaining a passport without
judicial order. Note also this section should be read with the provision of lockboxes to employees to hold their passports. It is worth noting that there is a reading of this language that could allow employers to retain passports for extended periods of time, for the purpose of obtaining, renewing, and cancelling visas generally – which is the oft-given reason that employers give for retaining visas in the first place. This could be limited by reading the “purpose” to inherently require limited detention of a passport, and for any detention of a passport beyond a reasonable time to be prima facie for a purpose contrary to the contract. Furthermore, the provision of lockboxes suggests that employees are holding their passports. However, as it stands the language as it stands in the contract does remain open to two reasonable interpretations in the contract, but only one that is consistent with the remainder of the SCC, including the prohibition of forced labor, and with UAE law.

L. Hiring practices. The SCC has the following thirteen points on hiring practices, and we provide our comments in the sidebar.

- Prohibition on employers charging “any recruitment, processing or placement fees” to Employees;
- If recruitment from outside UAE – ensuring contracts reflect job letter terms employee receives prior to arrival.
- If use of a recruitment agency for hiring employees – employer must disclose.
- If use of a recruitment agency to hire employees for the NYUAD site or to increase overall workforce size – must disclose (number of anticipated employees to be recruited, skills, countries anticipated, recruitment strategy, disclose name of recruitment agency, provide copy of recruitment agreement to NYUAD); must use “bona fide and appropriately licensed” agencies; require in text of agreement with Agency that agency comply with UAE law and local country law, that agency will not charge recruited persons for “any costs” or “any fees for … recruitment services,” that agency will notify prospective employees in writing of reimbursement provisions contained in Supplier Code of Conduct, that Employer reserves right to reimburse employees for “costs and fees” charged by the Agency and to recoup from the Agency; that Agency will use only “bona fide” employees and not independent agents; not receive any compensation from recruitment agencies.
- Employer must pay for “services” of any recruitment agency; NYUAD reserves right to examine documentation of payment or other related documentation upon request, to ensure “employees have not borne recruitment costs and fees, directly or indirectly.”
- Employer will reimburse “any costs or fees” paid by Employees associated with recruitment and/or hiring if they were incurred within twelve months of the employee starting work at NYUAD and the employee provides suitable documentation. If an employee reports that they have paid such recruitment costs or fees but is unable to provide suitable documentation, then it will be considered.
- “Recruitment costs and fees to be reimbursed by the Employer include, but are not limited to: a) any government-imposed fees such as taxes, insurance, and entry/exit fees, b) fees relating to visas or required medical examinations, c) fees for government-mandated IDs, d) costs for use of Recruitment Agencies, e) travel costs from home country to the UAE.”
- Employer will not deduct Employee remuneration for reimbursements.
- Once contract finalized between employer and NYUAD, employer will not charge NYUAD for costs of reimbursement payments to Employees.
- When the hiring process begins, Employer will notify prospective employees of reimbursement provisions in a language that prospective employee understands.
- If extended delay in employer payment to an employee owed reimbursement, NYUAD reserves the right to reimburse the employee to directly and to deduct such payment.
from contractual payments to the employer correspondingly.

Employer shall not ask or require an employee to waive their right to reimbursement of costs or fees or to sign or certify they have not paid any.

If any Employee fails the legally required medical examination to reside in the UAE, and accordingly must return to their country of origin, Employer will provide an airplane ticket to the closest airport to the Employee's home city in his or her country of origin.

M. **Health and safety** (includes workplace safety, food safety and quality, and general hygiene and healthy working conditions). **UAE LAW**

Employer obligation to participate in required NYUAD Environmental Health and Safety training programs, employer obligation to prepare a health and safety manual, employer obligation to maintain records of health inspections and food quality controls upon request, requirement that employer-provided meals be nutritious. Note that the relevant UAE law only states “prepare a place for eating food at the times when it is forbidden for the worker to eat food at the work place” which are times when work requires use or handling of poisonous or harmful substances, when workers are exposed to harmful radiations, and when workers are exposed to the contamination of visible parts of the body.683

N. **Reporting system for employee grievances.**

Employer and NYUAD will both provide means for grievances to be lodged with each anonymously. Employer will cooperate with NYUAD to ensure employee awareness of the submission process and that NYUAD or designee is able to fully investigate submitted grievances. Retaliation is prohibited. Access to such remedy does not impede or exclude other remedies, including judicial or administrative under UAE law.

O. **Resolution of work disputes.** **UAE LAW**

Employer must notify NYUAD of any labor dispute with employees, including steps taken by employer to resolve dispute.

P. **Respect, dignity, and protection from harassment or abuse.** “NYUAD is committed to a policy of equal treatment to ensure that those working for the University – either directly or indirectly – are treated with dignity and respect. The Employer is therefore expected to treat its Employees humanely and with respect and dignity, pursuant to the New York University Code of Ethical Conduct.” Employer will ensure working environment free from harassment; Employer is prohibited from threatening Employees, and Employer expected to protect Employees from “abuse, violence, harassment or intimidation” from other Employees.

Q. **Non-discrimination and equal opportunity.**

Equal pay for equal work; no discrimination in employment pursuant to NYU Code of Ethical Conduct, and employer will ensure equal employment opportunities, pursuant to NYU Code of Ethical Conduct.

R. **Women’s rights.** **UAE LAW** equal pay, treatment, opportunity and benefits, certain pregnancy accommodations, prohibited pregnancy test as condition of employment or coercion to use contraception.

S. **Prohibition of forced labor and of child labor.** **UAE LAW** no additional work as punishment, no employment bans, and minimum age of work as 18. Note that this states no employer may put an employment ban on a worker, but that does not preclude an employment ban being implemented by the UAE.

T. **Employment records.**

Employer will keep records as required by **UAE LAW** enumerates list of records required (human resources, health and safety, accommodation or other housing related records, payroll, details about subcontractors).

U. **Access to employer manuals, policies and procedures.** Employer will provide employees access to all relevant employer manuals, policies and procedures; NYUAD will be provided with copies of such documents upon request.

V. **Reporting and monitoring.** Employer provides monthly reports certifying compliance and with supporting evidence; NYUAD will conduct periodic audits and inspect accommodation and interview employees; employee interviews “will be conducted in an environment that encourages free and open dialogue without fear of reprisal,” employer must permit each interview to be conducted in accordance with requirements of
entity doing interview, and employer will not in any manner discipline workers who cooperate in good faith.

W. **Use of subcontractors.** Employer will notify NYUAD in writing before signing agreement with subcontractor, ensure all subcontractors comply, and include as an express term in the contract compliance with the SCC, required record keeping as in T and reporting and audit rights as in V, entitlement for employer at NYUAD request to terminate agreement, require subcontractor to remove or replace subcontractor employees where performance not in compliance with *Supplier Code of Conduct*, after employer gives one month notice of such noncompliance. Employer not entitled to any relief or fee as a result of such termination or replacement. All requirement and obligations in SCC between employers and subcontractors to be interpreted to apply down the supply chain.

X. **Amendments.** NYUAD reserves right to amend at any time, and exemptions for Employer must be approved in advance in writing by NYUAD and will only apply in limited circumstances.

Y. **Compliance with laws.** Employer will comply with all applicable requirements under UAE law in connection to work on the NYUAD campus; UAE law only for reference purposes, and UAE law prevails in event of conflict with SCC.

Z. **Remedies.** NYUAD will notify Employer if any monthly report or inspection reveals noncompliance with SCC; employer must take “immediate steps to remedy,” and in the event of non-remedy, NYUAD reserves right to require compliance, withhold or deduct future payments in amount equal total amount paid by NYUAD for remedy, in event of repeated or deliberate noncompliance, increased frequency of monitoring and auditing and to deduct costs from monitoring/auditing from contract amount, to immediately terminate underlying agreement, seek any other remedy or penalty pursuant to UAE law or other applicable authority as otherwise determined at discretion of NYUAD.

**Monitoring standards**

The *Supplier Code of Conduct* requires reporting from employers that they are in compliance with the *Supplier
NYUAD because they were recruited from a UAE recruitment agency. However, just because such workers were recruited from inside the UAE does not mean that they did not at some point pay recruitment fees, leaving them with recruitment related debt.

» Arbitrariness: No companies facing forced labor risks and taking due diligence consistent with best practices have implemented a policy that makes reference to the time frame in which the employee is recruited. It is possible that such a principle's twelve-month cutoff makes reference to the point at which it might be expected that a noncitizen has had a chance to pay off debts such that they are not in significant debt, but it is hard to make such a justification given the variety of different loan arrangements, and interest rates, at which a noncitizen might have taken out a loan. This policy appears to be singular among multinationals addressing this issue and does not appear to be based on a legally relevant policy consideration given the significant increase in the risk of forced labor presents to those not eligible for compensation.

» Incentives: Unless employers face responsibility for reimbursing recruitment costs and fees if employees are found to have paid them, there is no incentive other than low risk of government enforcement for employers to ensure that they follow UAE law and pay recruitment fees – or to contract with labor supply firms who are following UAE law and paying recruitment fees.

» Self-reporting. It is unclear whether NYUAD is relying on workers to come forward and ask for recruitment fees to be paid or whether NYUAD is actively auditing.

» Presumptions. If workers have paid recruitment fees, then that leads to a reasonable presumption either that the employer did not pay the agency or the agency improperly charged workers or did not otherwise regulate the recruitment process, which would in some circumstances be a violation of UAE law. Does NYUAD conduct

**Code of Conduct**, using forms provided by NYUAD and provided for in the SCC. These forms are not public.

The Office of Compliance has reported the methodology for monitoring is "based primarily on past precedent and the Social Accountability International Standard." This is concerning for several reasons:

1. It is unknown what metrics were used in the past to implement the old labor standards but given the pattern of repeated errors with regard to the interpretation of those Guidelines, it is essential that there be transparency about what metrics are being used and have been borrowed from the past.

2. The Social Accountability International Standard for workers' rights is the SA8000. SAI is a private auditing organization that certifies companies for compliance with its standards. SAI is widely used – though in many major projects that are certified SA8000 or use SA8000, blatant abuses occur because of improper implementation of the standard, which are based on the UN Declaration of Human Rights, ILO conventions and international human rights norms and require compliance with all relevant laws.

3. If NYUAD is using the SA8000 as a reference, it is unclear on which areas, given that on forced labor, it does not appear to be following the provision. The SA8000 recommendations regarding forced labor, as discussed above, are not met on the NYUAD project. The SA8000 adopts the ILO definition of forced labor and requires "the organization shall ensure that no employment fees or costs are borne in whole or in part by workers."

4. It is also worth noting that the SA8000 requires that organizations comply with all applicable laws, "prevailing industry standards," and the ILO conventions against forced labor – and stipulates that when there are several divergent standards on a given issue, the one most favorable to workers shall apply. The SA8000 also has standards for due diligence that includes identifying potential risks in selecting suppliers and adequately addressing those risks.
4.2 FORCED LABOR RISK

Below we present the forced labor analyses for current operations, based on available information. This risk may not materialize for all workers, but for certain sectors that are at particularly high risk already or for whom the SCC does not provide certain entitlements.

Where there has been a material change in the relevant rule compared to UAE law or the former labor standards, they are discussed below. Otherwise, the indicators default to the level of underlying risk, described in Part 1.

Recruitment

The primary relevant distinction the SCC makes among workers at NYUAD is between those hired within or who bore recruitment costs within twelve months of being recruited to the UAE and those who are not. 693 For all workers, NYUAD requires that employers pay for recruitment, consistent with UAE law (though what exactly they have to pay for unknown). 694 However, NYUAD reimburses recruitment fees for hired within twelve months of being recruited to the UAE, but not for those who have not been so recruited. Note that this rule was created in early 2014, before the Nardello Report. 695

For employees recruited within twelve months of beginning work at NYUAD, there is a guarantee of payment – but it is unknown whether NYUAD is actively auditing recruitment debt among such workers thus actively ensuring that the employer pays principle is being carried out and workers have not paid recruitment related costs and fees. The alternative is that NYUAD is relying on workers who have paid recruitment fees to come forward and seek reimbursement. It is anticipated that if the “employer pays” principle has been enacted to cover all costs and fees, then the number of workers who have paid recruitment fees would be lower – but that is an open question because of the language of the SCC, which require employers pay “services” not “costs and fees.” Nevertheless, that NYUAD have procedures in place that involve actively auditing recruitment debt and ensure no worker has recruitment debt is essential to ensure that there is a policy that materially mitigate the risk of forced labor.

For employees recruited more than twelve months before beginning work at NYUAD, there is no NYUAD or employer obligation that they will have recruitment debt paid back. Their risk of having incurred debt is lower inquiries into the employer if workers state they have paid recruitment fees?

Cost burdens. NYUAD puts the burden on paying for recruitment on the employer, but reserves the right to pay in the event of extreme delay. This creates the right incentives, but read together with the limit on paying back recruitment fees for those hired within twelve months of starting on the campus, it also provides perspective on a potential choice about cost bearing. NYUAD works with contractors to supply significant numbers of employees; in those instances, it has an ongoing relationship and can work with employers to ensure they regulate recruitment at the outset and then that they reimburse recruitment costs and fees after the fact. An ongoing relationship with NYUAD and these contractual requirements makes it more likely these employers will pay, limiting cases in which an employer unduly delays reimbursement and NYUAD might make use of its privilege to pay workers directly and indemnify contractors. However, for employees not recruited specifically for the NYUAD campus, NYUAD only requires that they disclose future recruitment, and then that they only give the name of the agency; such smaller suppliers might have a more limited relationship with NYUAD, and the relationship between them with regard to recruitment fees may be more adversarial. However, in such instance, NYUAD could still be doing its own audits and paying back recruitment fees and indemnifying these contractors or subcontractors, if it was willing to bear more up-front costs.

Retroactivity. The Supplier Code of Conduct was published in October 2016; according to the Office of Compliance, in early 2014 a new Supplier Code of Conduct was put into place, though never published. 831 Did the recruitment fees provision operate retroactively to cover employees then-present on the campus, or did it only apply to new hires?

Lack of clarity. NYUAD requires that recruitment agreements between recruitment agencies and employers hiring for NYUAD
because of the “employer pays” principle – in theory, as discussed above – having been enacted at NYUAD. However, it is important to note that there is no policy in place for having any reliable information to know whether or not such workers are in recruitment debt and a policy for rectification if they are.

Raza observed that ADNH dining services workers – roughly 280 of the 800 total contract staff at NYUAD, were hired within the UAE and had not paid recruitment fees for the UAE job; however, that does not mean that they had not paid recruitment fees to secure work in the UAE. In order to address the risk of recruitment debt, NYUAD would need to ensure that the entity from which ADNH hired workers paid recruitment costs and fees and that none of the workers hired paid recruitment costs and fees.

### 4.3 DUE DILIGENCE

Below, we assess the current status of due diligence at NYUAD with regard to forced labor. As above, a check mark indicates compliance, and a warning sign indicates noncompliance.
COMPLIANCE WITH LAWS

Compliance with laws
Under new Supplier Code of Conduct, NYUAD continues to operate with an ongoing and risk of forced labor arguably higher than that required by due diligence consistent with best practices.

Conflicts
Given the apparent conflict in certain instances between certain human rights principles covered by the Guiding Principles (and arguably the NYU Code of Ethical Conduct) and UAE law, it remains especially important for parties to ensure UAE law was followed to ensure fair treatment, including protection from forced labor conditions, knowledge of legal rights and protection of due process as required by statute.

Legal compliance
As before, responsibility for the labor standards was lodged with the NYUAD Office of Compliance and Risk Management with apparent reporting power to NYU and NYUAD leadership. However, concerns raised in this report highlight that NYUAD policies remain short of mitigating the risk of forced labor to the extent possible consistent with best practices, as would be expected in treating the relevant risks as an issue of legal compliance.

Assessment of risk
As before, if any risk assessment was made, it was not made public, though the ongoing pattern of errors, reliance on third parties and apparent error of laws calls into question whether such a risk assessment was one and whether it was adequate. As of December 2016, NYUAD publicly claimed that the operational campus had a “much lower risk profile” than during construction. It did not state what risk was in question or how it reached that conclusion. It is notable that although there are fewer workers now employed at NYUAD, there remain workers employed in maintenance, landscaping, cleaning etc. who are at the highest risk level in the UAE. Though the risks of forced labor may be lower overall for NYUAD, they are not low, and need to be identified, mitigated through policy and tracked consistent with obligations of due diligence.

Expertise
As discussed above, expertise on relevant laws and compliance with human rights in supply chains as a legal compliance issue either does not appear to be a skill that staff either brought to the project or — based on the pattern of conduct that occurred — that staff adequately informed themselves on from credible written sources and consultation with recognized experts. Leadership and many staff in the NYUAD Office of Compliance and Risk Management remained the same both before and after May 2014; new staff include Tamkeen's new head of compliance. It is critical that where such expertise has been consulted it was actually used to inform policy consistent with obligations to mitigate risks to the greatest extent possible consistent with best practice; knowing about best practices but then failing to implement them would raise serious concerns.

The NYUAD Office of Compliance and Risk Management has worked with Impactt as an advisor, which arguably has some relevant expertise, though it is unclear whether that expertise is legal and whether it is adequate to effectively consult and exercise due diligence on the NYUAD project.

Meaningful consultation
NYUAD now has a grievance mechanism through which workers can directly lodge complaints, and requires employers to do the same. With regard to consultation with NYU, as discussed below, NYUAD has publicly reported to faculty committees, though some may have exclusively academic mandates. NYUAD has also met with Coalition for Fair Labor regarding labor conditions. This resulted in NYUAD reconsidering its initial decision not to conduct public reporting about compliance at NYUAD, and also resulted in NYU and Tamkeen informing workers of their rights by providing workers copies of the Supplier Code of Conduct.

POLICY THAT ELIMINATES THE RISK

Responsibility and expertise
As before, decisions about labor standards, now the Supplier Code of Conduct, appear to have been reviewed by relevant leadership at NYU, NYUAD and there appear to be lines of reporting about compliance to the leadership of NYUAD. As discussed above, however, policy decisions do not appear to have been adequately informed by an
assessment of risk or standard or best practices of due diligence regarding forced labor.

Content
As before, labor standards, now the Supplier Code of Conduct, do attempt to stipulate expectations of personnel, business partners, and other relevant parties. However, as discussed above there are several concerns about the Supplier Code of Conduct, which contains ambiguities on points that are essential to its implementation, making expectations of relevant parties unclear.

Outcome
NYUAD policy on recruitment fee reimbursement does not mitigate the risk of forced labor to the greatest extent possible. NYUAD has not publicly provided any legally relevant reason that it cannot implement a policy of reimbursement for workers who have paid recruitment fees consistent with prevailing practice among entities exercising due diligence with regard to forced labor risks in their supply chains.

Scope
The Supplier Code of Conduct now covers all contractors and subcontractors in the supply chain. However, while it requires that all employers cover the costs of recruitment, it does not reimburse all employees who have been found to have paid recruitment fees – contrary to prevailing industry practice. This policy arbitrarily excludes significant groups of workers from protection from recruitment debt. As discussed above, if a worker has paid recruitment fees, that means either that the employer failed to pay or that they failed to exercise control over a recruitment agency such that they complied with UAE law requiring that no workers pay recruitment fees. If a contractor recruited from within the UAE, then they should similarly bear responsibility for ensuring that they use a hiring agency that complied with UAE law when they recruited workers. For NYUAD to fail to require reimbursement for a worker who has paid recruitment fees means that such potential bad acts by employers go unremedied, while workers bear the cost.

Complexity
The complexity of employer reporting required under the Supplier Code of Conduct is unknown, as are the indicators used to measure compliance. As discussed above, details essential to the application of the Supplier Code of Conduct are not specified.

Priorities
As before, absence of a formal risk analysis calls into question whether NYUAD has an adequate basis to make compliance priorities with regard to contracted labor; however, forced labor has been and remains the most significant compliance risk. The Supplier Code of Conduct now has clearer policy on retention of passports and other personal documents its policy on recruitment fees has been built out significantly. However, as discussed, on this area of highest priority, the Supplier Code of Conduct falls short of mitigating the risk of forced labor to the greatest degree possible consistent with prevailing practice.

IMPLEMENTATION
Beyond the SCC itself, NYUAD has disclosed that it “informs employers of their responsibilities under the SCC, interviews workers, inspects employer provided accommodations, and works with employers to promptly rectify instances of noncompliance. In addition, the University maintains a 24/7 reporting line in which members of the community, including contract workers, are able to confidentially report any compliance related concerns.” Whether NYUAD has taken further steps to bring their responsibility to respect human rights into the policies and procedures that govern their business activities and relationship, such as through auditing compliance with laws among contractors or building certain standards into choosing its contractors, is unknown.

Factual basis
As before, no evidence of an adequate risk or impact assessment; therefore it is unknown whether the findings were incorporated across relevant internal functions and processes.

Timing
Though the new Supplier Code of Conduct was published in October 2016, it is unclear whether and how the policy relates to past policy and to contracts that were already underway at the time of publication.
**Internal communication**

Known what internal lines and systems of accountability have been established in the new compliance structure.

**Expertise**

As before, see discussion of expertise regarding compliance with laws.

**Relationship to enterprise risk management**

As before, NYU and NYUAD undertake enterprise risk management, a process that looks not only at potential legal violations but also broader risks that can be mitigated. It appears that the compliance program with may have been built into ERM, but as discussed above, it does not appear that adequate risk assessment of risks to rights-holders was conducted.

**TRACKING IMPLEMENTATION**

**Tracking implementation**

NYUAD abandoned its original plans to release public annual compliance reports regarding compliance with relevant labor standards. NYUAD decided to publish an annual report in Fall 2016 after the Coalition for Fair Labor raised concerns about NYUAD abandoning such plans. At that time, NYUAD announced that such a report would be released in Spring 2017. In March 2018 such report had still not been released and NYUAD stated reports of the previous two years (which would appear to be AY 2016-2017 and AY 2017-2018) would be released shortly. Note the last public monitoring report appears to have covered through January 2014, and there appears to be no plans to provide public reporting on 2014, 2015 or part of 2016. Given the reversals and delays, it is unknown whether and how NYUAD has been tracking implementation.

**Indicators**

As discussed, the only public information about indicators is that the indicators being used are based on “past precedent” and the SA8000; analysis in this report raises concerns about the adequacy of indicators used.

**Feedback**

NYUAD appears to be tracking based on feedback from internal sources, such as employers and workers interviewed.

**COMMUNICATION**

**Public access**

The Supplier Code of Conduct is publicly available, though the required forms for reporting by companies and the indicators NYUAD is using to measure compliance are not. Note NYUAD has referenced another supplier code of conduct that was written in early 2014 which was never released.

**External communication**

Though public reporting has been significantly delayed, some information has been released to the public through meeting minutes of reports to faculty committees at NYU and through information disclosed to the Coalition for Fair Labor.

**Adequacy of communication**

Currently, communication is not adequate to fully evaluate the adequacy of NYUAD’s response to risks and is not of a form and frequency that provides information to do so. As discussed, public reporting is two years late.

**REMEDIATION**

**Grievance mechanisms**

As discussed above, NYUAD has created a new mechanism; compliance with Guiding Principles requirements of effectiveness is unknown.

**Effective remedy**

This is addressed below in Part 5.6 regarding remedy for forced labor at NYUAD.

**Access to effective remedy**

This is addressed below in Part 5.6 regarding remedy for forced labor at NYUAD.
4.4 PUBLIC STATEMENTS

This section reviews public statements made by NYU and NYUAD faculty and leadership about labor at NYUAD. Several statements are arguably false. Each bullet point presents the quote, and the subpoint provides analysis.

INTERVIEW FROM AL BLOOM, IN NYUAD STUDENT NEWSPAPER, MARCH 25, 2014

Just before the New York Times story – but after several other media reports of abuse – Vice Chancellor Al Bloom gave an interview to The Gazelle, the NYUAD student newspaper, published March 15, 2014.\(^698\) Bloom made the following remarks.

» I view instituting both the statement of values and our approaches to compliance as quite remarkable joint accomplishments of NYU Abu Dhabi and our partners. They model how to create and enforce expectations of fair and humane treatment. And in fact, our labor values and compliance approaches have been hailed as important advances in ensuring the kinds of conditions and the kind of respect employers have the responsibility to provide.”

⚠ Arguably false. As discussed in Part 4, the labor compliance program at the time of Bloom’s comments were not consistent with best practices for implementing due diligence for human rights. We have no evidence that supports Bloom’s statement that “they model how to create and enforce expectations of fair and humane treatment.”

» The “labor values and compliance approaches have been hailed.”

⊙ Partly true. The only public evidence we have of such praise is the Human Rights Watch statement of February 3, 2010 in response to the announcement of the Statement of Labor Values. The statement corroborates Bloom’s claim that the labor standards had been hailed.\(^699\) The statement notes that the standards are “a significant step towards protecting migrant workers” at New York University Abu Dhabi. However, the compliance approach was not publicly hailed. The Human Rights Watch statement also stated Human Rights Watch was “concerned” about the absence of clear provisions for independent third-party monitoring and the legal recourse that New York University Abu Dhabi would have in the event of a breach by a contractor employing workers on the project.\(^700\) Both issues were eventually resolved on paper, but not in practice. Though an independent third-party monitor was appointed – Mott MacDonald – it is not clear that they were an appropriate appointment – as discussed extensively in this report; options in the event of breach for New York University Abu Dhabi, as Nardello & Co. eventually found, existed on paper but were rarely and inconsistently implemented.\(^701\)

LETTER TO THE EDITOR, FROM NYUAD FACULTY, IN THE CHRONICLE OF HIGHER EDUCATION, MAY 28, 2014\(^702\)

NYUAD faculty wrote a letter to the editor published in the Chronicle of Higher Education May 28, 2014. It stated “we write as a group of New York University Abu Dhabi faculty and staff who are concerned about the labor situation in the United Arab Emirates and believe that NYUAD has striven to ensure good working conditions for its workers.” The introduction to the letter addressed apparent questions about the extent to which NYUAD faculty were able to address labor in the classroom, and highlighted talks and exhibits the university had hosted in Abu Dhabi on issues of labor and urbanization in the Gulf. The discussion of labor (beginning “Turning to labor: …”) is fact checked below. Note that the first signatory and apparent author of the letter (the remaining faculty are listed in alphabetical order), is Justin Stearns, Associate Professor of Arab Crossroads Studies at NYUAD. Stearns is a historian whose “research interests focus on the intersection of law, science and theology in the pre-modern Muslim Middle East,” according to his academic profile, and who teaches related courses on post-coloniality and the pre-modern Middle East.

» Labor conditions for construction workers are at best, challenging, if not downright bad in the Gulf.

⊙ True, though worth noting relevant question is not only one of whether conditions are “bad” but in violation of law.

» This is as much a function of the particular system of kafala (sponsorship) used in the Gulf countries as it is the result of ways in which global
labor migration takes place within the system of capitalism. Rapid modernization, the sheer scale of the construction of the past few decades, the demand for work in South Asia, and the profit-driven system of capitalism have led to a situation in which migrant workers who come to the Gulf face exploitative circumstances.

Conditionally true. In the broadest sense, Stearns’ statement is true. Legally – especially with regard to forced labor, it is primarily employers failing to pay recruitment fees, passport detention (an outgrowth of *kefala*) and the *kefala* system that create conditions of forced labor. However, this does not mitigate entities’ obligations to avoid violating law.

These can be alleviated in full only through systemic changes in the Gulf states in terms of enforcement of (largely existing) legislation, as well as through profound changes in the ways that workers are recruited in their home countries.

Conditionally true. If “in full” means as a total policy solution entirely eliminating the problem in the UAE, then the statement is likely accurate. However, if the statement refers to a project’s ability to eliminate exploitative or illegal conditions for workers, and their legal obligations to do so, then it is inaccurate.

To understand the scope of the challenge of reforming this system, it’s worth considering the phenomenon of labor migration globally and how other countries, notably including the United States, have also struggled with managing massive labor flows of migrants. The UAE is trying to establish itself as a member of the same global modernized and industrialized elite as the U.S. and Europe. As in other nations that are trying the same, their efforts have come at the price of at times very poor labor conditions, conditions that in one way or another are very similar to those that characterize the current global late-capitalist system, in which, for example, the U.S. and many of its institutions often depend on labor carried out under terrible conditions across the world and within its own borders.

True. We agree it is worth considering this, as we’ve done in Part 2 of this report extensively. However, it is not the goal of NYUAD – or should not be – to reform the UAE system, but to conduct its own conduct consistent with the values of compliance with laws.

In this context NYUAD has tried to bring better labor practices in setting up its campus in the UAE.

Strictly true. NYUAD aimed to enforce standards that are not commonly enforced in the UAE; some standards were new – like higher wages and housing – however, others were not.

As the institution’s repeated statements have made clear (and as outside observers have acknowledged), it has been successful in some areas, especially with the roughly 300 workers who work on our current campus who are monitored by our own compliance officers.

Strictly true. Hard to assess such a general statement for its veracity, since the statement says that it was successful in “some areas,” which is true. Compliance program for operations may have been “especially” “successful” in ”some areas,” though whether this means that the program was adequate is a separate question.

NYU-TAMKEEN JOINT STATEMENT ON NARDELLO & CO. REPORT, APRIL 16, 2015

On the day the *Nardello Report* was released, NYU and Tamkeen released a joint statement.

“We … established a set of labor standards, built upon UAE law and market-leading practices”

Partly true. As discussed in Part 3, though the practices with respect to wages and housing were market leading, those with respect to recruitment fees for construction arguably were not; if operations was willing to compensate workers for recruitment fee debt owed prior to taking up work at NYUAD, as has been indicated, then that was a best practice – though it is then unclear why NYUAD put into place a requirement of proof of payment such that only 10% of workers were compensated.

“In 2014, several media outlets published a series of allegations regarding violations of these labor
standards, which led Tamkeen, NYU’s local partner, to appoint an independent reviewer, Nardello & Co., to investigate these claims.”

☑ Mostly true. The bulk of media reports came out in 2013; the only media report to come out in 2014 was the New York Times report.

The Nardello Report “confirms that Tamkeen and NYU made good faith efforts to set and enforce standards that protected and benefitted the substantial majority of the approximately 30,000 individuals who worked on the construction of the NYU Abu Dhabi campus.”

☑ Partly true. We note that the statement does not state with regard to what or from what the standards “protected” workers. While the standards “protected” workers from violation of certain labor standards, it did not protect them, in many instances, from violation of others — in particular, forced labor, which was a provision with which NYUAD had committed to comply.

“The report also acknowledges that the labor monitoring compliance program effectively and routinely identified and resolved issues of contractor non-compliance.”

⚠ Arguably false. Nowhere does the Nardello Report state that the program “effectively” identified and resolved issues of non-compliance. The Nardello Report does say that “Our investigation found that the commitment was real, implemented in good faith, and to a large measure, effective.” This was a description of the overall effectiveness of the program towards the goal of NYUAD and Tamkeen to benefit workers; Nardello & Co. notes the program was effective in providing certain higher standards, particularly wages and housing, for at least some workers.

However, in the section of the report investigating the allegation that “Mott MacDonald was ineffective,” the Nardello Report never reaches a final conclusion regarding effectiveness of Mott MacDonald itself. Its conclusion in that section is that “Overall, we found evidence to suggest that, within the reduced scope of their mandate, the compliance monitors made an effort to enforce compliance and rectify violations of the Labor Guidelines.” When Nardello & Co. did note mistakes in the monitoring process, it stated that based on its sample size it was not possible to assess whether the mistakes were indicative of more serious failings in the monitoring process. Therefore, there is an interpretation on which the statement is true, but it is tortured compared to the plain meaning of the statement. The program could be considered to have “effectively identified and resolved issues” if that means some but not all issues, without judgment as to whether that conduct was adequate. For example, the program arguably effectively identified and resolved problems of wage nonpayment and housing noncompliance. If “effectively” modifies “issues” meaning certain issues to the exclusion of others then it is accurate. But if “effectively” refers to “issues of non-compliance” in the compliance program as a whole, then it is hard to read this claim as being supported.

“One of these recommendations concerns recruitment fees, which the report acknowledges are a complex, multi-jurisdictional challenge that cannot be resolved by an individual project.”

⚠ Arguably false. The report does not claim that recruitment costs and fees “cannot be resolved by an individual project.” It states that addressing an issue “as complex as recruitment fees on a per-project basis … requires far greater consideration than was given here,” and that “the long-term solution” to recruitment fees requires government action. If the statement is meant to mean that an individual project cannot resolve the issue of recruitment costs and fees overall, then it is accurate. But if it means that an individual project cannot resolve recruitment costs and fees for its operations, then that is inaccurate, given best practices on the issue. The Nardello Report does not say that recruitment costs and fees cannot be resolved by an individual project for the purposes of that project.

Furthermore, Tamkeen and NYU are referring to a claim here that Nardello & Co. appears
to have made 1) based on the interpretation of Key Parties re: recruitment fees – not external or objective research (consistent with its mandate) – and 2) that at times is inconsistent with the well-established best policy and practice regarding recruitment fees that “employers pay, and reimburse” as discussed extensively in this report.

“"The intention of our policy was to ensure that the NYUAD project did not cause workers to pay recruitment fees – which are illegal in the UAE but common in many workers’ home countries.”

New information. This is the first time NYUAD had identified this as the intention behind the policy. Using this intention to limit the reimbursement of recruitment fees created a high risk of violating other parts of the labor standards, such as the prohibition of forced labor.

EMAIL TO THE NYU COMMUNITY ON THOUGHTS ON THE REPORT FROM NARDELLO & CO. ON CONSTRUCTION LABOR ON SAADIYAT ISLAND, APRIL 16, 2015

The same day, then NYU President John Sexton sent a separate email to NYU about the Nardello Report.

On recruitment fees, while we did not imagine that we could address the pernicious effects of recruitment fees for all who came into contact with our project, our intent was to ensure that our project did not cause such debt for those who were coming to join it.

As discussed above, new information. Policy was inconsistent with best practice and created a high risk of violating other parts of the labor standards, such as the prohibition of forced labor.

However, the seemingly reasonable requirements we ultimately set in place for reimbursement – that it would apply to workers who specifically came to join the NYUAD project, and could substantiate payment – produced the unintended result that no construction workers received reimbursement for recruitment fees (though more than 20 operational workers at the campus have).

Arguably false. Sexton calls the requirements “seemingly reasonable.” By contrast, Nardello & Co. stated that “if the intention of the Labor Guidelines concerning recruitment fees was to release workers from the debt that effectively bound them to their UAE employers, then reimbursement should have been provided under guidelines that reflected the complexities of the situation, rather than interpretations that effectively disqualified all workers from reimbursement ...” Nardello & Co. continued on to say that “[NYU] interpreting the policy in a way that effectively disqualifies all workers from being reimbursed supports the conclusion that addressing an issue as complex as recruitment fees on a per-project basis, though admirable, requires far greater consideration than was given here.” Sexton’s statement is at odds with Nardello & Co.’s independent view that the requirements “should have been provided under guidelines that reflected the complexities of the situation.” Furthermore, analysis in this report shows the policy NYU endorsed was contrary to due diligence requirements on forced labor, and to prevailing practices from 2010 onward.

Note in addition that because recruitment costs and fees are a critical cause of forced labor conditions, it would have been essential for NYUAD to have reasonably mitigated recruitment costs and fees in order to comply with the prohibition on forced labor. As discussed above, parties involved in construction of the NYUAD campus do not appear to have audited compliance with the requirement employers pay costs and fees or considered how the rule adopted would impact the forced labor risk in work conditions.

“In the case of the Interim Campus, NYUAD served as the compliance monitor for its contracted workers and to the extent issues were identified, NYU appears to have addressed and rectified them on a timely basis.”

True. This is true because it is a statement about NYUAD conduct “to the extent issues were identified.” The statement does not make
any claims about whether NYUAD should have identified more issues than it did.

We can see that we were successful in implementing higher labor standards for the majority of construction workers, and highly successful in implementing them for operational workers at the Downtown Campus and now at the Saadiyat campus.

Arguably true. Regarding construction, NYUAD implemented certain higher labor standards for the majority of construction workers; others were not implemented. To the extent this referred to specific higher labor standards, it is accurate.

Regarding operations, it is true that, as Nardello & Co. notes, “in the case of the Interim Campus, where NYU was directly responsible for monitoring compliance and Tamkeen’s employees were being directly monitored by Mott MacDonald, no significant violations were identified” [by media and NGOs].\(^\text{712}\) Nardello & Co. also notes that “to the extent issues were identified,” NYU appeared to have addressed and rectified them.\(^\text{713}\) It also notes that Mott MacDonald appear to have addressed and resolved “all issues,” which we take to mean those that were identified.\(^\text{714}\) However, absence of outside NGO and media allegations does not alone indicate that operations were successful, and as discussed in this report, the Nardello Report findings suggest that reason for concern about the adequacy of the compliance program as it applied to operations. A complete reading of the Nardello Report indicates serious concerns about the operations compliance at NYUAD, which would have to be further investigated in order to assess whether claims that NYUAD was “highly successful” are well-founded.

A key challenge at the core of migrant labor exploitation is the charging of “recruitment fees” by informal — and typically illegitimate — labor recruitment agents in workers’ home countries, which often result in illegal, under-the-table payments from workers in exchange for providing them with a job in the Gulf.

Arguably true. As discussed in Part 1, recruitment fees, as distinguished from costs, are typically take to be both illegal fees and reasonable service fees that legitimate agencies charge for their services and for which employers are responsible. However, as discussed in this report, it is widely accepted that to exercise any control over recruitment, employers must pay for recruitment costs and fees. Payments by workers are not only in exchange for getting a job but cover costs and fees associated with recruitment for which employers are meant to pay. Such payments may also cover inflated costs due to corruption. However, when employers pay costs and fees they may exercise some leverage to audit and/or select recruiters with experience mitigating inflated costs and use of informal subagents.

NYUAD cites one challenge, but not the relevant or dispositive issue in creating supplier rules regarding recruitment fees; as highlighted in this report, the best practice is that employers pay and reimburse. It is unknown on what basis the NYUAD statement makes the characterization it does without a citation.

NYUAD has a robust compliance monitoring system. NYUAD has a labor compliance monitoring system that goes far beyond requiring its contractors to self-certify compliance with the SCC. NYUAD has a dedicated, in-house, on-the-ground compliance monitoring team, which informs employers of their responsibilities under the SCC, interviews workers, inspects employer-provided accommodations, and works with employers to promptly rectify instances of non-compliance. In addition, the University maintains a 24/7 reporting line in which members of the community, including contract workers, are able to confidentially report any compliance-related concerns.

**ADDITIONAL INFORMATION ABOUT THE NYUAD SUPPLIER CODE OF CONDUCT, DECEMBER 2016\(^\text{715}\)**

In November 2016, the Coalition for Fair Labor submitted a statement in response to the NYUAD Supplier Code of Conduct. Though the whole statement is available online, below are certain relevant selections:
Arguably false. It is true that NYUAD has a “dedicated, in-house, on-the-ground compliance monitoring team.” However, what exactly these terms actually mean is unclear. The Guiding Principles suggest that in any event these are not the relevant criteria on which the adequacy of a compliance team – or a compliance program – are to be assessed. Similarly, the actions that NYUAD and Tamkeen highlight above are only as good as the clarity of the standards, the validity of the indicators used to measure them, and the consistency of measurements using the indicators. Therefore, the standards of due diligence presented in this report cast doubt on the question of whether the compliance monitoring system is “robust.”

The Nardello & Co. report — which focused on construction — did not raise any concerns about the treatment of individuals working on NYUAD’s operational contracts.

Arguably false. Though the Nardello Report did not strictly address operations at NYUAD, as discussed in this report, it is very difficult to justify failing to identify the several ways – which we identify above – in which the Nardello & Co. findings do have implications for the compliance program as it applied to operational contracts.

4.5 INSTITUTIONAL REPORTING

As NYU responded to media reports and Nardello Report, NYUAD released reports to NYU faculty governance committees, which are the main voice for faculty in the university. There are several relevant bodies:

University Senate. According to the NYU website, “The University Senate is the deliberative body for the discussion of University-wide policies and proposed changes in University practices and structure. The Senate sets its agenda with particular concern for academic programs and structure, personnel and budgetary policies, development of facilities, and community, professional, and educational relations of the University. The Senate makes any recommendations regarding policies and practices of the University to the President and Chancellor and, through the President and Chancellor, to the Board of Trustees.” It has power to act on certain educational matters and academic regulations. Its members are elected and represent tenured and tenure track faculty, contract faculty, students, and administrative staff.

Tenured/Tenure Track Faculty Senators Council (T-FSC). The T-FSC has thirty-eight members and is part of the University Senate. Members are elected from each of the schools at NYU. The Tenured/Tenure Track Faculty Senators Council may consider any matters of educational and administrative policy and will function as the

RESPONSIBILITY FOR COMMUNICATIONS AT TAMKEEN

It must be noted that Tamkeen, on whose behalf several of these statements have been made, has a professional communications team with experience conducting public relations for sovereign states.

Izabella Siemicka has been Director of Communications from December 2013 through present. From February 2012 to April 2013, Seimicka was an Account Director at Bell Pottinger. Siemicka graduated with a Masters in Middle Eastern Studies from Harvard in 2004. Bell Pottinger Group collapsed this September after an independent report found it had been involved in an unethical race baiting campaign in South Africa that resulted in its bankruptcy.

Tim Carlton Jones has been Senior Communications Manager from December 2015 through present. Immediately prior, Carlton Jones was a Director at Consulum, a PR firm that according to one description, “advises heads of state, governments and political leaders throughout the Middle East, Africa, Caribbean and Asia. The firm also works alongside multinationals, family offices and ultra high-net-worth individuals.” Consulum was a spinoff of Bell Pottinger, and operates in Bahrain, Dubai and Qatar. Sample of activity is as follows: “bespoke programmes and provides counsel for, amongst others, the Kingdom of Saudi Arabia, the Kingdom of Bahrain, the Government of Djibouti, the Republic of Nigeria, the sovereign wealth funds of Abu Dhabi and Libya and the Economic Development Board of Bahrain.” Carlton Jones worked for Consulum in Bahrain and in Dubai. Carlton Jones joined Consulum from Bell Pottinger Group, where he had worked since September 2010.
Faculty Personnel Committee of the Senate with respect to the Tenured/Tenure Track Faculty.

- Faculty Committee on NYU’s Global Network (GNU). According to its website, the Committee’s charge is “to assess the academic state of NYU’s global network (the 11 global sites plus portal campuses in Abu Dhabi and Shanghai) and make recommendations to the President and Provost for improvements, including recommendations for how best to integrate the global centers with schools and programs in New York and one another.” Membership on this committee is not by election but by appointment from several schools, as well as university-wide groups – the T-Fac, the Full-Time Continuing Contract Faculty Senators Council, the Student Senators Council, and provostial committees). The Committee reports to the President and Provost and is not part of the University Senate.

- NYUAD Faculty Council Steering Committee. The NYUAD Faculty Council Steering Committee is based at NYUAD. According to its website, “NYUAD Faculty Council is a deliberative body that discusses all matters relating to policy and curriculum that are of interest or concern to the faculty. It meets three times a semester and its decisions and recommendations are recorded and forwarded to the University leadership. Attendance and participation at the Faculty Council is open to all members of faculty (T/TT, contract, Affiliates, Visiting), and to administration (President, VC, Deputy VC, Provost, Vice Provost, Deans, Associate Deans, Associate Dean of Academic Affairs), Library representatives (two), postdoc representatives (two), and student representatives (Chair of Student Council plus an additional representative, present for unreserved business only).” The Provost of NYUAD and the Chair of the Faculty Council Steering Committee (FCSC) jointly chair the Faculty Council. The FCSC is an advisory committee that provides a bridge between the senior academic administration and the Faculty Council. The Steering Committee meets weekly normally and is joined bimonthly by the Provost and/or Vice Chancellor.

There appear to be key differences among the committees. The T-FSC committee is elected and may consider “any matters of educational and administrative policy” (our emphasis); the Faculty Committee on the GNU is appointed and has a more limited mandate of assessing “the academic state” of the GNU. While the T-FSC explicitly has authority to consider compliance matters, because “Compliance and risk management” is listed as an administrative function on the NYUAD website, the GNU committee does not appear to have administrative issues within its mandate. Documents about the committee mandate confirm that the mandate was to assess the academic state of the GNU, dealing with such topics as development of curricula and curricular collaboration, graduate programs and faculty research in the global network, departmental involvement and student enrollment. What the committee referred to as “labor issues” was the only non-academic topic addressed.

We provide a timeline below of communications made to or by these committees about NYUAD. Together with the addition to the public statements from NYU and/or Tamkeen that are discussed above, these are the primary publicly recorded representations that NYUAD and its partners have made about the labor compliance program at NYUAD.

Note that major announcements about labor at NYUAD appear to be given as much by faculty as by compliance officers. Further, the Faculty Committee on the GNU, a committee that appears to have a more limited mandate than the T-FSC and which arguably excludes administrative issues including compliance, was the body to which the most detailed reports about compliance was given until AY 2016-2017.

Contents of the meetings primarily focused on reports whose contents have been described earlier in this section. We elaborate where the communication provided relevant new information or warrants further commentary.

**May 28, 2014** NYUAD FCSC. FCSC states it has had a series of conversations and meetings with NYUAD leadership, and requests certain aspects be included in the investigation. Announces several areas the Committee will explore to address the issue on multiple fronts.

**May 30, 2014** NYU Faculty Senators Council. Letter from FSC Executive Committee on behalf of Faculty Senators Council to President Sexton.

Letter is intended “to share with [Sexton] faculty sentiment regarding the extent and range of those investigations, as well as faculty views regarding compliance matters for the [GNU].” The Faculty council granted that implementing the Statement of Labor Values would be a significant
improvement and that conditions at the site may have been better than others in the UAE. It continued, “None of this, however, absolves the University of its abiding obligation to ensure that every effort has been taken to ensure compliance with the agreed Statement of Labor Practices. To fall short in executing that obligation would be substantially damaging both for the broader mission of the GNU and the core humanistic principles of our educational mission.” The Faculty Senators Council then requested that the investigation cover “at least the following questions.” The letter then noted the investigation should aim to answer these questions in writing and that it include in its report a section on remedial solutions. The letter acknowledged the potential difficulty of compensatory remedies, “particularly in situations where the production and verification of evidence will present challenges,” but these difficulties “ought not to absolve the University of its duty to explore and think creatively about possible remedies for any proven labor practices violations on its NYU-AD campus.”

Finally, the letter concluded, “to ensure [operational] standards are maintained, we request that the University establish dedicated mechanisms to monitor labor and employee standards across the GNU. These mechanisms should include use of outside auditors and compliance firms, where necessary, as well as the preparation and circulation of an annual report.”

In our review of the letter’s requested information, we find that as of May 2018, eleven of the twelve of the questions the T-FSC posed in May 2014 have not been publicly answered. The question that has been partially answered – asking if the New York Times allegations were correct, how did monitors fail to detect the specific deviations investigative journalists found? – was addressed by the Nardello Report partially, but a full review of the compliance program was beyond Nardello & Co.’s mandate.

June 2014 Report of the Faculty Advisory Committee on the GNU. Included section on “Labor Conditions in China and Abu Dhabi,” which indicated the Committee had spoken with the Vice Chancellors of NYUAD and NYUSH and proposed ideas for NYU faculty to seek information and discuss. It noted with approval the FCSC response and letter in the Chronicle of Higher Education.

October 9, 2014 NYU University Senate meeting. Then NYU President John Sexton made statements consistent with his earlier statement about the New York Times story and said Khaldoon al Mubarak has no conflict of interest as a board member at NYUAD. Martin Klimke, Chair of the NYUAD FCSC, summarized the “robust ongoing debate about labor and human rights at the NYU Abu Dhabi campus,” changes to compliance and expansion of adult education opportunities, inter alia.

October 21, 2014 Faculty Committee on the GNU. Martin Klimke report to the Faculty Advisory Committee on the GNU. Summarized immediate reform since New York Times report.

May 7, 2015 T-FAC Committee. The GNU subcommittee of the T-FAC Committee reports that it studied and discussed the Nardello Report and asked Martin Klimke to provide reports from their campus’ faculty governance structures. Committee member states labor issue is “paramount” to them. Martin Klimke reports on the Nardello Report.

May 14, 2015 Faculty Committee on the GNU. Martin Klimke presented, with guests Erum Raza, Ellen Schall, and Justin Stearns. Klimke gave his presentation on the recently released Nardello Report again. Stearns discussed the findings of the final report of the Faculty Committee on Labor and Social Responsibility at NYUAD. Erum Raza mentioned the early 2014 supplier code of conduct and with Schall answered questions from the committee. Klimke and Raza introduced the Domestic Employment Initiative to release standards specifying living and working conditions for domestic workers.

June 15, 2015 Faculty Committee on the GNU Subcommittee on Labor Issues. Committee followed up further with Martin Klimke about compliance at NYUAD and said their impression was “it is clear that all of this is very robust.” The committee met with the Vice President and Chief Global Compliance Officer at NYU and Chief Compliance Officer at NYUAD.

August 2015 Faculty Committee on the GNU annual report. Summarizes work of year, including learning about Nardello Report.

April 20, 2016 Faculty Committee on the GNU. Erum Raza, Justin Stearns, and Martin Klimke provide updates on labor compliance; Neeti Chauhan, Assistant Manager of Compliance, and Shamoona Zamir, Associate Professor of Literature and Visual Studies at NYUAD and member of the Labor Compliance Working Group, are in attendance.
SUMMER 2016 Faculty Committee on the GNU Annual Report.\textsuperscript{739} Summarizes work of year, including learning about changes to compliance program after \textit{Nardello Report}.

NOVEMBER 3, 2016 T-FAC Committee.\textsuperscript{740} Josh Taylor, Associate Vice Chancellor for Global Programs, and Erum Raza, Chief Compliance and Risk Officer at NYUAD, presented on the new NYUAD \textit{Supplier Code of Conduct} released in October. No statements from Raza are in the minutes.

4.6 REMEDY

BEST PRACTICES FOR ADEQUATE REMEDY

As experts on the \textit{Guiding Principles} note, the concept of remedy aims to restore individuals to the situation they would have been in had the harms not occurred.\textsuperscript{741} Where harm is irreparable, compensation or other forms of remedy may be adequate. In both the judicial and non-judicial contexts, these can include “apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well the prevention of harm through, for example, injunctions or guarantees of non-repetition.”\textsuperscript{742} Adequate remedy should be both forward-looking – to prevent the relevant harms from occurring again – and backward looking, to address impacts for those harmed.\textsuperscript{743}

The only apology has come from University representative John Beckman in 2014,\textsuperscript{744} which the \textit{New York Times} reported with the headline “NYU Apologizes to Any Workers Mistreated on Its Abu Dhabi Campus” – in which Beckman stated, “to any worker who was not treated in line with the standards we set and whose circumstances went undetected and unremedied, we offer our apologies.”\textsuperscript{745}

NYU and Tamkeen have never acknowledged the risk of forced labor or the likelihood that forced labor occurred, especially because of their decisions regarding recruitment fees.

WAGE REMEDIATION

NYUAD and Tamkeen appointed Currie & Brown in June 2015 to compensate workers for wage payments that it owed them. NYUAD and Tamkeen state they took responsibility for failing to pay these workers.\textsuperscript{746}

In May 2017, NYU and Tamkeen announced the “active phase” of the compensation program would end that summer.\textsuperscript{747} As of their announcement, NYU and Tamkeen had identified 8600 workers who had been excluded from the compliance program and to whom they owed wages.\textsuperscript{748} They paid 6600 of these. 2000 remained to be paid at the time of their announcement.\textsuperscript{749} NYUAD stated it had mailing addresses for 1500 of those 2000, the vast majority of whom NYUAD believed had returned to their home countries.\textsuperscript{750} Based on \textit{Nardello Report} estimates that roughly 10,000 workers were excluded, having paid 6600 of 10,000 workers is roughly a 66% success rate. It is unknown how many more workers of the 2000 workers who faced wage theft but were not compensated as of May 2017 were able to receive compensation as of May 2018. NYUAD has said that claims that it receives will continue to be processed.

RECRUITMENT FEES

NYU and Tamkeen did not reimburse recruitment fees for any of the workers involved in construction. As discussed in Part 3, the failure to do so occurred because of a “significant erro[r]” by the monitors, which NYU appears to have endorsed. It is likely that given known practices in the UAE, employers failed to pay recruitment costs and fees as required, passing such costs on to workers, who would have been owed reimbursement. However, it appears the Government of Abu Dhabi was not willing to reimburse. According to Ellen Schall as recorded in meeting minutes, “NYU was unsuccessful in persuading its partners to fully reimburse all recruitment fees for workers on the NYU project.”\textsuperscript{751} As mentioned above, when Apple repaid comparable costs and fees to 35,000 workers, roughly the same number employed in construction of the NYUAD campus, Apple repaid to workers $30 million. So far as NYUAD has said publicly, NYUAD paid $0 to workers to reimburse recruitment costs and fees.

Instead, NYUAD funded a research center at Columbia University in New York to conduct an academic project on recruitment to the GCC, called the “Research and Empirical Analysis of Labor Migration,” or REALM.\textsuperscript{752}

The REALM project has been housed at Columbia University’s “Interdisciplinary Center for Innovative Theory and Empirics.”\textsuperscript{753} The Principal Investigator, Peter Bearman, is the director of the Center and Cole Professor
of Social Science at Columbia. Though a specialist in network analysis, he otherwise has no experience on labor, migration, relevant labor, civil, or immigration law or any relevant area studies experience. He is a specialist in the autism epidemic. Bearman is a longtime colleague of Hannah Brückner, Vice Provost for Faculty Diversity, Professor of Social Research and Public Policy and formerly Associate Dean of Social Sciences, with whom he published eight publications on teenage sex and pregnancy in the United States between 1999 and 2005; Bearman also chaired Brückner’s dissertation in 2000. It is unknown how INCITE was selected as the location for the REALM project. In the first round of funding, workshop participants were told by project organizers field-based research in the GCC was explicitly prohibited, and that an emphasis would be placed on research focusing on the sending countries rather than the GCC.

REALM has funded 14 projects so far, five of which are based at NYUAD:

- Migration and Kerala’s Gender Paradox, Dr. Hannah Brückner and Dr. Swethaa Ballakrishnen, NYUAD
- A Rapid Ethnographic Assessment of the Gulf-Directed Labor Brokerage System in South Asia, Dr. Andrew Gardner and Dr. Zahra Babar, University of Puget Sound and University of Georgetown in Qatar
- Family Migration Context and Early Life Outcomes Project, Dr. Dirgha Ghimire, University of Michigan
- Disaggregating Recruitment: Uncovering the Expectations, Obligations and Hidden Pathways of Labor Migration, Dr. Daniel Karell, NYUAD
- A Large-Scale Survey of International Migrants from a Rural Area of Bangladesh, Dr. Randall Kuhn, UCLA
- Recruiting International Migrant Labor: Theory and Evidence, Dr. Yaw Nyarko, Dr. Suresh Naidu, and Dr. Shin-Yi Wang, NYUAD and Columbia University
- The Paradox of the Gulf as a Space of Aspiration and Freedom, Dr Caroline Osella, School of Oriental and African Studies, University of London
- A Panel Study of Migration from South India, Dr Irudaya Rajan, Dr Ganesh Seshan, and Dr Sulagna Mookerjee, Center for Development Studies, World Bank, Georgetown University, Qatar
- Norms Transmission through Migration: Evidence from the Philippines, Dr Caroline Theoharides (PI) and Dr Susan Godlonton (co-PI), Amherst College
- Migration as a ‘risky gamble’: Places and networks of departure to the Gulf of Bangladeshi fishermen, Dr Aurélie Varrel and Dr Marie Percot, French Institute of Pondicherry
- Recruitment of Temporary Migrant Workers and the Evolving Role of Sub-Agents in Sri Lanka, Dr Bilesha Weeraratne, Institute of Policy Studies
- Sri Lankan Migrant Workers in Kuwait and their Entitlements to Healthcare: Exploring the Role of Private and Public Actors, Dr Sajida Ally, Queen Mary University of London (QMUL)
- Reviews, Ratings, and Resilience: The Promises and Perils of Revealing Labor Migrant, Job Agent, and Recruitment Firm Networks, Dr. Daniel Karell and Dr. Rabia Malik, NYUAD
- Sudanese Labor Migration Under the Adverse Economic Situation and the New Saudi Policies Towards Migrants and their Dependents, Dr. Osman Nour, NYUAD
- Gendered Differences in the Causes and Consequences of Migration: Experimental Evidence from India and the United Arab Emirates, Dr. Nikhar Gaikwad and Dr. Rachel Brule, Columbia University

In announcing the project, originally intended to be at the NYU Abu Dhabi Institute, then NYU President John Sexton stated the research initiative would involve “identifying and seeking opportunities to implement potential widespread solutions to this transnational challenge.” Four years later, organizers of the REALM project write “Our ultimate goal is to create a lasting database and research core for future researchers and policymakers to draw on, and to build the foundation for the policy interventions that will promote fairer labor migration recruitment and better outcomes for individuals and their communities.”

In the meantime, policy interventions pursuant to entities’ legal obligations have already been researched and enacted. Significant research and organizing among corporations and business and human rights NGOs has established a uniform and dominant understanding among lawyers and policymakers that GCC employers paying for recruitment costs and fees is an essential component of preventing recruitment related debt and furthermore that reimbursing such costs and fees is essential to taking
due diligence with regard to forced labor. Companies facing forced labor risks in supply chains worldwide have adopted this standard.

As discussed, remedy is both a backward and forward looking standard. Funding academic research does not mitigate the obligation of to remedy harms that have occurred, including forced labor, as a result of an apparent failure to audit compliance with UAE law with regard to recruitment fees or to compensate for recruitment fees, consistent with best practices.
5
RECOMMENDATIONS
It is essential that New York University conduct itself in compliance with applicable laws and exercise due diligence to do so. The recommendations below echo those Paul Hastings LLP made to NYU after it investigated compliance with labor standards at NYU Shanghai.

Our recommendations are made with the belief that NYU should not be judged on the presence of risk in a jurisdiction in which it chooses to operate, but by its response to that risk. Evidence from other entities suggests that NYUAD can act with due diligence consistent with prevailing practices to eliminate the risk of forced labor at NYUAD to the greatest extent possible. Below we make recommendations based on the record in this report as to how NYU might effectively implement due diligence with regard to the risk of forced labor at NYUAD.

5.1 COMPLY WITH RELEVANT JURISDICTIONAL LAWS

It is essential that NYU clarify its legal obligations with regard to compliance with laws in jurisdictions in which it operates. Agreements between NYU and foreign sovereigns may create certain privileges against enforcement of certain personal laws in connection with its operations. However, where an area of law – like labor law – creates rights and entitlements for employees of NYUAD or its contractors, NYU should consider itself obligated to follow such laws in letter and spirit to the extent consistent with any applicable University policies, which it does appear to do. NYU should be auditing compliance with such laws, and developing an assessment of auditing needs based on an estimate of underlying compliance rates; where preexisting compliance rates with a law is low, it is essential that NYU be able to independently verify high rates of compliance among relevant contractors.

In accordance with this principle, NYUAD should ensure that entities with whom it contracts are in compliance with laws.

5.2 ASSESS RISK

It is essential that NYU have assessed the risk of legal violations associated with operating in a jurisdiction. As discussed below at 5.5, such risk assessment must be done with professional expertise and by an independent entity. It should have a factual basis that is comprehensive of all relevant published documents and considers submissions from several stakeholders, including external stakeholders and those potentially affected by the potential risk or their representatives.

5.3 ELIMINATE RISK TO GREATEST EXTENT POSSIBLE THROUGH POLICY CONSISTENT WITH BEST PRACTICES

Forced labor risk chart 7/7 shows the risk of forced labor possible after due diligence consistent with prevailing practices. It is necessary in order to eliminate the risk of forced labor being used on its campus that NYUAD eliminate risks that a person does not voluntarily offer themselves for work and that a person works under threat of penalty. The chart above indicates that all indicators are at elevated risk of occurring in the UAE with regard to contracted labor. While some – such as passport retention and recruitment debt – are widespread and may be fully mitigated through employer conduct, others, such as threat of employment ban, denunciation to authorities, constant surveillance or multiple dependency on employer, are built into features of the UAE limited-term work visas or relevant UAE labor laws. This counsels towards eliminating to the extent reasonably possible consistent with prevailing practices those risks that the entity can control, and ensuring that there are employer grievance mechanisms and adequate knowledge about legal rights and legal grievance mechanisms for contracted workers to mitigate underlying risks.
PASSPORTS

Consistent with the Supplier Code of Conduct, verify that all workers are holding their passports. NYU implemented a clearer rule in its Supplier Code of Conduct that no worker shall have their passport taken except for to conduct certain relevant paperwork on their behalf. This should be read to mean that separation from a passport for that reason should be limited in time, and that at all other times, workers should be able to store their passports in the lockboxes that NYUAD now requires employers have. Note that this is a point that NYUAD appears to have fully corrected in its Supplier Code of Conduct.

RECRUITMENT

NYU should follow the standard practice among multinationals facing forced labor risks and commit to a “pay and reimburse” policy. The 12-month rule in the Supplier Code of Conduct is without precedent among multinationals having addressed this issue. Though reaffirmed in the Supplier Code of Conduct in October 2016, it appears to have been first implemented in early 2014—before New York Times reporting and the Nardello Report. NYU must also provide basic information necessary to understand and implement its policy on hiring practices; as discussed above, there are several deficiencies in the current standard in this regard. NYU should actively audit compliance with a “pay and reimburse” policy to be able to verify that all workers employed on its campus have not paid for recruitment costs and fees and are not in debt related to recruitment, whether full-time workers or part-time workers.
FINANCIAL PENALTIES
NYU should provide that employers shall not ask employees to pay for the cost of a flight back home, even if an employee leaves before the end of their term of employment.

KNOW YOUR RIGHTS
NYU should inform workers about, inter alia, their legal rights to terminate employment and against termination of employment, and to lodge grievances (legal and otherwise) at work. These legal rights cover more issues than does the Supplier Code of Conduct, so informing workers only of the Supplier Code of Conduct does not adequately inform workers of their legal rights. Given limited freedom to terminate employment and the significant imbalance in power between employers and employees in practice, it is essential that employees known their legal rights. NYU should also make available an up to date copy of all relevant labor laws in the UAE. The link on the government site to which the Supplier Code of Conduct links is often broken, and does not have a comprehensive compendium of all relevant laws, which should be made publicly available.

GRIEVANCE MECHANISMS
NYU should ensure and verify that its grievance mechanism complies with best practices for grievance mechanisms, as stipulated by the Guiding Principles.

5.4 TRACK IMPLEMENTATION
Part of the reasoning behind due diligence is that responsible parties, including the Board of Trustees of an organization, should have information about legal risks and a compliance program’s response such that they can make reasoned judgements and decisions about an organizations’ compliance with laws or lack thereof. Therefore, it is essential that parties develop appropriate qualitative and quantitative indicators for each of the terms it expects parties to meet in order to comply with law – and that it systematically track compliance with such indicators. As addressed below in 5.6, it is essential that such metrics be made public so that an external audience can assess the adequacy of the institutional response.

5.5 PROVIDE COMPLIANCE PROGRAM WITH RELEVANT PROFESSIONAL EXPERTISE AND INDEPENDENCE

EXPERTISE
As discussed in this report, it is essential that the compliance program be run by and staffed by personnel who have relevant professional expertise with regard to the underlying substantive law with which they are expected to assess compliance, or that they undergo professional training by a body with recognized expertise in providing such training. For compliance personnel, it is essential that such professional experience or training be legal. We note that there is no shortage of employment lawyers in the UAE, of lawyers with professional experience in business and human rights, and of lawyers with professional experience identifying and mitigating forced labor risks. However, the personnel hired do not appear to have any of the above expertise and do not appear to have been seriously trained by any such persons.

Staff and faculty should not be considered such experts unless they have any of the aforementioned expertise, and accordingly should not be involved in compliance interviews.

Compliance monitors should be selected through a process that considers several candidates, with external input considered. The process through which compliance monitors are selected should include consideration of the type of expertise they are able to provide; given the inherently legal nature of compliance – as a matter of NYU institutional organization – parties should consider hiring outside counsel to be monitors. Insofar as NYU is responsible for NYUAD compliance with laws, NYU should hire the outside counsel, rather than Tamkeen, which is wholly owned by the Government of Abu Dhabi Executive Affairs Authority.

INDEPENDENCE
NYUAD and Tamkeen necessarily have diverging views on certain topics. The compliance program has been structured such that NYUAD and Tamkeen jointly operate the compliance program. It is unknown whether their respective responsibilities, roles, authority, power, or decision-making procedures have been designed to
ensure independence of NYU with regard to compliance decisions. Because the Board of Trustees Audit and Compliance Committee is responsible for NYU compliance with laws, to the extent that it is responsible it would be reasonable for the Board Audit and Compliance Committee to be the entity that oversees compliance at NYUAD.

Note also as discussed below that because NYU has an independent obligation to comply with laws, it has an obligation to take whatever steps are necessary to realize compliance with laws and due diligence to avoid violating laws, even if at its own cost.

5.6 COMMUNICATE TO EXTERNAL AUDIENCES ADEQUATELY

As the Guiding Principles indicate, external audiences should be communicated with regarding the compliance program such that parties are able to assess the institution’s response. As the Nardello Report observes, prior reporting was not adequate for outside parties to understand the compliance program. We recommend that disclosure include information about the indicators that are being used to assess compliance with relevant rules and/or laws, and about rates of compliance with those discrete indicators. We also recommend disclosure include certain information about the identities of compliance entities, their roles, responsibilities, authorities, powers, and certain decision-making procedures, consistent with the level of disclosure currently provided for the Office of Compliance and Risk Management in New York.

We express serious concern over the two-year delay in public compliance reporting regarding NYUAD and the reasoning that NYUAD claims to have adopted that having such external reporting was no longer necessary.

5.7 REMEDY VIOLATIONS OF LABOR GUIDELINES, INCLUDING FORCED LABOR CONDITIONS, AND COMMIT TO NON-REPETITION IN OPERATIONS

The fundamental principle of remedy is to make persons who have wrongfully experienced harms whole. When an institution has professed responsibility for eliminating these harms or has caused or contributed to such harms, it owes remedy to the individual persons harmed for what they have experienced.

NYUAD has paid back wages it owed to workers; it has aimed to reach all workers but has in practice reached a reported 6600 of 10,000 – or 66%, as of May 2017. Several thousand people are owed wages from NYUAD but have not and likely will not be paid because they are unreachable.

However, NYU does not appear to have done any of the following:

**REMEDIED RECRUITMENT COSTS AND FEES**

As discussed extensively in this report, NYU appears to have made a significant error in reversing its public position on recruitment costs and fees which would have involved reimbursing workers for recruitment costs and fees both in construction and operations. Instead, by 2014 NYU had adopted a non-public rule that was outside prevailing practice and failed to reasonably address a major determinant of forced labor.

NYU’s decision on recruitment costs and fees appears to have likely affected over 30,000 construction and operational workers.

As noted, multinationals commonly now reimburse recruitment costs and fees for workers, which is the prevailing practice among multinationals facing and addressing risks of forced labor in their operations. To reimburse 35,000 for comparable recruitment costs and fees in the Philippines and Malaysia, among other places, Apple has paid $30 million since 2008. 2022 FIFA World Cup Qatar construction contractors have committed to repay 30,000 $5 million.
That NYU has paid tens of thousands of workers nothing as a result of its own errors in its compliance program undermines the appearance of its commitment to compliance with laws. NYU leadership has stated it was unable to convince the Government of Abu Dhabi to reimburse recruitment costs and fees. But NYU has an independent obligation to compliance with laws. Where NYU has made mistakes that seriously harmed persons involved in its operations and created undue risk of violating the prohibition on forced labor, NYU has an independent consistent with its commitment to compliance with laws to provide remedy to those actually harmed, consistent with prevailing practices.

**REMEDIED FORCED LABOR**

Forced labor is a serious and arguably irreparable harm. Judicial remedies in the United States have made available monetary damages for forced labor in the millions of dollars per worker. NYU remedy for forced labor or inadequately mitigated risk thereof — separate from its remedy for owed recruitment costs and fees — should at least include acknowledgement and apology for such conditions, as well as a commitment of non-repetition, discussed below.

**COMMITTED TO NON-REPETITION**

It is essential that NYUAD fully understand past compliance failures in order to be able to implement a compliance policy moving forward that reasonably eliminates forced labor from its operations consistent with prevailing practices. Though it is part of the nature of a multi-jurisdictional entity like NYU to have diverse labor practices as it follows the laws of the jurisdiction in which it operates, fundamental prohibitions like the prohibition on forced labor, which both UAE and US jurisdictions adopt, must be responded to with policies that eliminate the risk, consistent with prevailing practices. In assessing whether NYUAD has taken the steps needed to understand the deficiencies in its compliance program and commit to and successfully execute non-repetition, NYUAD’s claim that the *Nardello Report* “did not raise any concerns about the treatment of individual working on NYUAD’s operational contracts,” given the findings of this report, is concerning.

We note that compliance with laws is an independent obligation of NYU. Having assumed the risk of operating in Abu Dhabi, NYU has an obligation to take whatever steps are necessary to realize compliance with laws and due diligence to avoid violating laws, even if at its own cost.
ENDNOTES


9 Id.


16 See e.g., SOUTHERN POVERTY LAW CENTER, CLOSE TO SLAVERY: GUESTWORKER PROGRAMS IN THE UNITED STATES 5 (2013).

17 In the GCC, because so many people work for years on guestworker visas, the term guestworker is disfavored, so we have referred to such visas in the GCC context as limited-term work visas.

18 Claire Felter, US Temporary Foreign Worker Programs, COUNCIL ON FOREIGN RELATIONS, https://www.cfr.org/backgrounder/us-temporary-foreign-worker-programs (noting more guestworker visa holders may be living in the US because visa extensions may be granted while persons are waiting on other residency visa status determinations).

19 Kanna, supra note 11 at 159.

20 See e.g., SOUTHERN POVERTY LAW CENTER, supra note 16.


26 Anscoume, supra note 22 at 30.

27 Nels Johnson, Ahmad: A Kuwaiti Pearl Diver in Struggle and Survival in the Middle East 80-89 (Burke, et al. eds. 2006).

28 Gwen Campbell, INTRODUCTION TO ABOLITION AND ITS AFTERMATH IN THE INDIAN OCEAN, AFRICA AND ASIA (Campbell, Green ed. 2005).


31 Mehran Kamrava and Zahra Babar, SITUATING LABOR MIGRATION IN THE PERSIAN GULF IN MIGRANT LABOR IN THE PERSIAN GULF 7 (Mehran Kamrava and Zahra Babar eds. 2012).

32 Pearlimg collapsed because the invention of the cultured, or farmed pearl in Japan, which became the dominant method for producing pearls, eliminated need for searching for naturally occurring pearls on the Arabian Gulf.


37 Vitalis, supra note 35.
39 Farah Al-Nakib, Revisiting Hadar and Badu in Kuwait: Citizenship, Housing, and the Construction of a Dictatorship, 46(1) Int'l. J. Middle East Stud. 5-30 (2014).
40 Michelle Buckley, Locating Neoliberalism in Dubai: Migrant Workers and Class Struggle in the Autocratic City, 45(2) Antipode 256, 266 (2012).
41 Nelida Fuccaro, Pearl towns and early oil cities: Migration and integration in the Arab coast of the Persian Gulf, in SOAS Routledge Studies on the Middle East: The City in the Ottoman Empire: Migration and the Making of Urban Modernity 112 (Freitag et al. eds. 2011).
46 Frauke Heard-Bey, From Trucial States to United Arab Emirates: A Society in Transition (1982).
47 Christopher M. Davidson, Abu Dhabi: Oil and Beyond 728-800 (2009).
48 Commis, supra note 30, 189-191.
50 Commis, supra note 30, 201.
51 Christopher M. Davidson, Dubai: The Vulnerability of Success 67-99 (2009).
52 John T. Chalcraft, Monarchy, Migration and Hegemony in the Arabian Peninsula (2010).
54 See UAE Federal Law No. 17 (1972); UAE Federal Law No. 10 (1975).
55 See UAE Federal Law No. 10 (1975).
58 Id.
60 Id.
61 Noora Lori, Temporary Workers or Permanent Migrants? The Kefala System and Contestations over Residency in the Arab Gulf States 13 (Center for Migrations and Citizenship Note Nov. 2012).
62 Secombe and Lawless, supra note 38 at 569.
67 See e.g., id. at 9-11.
68 See e.g., Bristol-Rhys, supra note 49 at 73 (citing Saskia Sassen, The Global City (2001)).
70 Neha Vora, Impossible Citizens: Dubai’s Indian Diaspora 31(2017).
72 See e.g., UAE Federal Law No. 17 (1972).
73 Vora, supra note 70.
74 Sponsoring Residency Visa by Expatriates, GOVERNMENT.AE https://government.ae/en/information-and-services/visa-and-emirates-id/sponsoring-residency-visa-by-expatriates (noting male residents can sponsor immediate family only if they make at least AED 4000 ($1,089) or AED 3000 ($817) plus accommodation).
75 Bristol-Rhys, supra note 49 at 74-75.
78 Vora, supra note 70.
79 Id.
80 Id. at 137-138.
81 See e.g., Filippo Osella and Caroline Osella, Migration, Money and Masculinity in Kerala, 6(1) ROYAL ANTHRO. INST. 117, 123 (2000); Ali Nobil Ahmad, Bodies That (Don’t) Matter: Desire, Eroticism and Melancholia in Pakistani Labor Migration, 4(3) Mobilities 309, 312-313 (2009).
82 Vora, supra note 70 at 135.
85 Bristol-Rhys, supra note 49 at 68-71.
86 Id. at 71.


106 Kanna, supra note 11.


109 Segall and Labowitz, supra note 69 at 548-574, 560.

110 Id.


113 UAE Federal Law No. 6 (1973), art. 2, 8; UAE Ministerial Decision No. 707 (2006), art. 1, 3.

114 UAE Ministerial Resolution No. 52 (1989), art. 3, 4, 8, 9.

115 Anh Nga Longva, Keeping Migrant Workers in Check: The Kafala System in the Gulf, 211 MIDDLE EAST REPORT 20 (1999); see e.g. UAE Ministerial Decision No. 707 (2006).

116 Note that trading and selling visas is a common practice, though it may not be legal. See UAE Federal Law No. 13 (1996), art. 2.


119 UAE Federal Law No. 8 (1980), art. 113; see also UAE Ministerial Decree No. 765 (2015), art. 1(I)(1).


121 UAE Federal Law No. 8 (1980), art. 120(1).

122 Id.; see also UAE Ministerial Decree 765 (2015), art. 1(I)(6).

123 UAE Federal Law No. 8 (1980), art. 110.

124 Id.

125 UAE Ministerial Decree No. 766 (2015), art. 3.

126 UAE Ministerial Decree No. 766 (2015), art. 1, 2.

127 UAE Ministerial Decree No. 761 (2015), art. (II)(3).


131 Haneen Dajani, Abu Dhabi’s new one day labour court looks to put an end to wage disputes, NATIONAL (UAE), Nov. 9, 2017, https://www.thenational.ae/uae/abu-dhabi-s-new-one-day-labour-court-looks-to-put-an-end-to-wage-disputes-1.674492.


133 UAE Federal Law No. 8 (1980), art. 154-166.

134 Id., art. 155(1).

135 Id., art. 155(2-3).

136 Id., art. 155(4).

137 UAE Federal Law No. 8 (1980), art. 156-159.

138 UAE Ministerial Decision No. 307 (2003), http://gulfmigration.eu/uae-ministe-


141 Gardner, Pessoa and Harkness, supra note 139.

142 UAE Federal Law No. 8 (1980), art. 6.

143 UAE Civil Code, art. 112.

144 Id., art. 231.


146 Id.; c.f. UAE Ministerial Decision No. 1186 (2010).

147 UAE Ministerial Decree No. 766 (2015).

148 Id.; UAE Ministerial Decree No. 765 (2015); c.f. UAE Federal Law No. 8 (1980), art. 121.

149 UAE Ministerial Decree No. 765 (2015), art. 1.

150 Id., art. 2.


153 UAE Ministerial Decree No. 766 (2015), art. 1, 2.

154 UAE Ministerial Decision No. 766 (2015), art. 1, 13, 14.

155 UAE Ministerial Decision No. 708 (2006), art. 8.

156 Id., art. 13.


158 Id., art. 28.


168 C.f. Segall and Labowitz, supra note 69 at 24 (distinguishing government-run agencies, less often used, from private but government-licensed agencies, more commonly used).

169 See e.g., Brickman infra note 814 (noting the recruitment agencies themselves); see also Segall and Labowitz, supra note 69 at 24-26 (highlighting that subagents registered agencies use are essential to recruitment).

170 See Report of the Director-General (ILO), Seventh Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by the United Arab Emirates of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC), ¶ 38.

171 UAE Ministerial Decision No. 52 (1989), art. 6.

172 UAE Federal Law No. 8 (1980), art. 181.

173 Segall and Labowitz, supra note 69 at 9-10.

174 Id. at 3, 13-16.

175 UAE Ministerial Decision No. 52 (1989), art. 6.

176 UAE Federal Law No. 8 (1980), art. 20.

177 UAE Ministerial Resolution No. 52 (1989), art. 3.


179 UAE Federal Law No. 8 (1980), art. 35.

180 UAE Federal Law No. 8 (1980), art. 36.

181 UAE Ministerial Decree No. 764 (2015), art. 1, 2.

182 Id., art. 4.

183 UAE Federal Law No. 8 (1980), art. 63.

184 Segall and Labowitz, supra note 69 at 9-10.


186 UAE Ministerial Decision No. 739 (2016).

187 Supra note 170, ¶ 31.


189 UAE Federal Law No. 8 (1980), art. 56.

190 UAE Federal Law No. 8 (1980), art. 37.

191 UAE Federal Law No. 8 (1980), art. 65.

192 UAE Federal Law No. 8 (1980), art. 67.

193 UAE Federal Law No. 8 (1980), art. 73.

194 UAE Ministerial Decision No. 149 (1980).

195 UAE Federal Law No. 8 (1980), art. 74.

196 UAE Federal Law No. 8 (1980), art. 75.

197 UAE Federal Law No. 8 (1980), art. 76.

198 UAE Federal Law No. 8 (1980), art. 79.

199 UAE Federal Law No. 8 (1980), art. 84.

200 UAE Federal Law No. 8 (1980), art. 83.

201 UAE Federal Law No. 8 (1980), art. 82.

202 UAE Federal Law No. 8 (1980), art. 132.


205 UAE Federal Law No. 8 (1980), art. 91-93.

206 UAE Federal Law No. 8 (1980), art. 94.
in force; inhabitants is used in Article 44, which states “it shall be the duty of all inhabitants of the Union to respect the Constitution and the laws and regulations issued by the public authorities in execution thereof.” This implies that the duty to respect laws applies to all inhabitants without regard to citizenship.


221 Constitution of the United Arab Emirates, Art. 40.

222 Id.

223 Convention concerning Forced or Compulsory Labour (ILO No. 29) art. 2(1), entered into force May 1, 1932, 39 U.N.T.S. 55.


226 Convention concerning Forced or Compulsory Labour (ILO No. 29) art. 2, entered into force May 1, 1932, 39 U.N.T.S. 55.


228 Id., art. 1.


230 Supra note 170, ¶21.

231 Id.

232 Id.


235 See e.g., Island of Happiness, supra note 107 at 19-24.


238 See e.g., id. at 32.

239 See e.g., Segall and Labowitz, supra note 69, 6-11.

240 See e.g., Amnesty Intl., Turning People into Profit: Abusive Recruitment, Trafficking and Forced Labor of Nepali Migrant Workers, 56 (2017).


242 See e.g., Turning People into Profit, supra note 240 at 30.

243 See e.g., Exploited Dreams, supra note 241 at 33, 34.


245 See e.g., Exploited Dreams, supra note 241 at 31-34.

246 See e.g., Island of Happiness (2009), supra note 107 at 45-48.

247 UAE Ministerial Resolution No. 212 (2014) (for accommodation housing fewer than 500 workers); UAE Cabinet Resolution No. 13 (2009) (for accommodation housing more than 500 workers).

248 See e.g., False Promises, supra note 237 at 63-66.

249 Supra notes 154-158.

250 See e.g., UAE Federal Law No. 8 (1980), art. 120, 121, 123.

251 See e.g., Island of Happiness (2009), supra note 107 at 45-48.

252 See e.g., Exploited Dreams, supra note 241 at 45; False Promises, supra note 237 at 54-55.

253 See e.g., Turning People into Profit, supra note 240 at 60.

254 See e.g., id. at 30.

255 See e.g., Exploited Dreams, supra note 241 at 44; False Promises, supra note 237 at 66.

256 UAE Federal Law No. 8 (1980), art. 131.

257 See e.g., Turning People into Profit, supra note 240 at 60; False Promises, supra note 237 at 69.

258 See e.g., Exploited Dreams, supra note 241 at 18.

259 See e.g., id.
nearly exercised by a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case”).

312 UAE Civil Code, art. 383(1).

313 See e.g., Guiding Principles.


315 See e.g., In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (Del. Ch. 1996).

316 Compliance and Risk Management, supra note 314.


318 Guiding Principles.

319 Id.

320 Id.

321 Id. at 1.

322 Id.

323 Id. (noting Guiding Principles “are grounded in recognition of ... the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights”).

324 Id.


326 Guiding Principles at 13.

327 Id.

328 Id. at 25.

329 Id. Note that the term gross human rights abuses is used alongside human rights abuses in the General Principles, and there are few authoritative interpretations of the term. It does appear to cover large-scale (versus individual) human rights abuses, and arguably abuses that are violations of customary international law, like forced labor.

330 Guiding Principles at 19.

331 Id. at 19.

332 Id. at 16-17; 26 (at 26, highlighting need to consult externally with credible independent experts, including civil society, national human rights institutions and relevant multi-stakeholder initiatives where there is a risk of gross human rights abuses).

333 Id. at 19.

334 Id.

335 Id.

336 Id. at 21.

337 As a point of comparison, arguably a supply chain impact to which an entity does not contribute but to which it is nevertheless linked is an entity using a supplier for an agricultural commodity, like palm oil, where the supplier has been accused of arbitrary arrests or violence.

338 Id. at 21.

339 Id. at 15, 16, 18.

340 Id. at 14.

341 Id. at 17.

342 Id. at 21.

343 Id. at 18.

344 Id. at 17.

345 Id.


347 Guiding Principles at 19.

348 Id. at 22.

349 Id.

350 Id.

351 Id. at 16.

352 Id. at 23.

353 Id.

354 Id. at 31-35.

355 Id. at 27.

356 Id.


358 See e.g., Id.


363 Leadership Group for Responsible Recruitment (2017) https://www.ihrb.org/employerpays/leadership-group-for-responsible-recruitment. Note that IHRB describes the principle as “employer pays,” which they define as “No worker should pay for a job – the costs of recruitment should be borne not by the worker but by the employer.” Note the word costs here refers to costs and fees. See IHRB and Leadership Group for Responsible Recruitment, Migrant Worker Recruitment Fees: The Increasing Debt Burden, https://www.ihrb.org/uploads/member-uploads/Migrant_Worker_Recruitment_Fees_-_The_Increasing_Debt_Burden_-_Leadership_for_Responsible_Recruitment.pdf. Note also that “employer pays” includes a policy requirement of access to remedy for having paid recruitment costs and fees such that employers must provide effective access to reimbursement for them. See IHRB and Leadership Group for Responsible Recruitment, Six Steps of Responsible Recruitment: Implementing the Employer Pays Principle 4, https://www.ihrb.org/uploads/member-uploads/Six_Steps_to_Responsible_Recruitment_-_Leadership_Group_for_Responsible_Recruitment.pdf.


366 Id.

367 Id.

368 Id.


supplier-responsibility/pdf/Apple-Supplier-Responsible-Standards.pdf.
373 Id.
376 GUIDING Principles at 13.
377 See UAE Civil Code, art. 29.
378 Island of Happiness, supra note 107.
379 See GUIDING Principles at 57.
380 Sexton, supra note 2.
382 Id.
384 GUIDING Principles at 13.
386 Meeting Minutes, NYU Faculty Advisory Committee on the Global Network (May 14, 2015), https://www.nyu.edu/content/dam/nyu/provost/documents/Committees/May142015MeetingSummary.pdf.
388 Id. Note that the Minutes refer to the UAE government as the NYU partner; only the Government of Abu Dhabi, not the UAE government, has ever been the partner of NYU. It is apparent the minutes have an inaccuracy in this regard and so it is corrected in our reporting of the relevant fact above.
391 Id.
392 Id. at 14.
393 Id. at 9.
394 Id. at 11.
395 Id.
396 Id. at 66.
397 Id.
398 Id.
399 Id. at 69.
400 Id. at 12.
401 See UAE Federal Law No. 8 (1980), art. 65, 67, 73; UAE Ministerial Decision No. 149 (1980).
402 UAE Federal Law No. 8 (1980), art. 52.
403 See e.g. UAE Federal Law No. 8 (1980), art. 29.
405 Id.
408 Nardello Report at 5.
410 Id.
415 See e.g., id.
417 Nardello Report at 5.
418 Id. at 13.
419 Good faith, in BLACK’S LAW DICTIONARY (10th ed. 2014).
420 Id.
421 Id. at 12.
422 Id. at 17.
423 Id. at 20, 21.
424 Id. at 67.
429 Nardello Report at 52.
430 Id. at 42.
431 Id. at 43.
432 Id.
433 Id.
be sufficient to evaluate the adequacy of an information provided to the public should

UAE Federal Law No. 8 (1980), art. 78.

See e.g., Guiding Principles at 23 (noting information provided to the public should

be sufficient to evaluate the adequacy of an enterprise’s response).

See Nardello Report at 69.

Id. at 9.

Id. at 25.

Id. at 28.

See e.g., Guiding Principles at 23 (noting information provided to the public should

be sufficient to evaluate the adequacy of an enterprise’s response).

Nardello Report at 69.

Id. at 40.

Mott MacDonald Report 2011 at 22;

Nardello Report at 40.

Id. at 18.

Nardello Report at 19.

Id. at 41.

Id.

Qatar Supreme Committee, supra note

159.

Nardello Report at 19.

Id. at 40.

Id. at 62.

Id.

Segall and Labowitz, supra note 69.

Mott MacDonald Report 2013 at 19;

Mott MacDonald Report 2012 at 21;

Mott MacDonald Report 2011 at 18.

Supra note 321.


Id.

Hard to See, Harder to Count, supra note 236.

Nardello Report at 58.

Id. at 57.

Id. at 5.

Id. at 58.

Memorandum from Raghu Sundaram,


Id.

Nardello Report at 16.

Id. at 17.

Id. at 16-17.

Id. at 33.

Id. at 16, 34.

Id. at 35.

Id. at 67.

Id. at 36.

Id. at 35.

Id. at 34.

UAE Federal Law No. 8 (1980), Chapt. IX.

Id. at 17.

Id.

UAE Federal Law No. 8 (1980), art. 156-165.

Id. at 112

Id. at 120.

Id. at 110.

Nardello Report at 67.

Id. at 37.

Id. at 38.

Id. at 37.

UAE Federal Law No. 8 (1980), art. 120.

Nardello Report at 67.

Id. at 38.

Id.

Id. at 5.

Id. at 5.

Id. at 5.

Id. at 28.

See e.g., Mott MacDonald Report 2012 at 2.

Mott MacDonald Report 2011 at 5;

Mott MacDonald Report 2012 at 3.

Nardello Report at 29.

Nardello Report at 31.

See id. at 26.

Id. at 29.

Id.

Id. at 28.

Id. at 31.

Id. at 24 (noting “the Mott MacDonald ILS Team addressed [the issue of time and
cost thresholds] in their first quarterly report by stating that the list of exemptions for the
Supplementary Specifications should be clarified to ensure the Key Parties would all work
with the same understanding regarding coverage. This call for clarity went unanswered”).

Id. at 41.

Id. at 24.

Guiding Principles at 17.


MOTT MacDonald Report 2012 at 3.  

NARDELLO Report at 31.  


See e.g., MOTT MacDonald Report 2011 at 5; NARDELLO Report at 31.  

See e.g., MOTT MacDonald Report 2011 at 7, MOTT MacDonald Report 2012 at 9, MOTT MacDonald Report 2013 at 8.  

NARDELLO Report at 42, 52.  

Id. at 44.  

Statement, supra note 566.  


Id. at 70.  

Sexton, supra note 2.  

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