Nardello & Co.

Report of the Independent Investigator into Allegations of Labor and Compliance Issues During the Construction of the NYU Abu Dhabi Campus on Saadiyat Island, United Arab Emirates

April 16, 2015

1. INTRODUCTION

This investigation arises from New York University's ("NYU") decision to open an NYU campus in the Emirate of Abu Dhabi, one of seven emirates that constitute the United Arab Emirates ("UAE"). Construction projects in the UAE and the wider Gulf region rely on the use of migrant laborers, many of whom come from the Asian subcontinent. These workers often encounter difficult working conditions and abusive labor practices. Accordingly, 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. Their actions were largely unprecedented, and resulted in bettering the lot of many of those workers who were ultimately covered by the enhanced standards they adopted. Those standards – and to some extent the controversy surrounding how effectively they were implemented – spotlighted labor conditions in the UAE and wider region and have fueled a debate on how to improve them. Reports by several newspapers and Non-Governmental Organizations ("NGO") have alleged that workers on the campus construction project were not treated in accordance with the guidelines and implied that NYU and its government partners merely paid lip service to their commitment. The objective of this investigation was to determine the veracity of those allegations. As set forth below, our investigation found that the commitment was real, implemented in good faith and, to a large measure, effective. Yet our investigation also corroborated many of the allegations leveled by the media and NGOs and found that the implementation of the standards was flawed. Indeed, our investigation established that approximately one third of the workforce was exempted from coverage by the enhanced standards and that NYU and other parties were not aware of what became a *de facto* exemption policy. Further, our investigation concluded that this flawed execution was caused by miscommunication, an overly complex monitoring scheme, a failure to obtain clarity on key issues and an overreliance on third parties to implement and monitor adherence to the guidelines. A detailed discussion of our findings and recommendations follows.

Origin of the Project

In September 2007, NYU and the Executive Affairs Authority ("EAA"), a government agency of the Emirate of Abu Dhabi in the UAE, entered into an agreement to establish a research and degree-granting branch of NYU in Abu Dhabi ("NYUAD"). Mubadala Real Estate & Infrastructure ("Mubadala"), an Abu Dhabi government-owned real estate developer, was appointed as the developer and was responsible for the construction of the campus.

The agreement was made public in October 2007. A month later, it was announced that the campus would be built on Saadiyat Island as part of Abu Dhabi's ongoing effort to turn the island into an international educational and cultural center. By 2008, the design and construction of an Interim Campus ("Interim Campus") began in downtown Abu Dhabi to accommodate an inaugural class of NYUAD students while the construction of the main campus on Saadiyat Island was underway. The construction of the Interim Campus was completed in December 2009 and classes began in the fall of 2010.

In April 2010, Mubadala hired Al Futtaim Carillion LLC ("AF Carillion"), the UAE-based affiliate of Carillion plc, a British construction services company, to be the main contractor for the construction of the NYUAD Main Campus Project ("Main Campus Project"). Tamkeen, a subsidiary of the EAA, was created in July 2011 with the specific mandate to deliver NYUAD on behalf of the Government of Abu

Dhabi. Construction of the Main Campus Project began in June 2010 and was completed in April 2014, although "snagging"[1] work continues.

The Labor Guidelines

NYU and its government partners sought to address and obviate historically harsh labor practices by establishing guidelines designed to better the working conditions for construction workers and operations personnel at the Interim and Main Campuses. These guidelines were publicly announced in two documents: the *Statement of Labor Values* and the *14 Points*.[2] The *Statement of Labor Values*, released in 2009, primarily called for strict adherence to pre-existing UAE labor laws in ten different categories: wages and benefits, working hours, overtime compensation, child labor, forced labor, health and safety, nondiscrimination, harassment or abuse, resolution of work disputes and women's rights. The *14 Points*, released in February 2010, constituted 14 bulleted provisions intended to "operationalize" (in the words of NYU and its partners) the *Statement of Labor Values* and also, in some cases, exceed the minimum protections afforded by UAE labor law. In order to implement the measures described in the *Statement of Labor Values* and the *14 Points*, the Key Parties[3] relied on the *Supplementary Specifications*,[4] issued in March 2010, which contained 59 pages of non-public guidelines 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. The *Supplementary Specifications* set forth detailed provisions for compensation, health care, living conditions, workplace health and safety, and working conditions, but was in some respects inconsistent with the *14 Points*. The "Labor Guidelines" as referenced in this report refer collectively to the *Statement of Labor Values*, the *14 Points* and the *Supplementary Specifications*.

The effort by NYU and its government partners to raise the working standards of the thousands of workers who would ultimately be employed on the Main Campus Project was unprecedented in the region. As such, it presented substantial challenges for NYU and its partners, for the compliance monitors hired to ensure adherence to the Labor Guidelines and for AF Carillion and hundreds of its subcontractors. 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. Mott MacDonald Limited ("Mott MacDonald"), a UK-based engineering and development consultant, served as the compliance monitor for Tamkeen-contracted workers at the Interim Campus and also appears to have addressed and resolved all issues on a timely basis at that campus. Indeed, there were no allegations in media and NGO reports of violations of the Labor Guidelines during the operation of the Interim Campus. Accordingly, it was not part of our mandate to investigate the conditions there.

Compliance Monitoring

As a first step to ensuring compliance with the Labor Guidelines by the construction companies working on the Main Campus Project, Mubadala appointed EC Harris International Limited ("EC Harris"), a UK-based construction consultant, as the cost consultant and the project manager for the Main Campus

[1] "Snagging" involves checking new construction for minor faults that need to be corrected.
[2] *See* Appendix Exhibit 1 for a copy of the *14 Points* and the *Statement of Labor Values*.
[3] *See* Appendix Exhibit 2 to this report for a fuller description of the Key Parties. The Key Parties involved in the construction of the Main Campus Project included NYU, the EAA, Tamkeen, Mubadala, EC Harris, Mott MacDonald, and AF Carillion.
[4] In spite of our request, Tamkeen refused, citing "commercial sensitivity," to allow us to include the *Supplementary Specifications* as an exhibit to this report.

Project, which included responsibilities for overseeing compliance by AF Carillion and its subcontractors.[5] Tamkeen's responsibilities included monitoring the project's commitment to workers' rights. Tamkeen, in turn, engaged Mott MacDonald to be the independent third party verifier responsible for overseeing the compliance practices of EC Harris.[6] A Mott MacDonald team of experts from its International Labour and Social Sustainability division ("Mott MacDonald ILS Team") was also engaged to assist Mott MacDonald with its compliance responsibilities. Together, EC Harris, Mott MacDonald, the Mott MacDonald ILS Team and AF Carillion were responsible for monitoring adherence to the Labor Guidelines. These parties carried out this function through monthly audits of AF Carillion and its subcontractors, worker interviews and inspections of housing accommodations. On a monthly basis (or, in the case of the Mott MacDonald ILS Team, a quarterly basis), these parties produced *non-public* reports reflecting their monitoring activities and findings. Mott MacDonald also produced annual reports, which were publicly released. The annual reports only reported the violations that were not rectified within 30 days of a contractor being notified of a violation of the Labor Guidelines. Further, subcontractors that were obligated to comply with the Labor Guidelines provided monthly non-public reports to AF Carillion self-certifying their compliance with certain aspects of the Labor Guidelines.

Allegations of Violations

Various media outlets and NGOs subsequently conducted their own investigations of working conditions at the Main Campus Project. Their inquiries resulted in articles and reports[7] alleging that NYU and its government partners had failed to enforce the Labor Guidelines they had issued.[8] The specific allegations included the following:

1) **Allegation:** *Mott MacDonald was Ineffective*

   Media and NGO reports contrasted the apparently limited findings of compliance violations by Mott MacDonald in its annual public reports with their own findings of numerous violations, the inference being that Mott MacDonald was ineffective.

[5] EC Harris's dual role as project manager and compliance monitor could be perceived as a conflict of interest. For this reason, as noted in our recommendations (*see* Section 6.1.5 below), we believe that the compliance monitor should not have any economic interest in the larger project to avoid even the appearance of a conflict.

[6] In 2006, Mott MacDonald was awarded a contract by the Abu Dhabi Water and Electricity Authority to oversee the development of water and electricity systems on Saadiyat Island. As with EC Harris, Mott MacDonald's work for the Abu Dhabi Water and Electricity Authority could be perceived as a conflict of interest with its role as the independent third party verifier. The compliance monitor should not have any interest in other projects for the same parties to avoid even the appearance of a conflict. *See* Recommendations in Section 6.1.5 below.

[7] The reports included: "The Island of Happiness," *Human Rights Watch,* May 19, 2009; "The Island of Happiness Revisited," *Human Rights Watch*, March 21, 2012; "In Abu Dhabi, they call it Happiness Island. But for the migrant workers, it is a place of misery," The Guardian, December 21, 2013; "Deconstructing labor at NYU Abu Dhabi," *Gulf Labor*, May 2, 2014; "Workers at N.Y.U.'s Abu Dhabi Site Faced Harsh Conditions," The New York Times, May 18, 2014; "Dubai workers for British firm beaten by police over strike," The Independent, May 25, 2014; "NYUAD Needs to be Proactive about Fair Labor Guidelines on Saadiyat Island," *Coalition for Fair Labor at NYU*, May 2014; "Slaves of Happiness Island," Vice, August 4, 2014; "Migrant Workers' Rights on Saadiyat Island in the United Arab Emirates – 2015 Progress Report," *Human Rights Watch*, February 10, 2015.

[8] The reports do not cite evidence of problems relating to the child labor, forced labor, worksite health and safety and employer-provided transportation provisions of the Labor Guidelines.

2) **Allegation:** *Mistreatment of Striking Workers*

   Media and NGO reports specifically cited the treatment of workers of BK Gulf,[9] the largest subcontractor on the Main Campus Project, during a 2013 strike, as well as workers of Al Reyami, another subcontractor on the Main Campus Project, during a 2011 strike. In the case of the BK Gulf strike, the reports implied that the strike was specifically related to working conditions on the Main Campus Project. As to both strikes, the reports questioned whether the arrest or dismissal and deportation of certain workers following the strikes were violations of the Labor Guidelines.

3) **Allegation:** *Ineffective Reimbursement Policies for Recruitment Fees Paid By Migrant Workers*

   Media and NGO reports alleged that workers who had paid recruitment fees to secure jobs in the UAE had not been reimbursed by their employers as required by the Labor Guidelines.

4) **Allegation:** *Lack of Adherence to Passport Retention Policies*

   Media and NGO reports alleged that employers on the Main Campus Project were violating the Labor Guidelines by taking and holding their workers' passports.

5) **Allegation:** *Pay-Related Issues, Including Late Payments and Non-Payment of Back Pay*

   Media and NGO reports alleged that some workers were paid late and were not paid back pay.

6) **Allegation:** *Involuntary Overtime*

   Media and NGO reports alleged that employers were violating the Labor Guidelines by forcing their workers to work overtime against their wishes.

7) **Allegation:** *Sub-Standard Housing*

   Media and NGO reports cited several instances in which workers on the Main Campus Project were living in housing that was below the standard set forth in the Labor Guidelines.

These allegations formed the basis for the inference that NYU and its government partners did not make a good faith effort to implement the Labor Guidelines that were intended to enhance the working conditions of those employed on the Main Campus Project.

[9] BK Gulf is a Dubai-based affiliate of Balfour Beatty plc, a multinational construction services group based in the UK. BK Gulf's subsidiary, PT Gulf, which is based in Abu Dhabi, was the largest subcontractor contracted on the Main Campus Project to carry out Mechanical, Electrical and Plumbing ("MEP") services. When discussing the October strike which involved both BK Gulf and PT Gulf workers, we have adopted the practice of media outlets and NGOs by referring to all of the workers as "BK Gulf" workers.

1.1 Nardello & Co.'s Mandate

In response to the media and NGO reports, NYU and Tamkeen called for an independent investigation of the allegations. In June 2014, Nardello & Co. was selected by Tamkeen to conduct an independent investigation to determine the veracity of the allegations raised by the media and NGOs.[10]

The mandate given to us by Tamkeen was the following:[11]

(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.

2. METHODOLOGY

Our investigation comprised a review of thousands of documents, hundreds of interviews of construction workers and representatives of the Key Parties, as well as site visits to worker accommodation camps, local markets, and gathering places such as mosques and outside the gates of accommodation camps.[12]

2.1 Document Review

In addition to familiarizing ourselves with the media and NGO allegations, we reviewed a wide array of documents provided by the Key Parties and various subcontractors and sub-subcontractors.[13] These documents included:

(i) The Labor Guidelines;
(ii) Correspondence and memoranda drafted by the Key Parties;
(iii) Executed contracts between the Key Parties and between AF Carillion's subcontractors and sub-subcontractors;
(iv) Mott MacDonald's monthly and annual monitoring reports;
(v) The Mott MacDonald ILS Team's quarterly monitoring reports;
(vi) EC Harris's monthly monitoring reports;
(vii) AF Carillion's monthly compliance reports;
(viii) Monthly compliance reports from over 50 subcontractors;
(ix) Subcontractor approval forms maintained by EC Harris;
(x) Compliance questionnaires maintained by EC Harris;
(xi) Minutes of numerous meetings held by the Key Parties;
(xii) Passport retention forms maintained by AF Carillion and its subcontractors;
(xiii) Payroll records for BK Gulf;
(xiv) Daily manpower reports for AF Carillion and BK Gulf;

[10] *See* Appendix Exhibit 3.
[11] Our mandate did not include providing an opinion on UAE labor law. We also were not tasked with conducting a general review of the overall compliance program for the Interim Campus and the Main Campus Project, but did so only in those specific instances where the allegations called into question the role of the compliance monitors. Further, while we reviewed the actions of the monitors as they related to specific allegations, it was not within our mandate to examine the basis for those actions to assess the merits of the monitors' decisions.
[12] Workers' accommodation camps have security gates to restrict access.
[13] Sub-subcontractors were companies contracted by subcontractors on the Main Campus Project.

(xv) Supplementary contracts for workers employed by AF Carillion and its subcontractors;
(xvi) Reports of accommodation inspections by AF Carillion, EC Harris, Mott MacDonald and the Mott MacDonald ILS Team;
(xvii) Materials issued by AF Carillion and EC Harris during the subcontractor tender process; and
(xviii) Spreadsheets and data regarding compliance activities, project statistics and miscellaneous tracking reports, including site access card inventories and lists identifying subcontractors and sub-subcontractors.

2.2 Interviews and Site Visits

Over a six-month period, we conducted approximately 400 interviews, including in-person interviews in the UAE, US, UK, Ireland and Canada, and, by telephone, in Bangladesh and Qatar.

The people with whom we spoke fell into one of six categories: (i) approximately 340 laborers who worked on the Main Campus Project; (ii) senior and mid-level management for employers on the Main Campus Project; (iii) representatives of Mott MacDonald and EC Harris; (iv) senior representatives of the Abu Dhabi government agencies responsible for the management and delivery of the Main Campus Project; (v) administrators, compliance personnel, faculty and students of NYU and NYUAD; and (vi) journalists and representatives of NGOs.

We were able to identify and interview three of the workers who were named by the media and NGOs. We attempted to identify and locate additional workers mentioned in media and NGO reports by reviewing employee rosters, when available, and through interviews with co-workers, but our efforts were unsuccessful.[14]

In order to encourage openness and full disclosure, particularly for the construction workers, we kept the identities of our interview subjects confidential. In light of the nature of the allegations and the cultural context, we adopted special additional measures and protections for interviews of the construction workers. With pre-approved access to accommodations that housed workers from several companies employed (or formerly employed) on the Main Campus Project, we were able to speak with workers without revealing their identities to their employers. We also identified additional interviewees through informal approaches to workers in local markets, gathering places such as mosques, and outside housing camp gates. We utilized diverse and culturally sensitive interview teams, fluent in Urdu, Hindi and Bengali, who spoke to workers in non-threatening private settings free from the presence of their employers or other workers. As noted above, we interviewed approximately 340 workers from the Main Campus Project. It is worth noting that these workers were dependent on their UAE jobs, which allowed them to earn wages in excess of what they could earn in their home countries. This dependence, coupled with the fact that many workers had limited education, made them particularly vulnerable. Accordingly, it is possible that some workers may have believed that certain practices, such as providing their passport to their employer, were mandatory even if an option was offered. Similarly, it is also possible that some workers did not understand certain documents they signed – such as consent forms to provide their passports to their employers – or their significance.

We were also able to tour the labor accommodations at Yas Island and conduct informal visits to labor accommodations elsewhere.

[14] In several cases, insufficient identifying information appeared in media and NGO reports, as only first names or initials were used to protect the identities of the workers.

2.3 Measures to Safeguard Our Independence

We agreed to take on this matter on the condition that our investigation would be completely independent. Tamkeen gave us sole authority to make all investigative decisions, including with respect to staffing, strategy, areas of emphasis and investigative techniques. At no point in our investigation did any party attempt to dictate our strategy, tactics or conclusions. 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.

2.4 Limitations on Our Investigation and Report

Three principal factors limited the scope of our investigation and the preparation of this report. First, our ability to interview a wider sampling of workers was hampered by the reality that our investigation started near the end of the construction of the Main Campus Project, during a period when the pool of workers was dwindling and workers either were being shifted to other projects or had already left the UAE. Accordingly, while we believe our interviews of hundreds of workers offer a sound basis for the findings set forth herein, we recognize that there were hundreds, if not thousands, of workers who may have had relevant information with whom we were unable to speak.

Second, the records of the Key Parties did not capture all the details of their compliance-related activities for future independent investigations such as ours. While we saw no indication of intentional concealment, certain potentially relevant records were missing or incomplete.

Third, while Tamkeen and NYU fully cooperated with our investigation and provided us with all of the documents and access to the personnel we requested, we were not provided similar access by several of the other Key Parties involved with the construction of the Main Campus Project. Further, we did not have the equivalent of subpoena power or other means to compel information: cooperation with our investigation was voluntary and the level of cooperation varied considerably. For several months, AF Carillion repeatedly declined to provide access to their employees and records due to purported concerns about the "commercially sensitive" nature of the materials we requested. Other parties, such as AF Carillion's subcontractors, said they would not provide us with information because of confidentiality agreements with AF Carillion, or the companies that contracted them. Months of negotiations caused substantial delay of our investigation and further limited the pool of workers we were able to speak to. These issues were largely resolved and access to the individuals and records we requested was in most cases provided. Certain information, however, such as the value of all contracts on the Main Campus Project, was not provided on the basis that it was "commercially sensitive."

Notwithstanding these limitations, we are satisfied that our fact finding was sufficient to support the conclusions and recommendations set forth herein.

3. EXECUTIVE SUMMARY

Introduction

Several media and NGO reports alleged that there were numerous violations of the Labor Guidelines involving workers on the Main Campus Project. The inference raised by these reports is that these violations were widespread and that all workers encountered the conditions cited in the reports. When these allegations surfaced, NYU and Tamkeen called for this independent investigation. Our investigation determined that there was substantial evidence to support the reported allegations of violations of the Labor Guidelines, but that the conditions were not as widespread as implied. In fact, based on our sample pool of interviews, it appears that the majority of workers on the Main Campus Project, to varying degrees, benefited from the protections of the Labor Guidelines.

Our investigation also determined that while the goals of the Labor Guidelines were admirable, there was insufficient understanding by all Key Parties of the challenges in implementing and enforcing enhanced standards for the workers. We concluded that the single most significant problem was not one of enforcement of the Labor Guidelines, but rather *the exclusion of thousands of workers from the protections afforded by these guidelines*. Our investigation disclosed that there were two pools of workers employed on the Main Campus Project: (i) workers employed by subcontractors who were required to comply with the Labor Guidelines; and (ii) workers employed by subcontractors who were deemed "exempt" from complying with the Labor Guidelines because their contracts fell below certain monetary or time thresholds. Further, we determined that the majority of the serious allegations involved workers employed by these exempt subcontractors. Based on a review of available site-attendance records for exempt and non-exempt companies, we estimate this pool of exempt workers was between 30% and 35% of the total pool of approximately 30,000 workers employed on the Main Campus Project over the course of its construction. As the exempted workers were employed on contracts that were smaller either in monetary amount or duration of time, or both, this pool of workers accounted for a much smaller percentage than 30% to 35% of the total man-hours worked on the Main Campus Project. Nevertheless, this practice of exempting companies from compliance created a significant gap in coverage that disenfranchised thousands of workers from the protections contemplated by the Labor Guidelines.

In contrast to the workers employed by contractors deemed exempt from complying with the Labor Guidelines, it appears that the 65% to 70% of the workers employed by non-exempt contractors benefited to some extent from the protections of the Labor Guidelines. For example, one of the objectives of the Labor Guidelines was to ensure that workers on the Main Campus Project received wages that were benchmarked to the highest wages in the region. In the course of our investigation, we spoke to over 300 workers and reviewed pay records for approximately 200 more workers[15] employed on the Main Campus Project. Of this total pool of workers, approximately 95% received at least the minimum salary of AED 800 (USD 217) mandated by the *Supplementary Specifications* – amounts that, to varying degrees, were higher than what workers earned on other projects.[16] In terms of housing, of the 300 workers interviewed,

[15] Payroll records for these 200 workers were reviewed because they had been deported in connection with the BK Gulf strike, which The New York Times reported in its May 18, 2014 article, included "strikers' demands for more pay." Based on this description, we sought to determine whether the strike involved the payment of wages that fell below certain minimum levels as set out in the *Supplementary Specifications*. (*See* Section 5.2.1.4 below).

[16] In order to assist in the preparation of the Labor Guidelines, the EAA commissioned a study that looked at wages for unskilled workers in the UAE. The study looked at nine companies and the average wage was approximately 650 dirhams (USD 177) per month in basic wages, which did not include food, housing, transportation or medical

approximately 90% lived in higher standard housing in accordance with the Labor Guidelines. Indeed, many workers described their employment on the Main Campus Project in favorable terms, with a number saying it was the best project they had ever worked on.

With the benefit of access to personnel and documentation that was not made available to the media and NGOs, we also found evidence to suggest that compliance monitors on the Main Campus Project identified and addressed many more violations of the Labor Guidelines than would appear from their publicly released reports, including some of the specific violations cited in media and NGO reports. In our view, however, there were significant errors in judgment by the monitors concerning their interpretation of the Labor Guidelines, most notably with respect to passport retention and reimbursement of recruitment fees.

Collectively, 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 conditions in the UAE and NYU's decision to establish a campus there. Although it is not strictly within our mandate to address this question, we would be remiss not to comment. A careful analysis of the facts, many of which were not available to the media and NGOs, showed that NYU and its government partners intended to improve conditions for workers on the Main Campus Project and made a real effort to implement the Labor Guidelines. Indeed, 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.

3.1 The *de facto* Exemption Policy

The Labor Guidelines were intended to ensure that *all* workers engaged in the construction of the Main Campus Project and the operation of the Interim Campus received the benefits of those guidelines. Our investigation determined that this was not the case, as by our calculation, based on a review of available site-attendance records for exempt and non-exempt companies, 30% to 35% of workers who had been employed on the Main Campus Project did not receive these benefits. Although there were several contributing factors affecting the scope of those covered (*see* Section 5.1.2 below), the greatest single factor was a *de facto* policy, not disclosed publicly, that made numerous subcontractors exempt from compliance.

As noted above, we had a discrete mandate, which was to investigate and determine the veracity of specific allegations in the media and NGO reports. A thorough examination of the practice of exempting companies that fell below certain time or monetary thresholds was decidedly outside the scope of that mandate. That said, our findings on the veracity of the allegations would be incomplete if we did not

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insurance. We also reviewed publicly available sources to identify average wages for construction workers in the UAE. In 2006, *Human Rights Watch* reported that wages ranged from AED 389 (USD 106) to AED 918 (USD 250) per month (http://www.hrw.org/news/2006/11/11/uae-workers-abused-construction-boom). More current articles and reports estimated wages from AED 374 (USD 102) to AED 1,500 (USD 409). It is not clear whether any of these figures include the benefits provided on the Main Campus Project including food, housing, transportation (such as flight costs home) and medical insurance.
(http://www.aljazeera.com/indepth/features/2013/05/201352371226306130.html,
http://www.albawaba.com/business/136-salaries-construction-workers-stage-rare-protest-next-dubai-mall-667424,
and http://www.dubaifaqs.com/salaries-dubai.php).

address, at least in some measure, the development and effect of this practice that became a *de facto* policy.

We found that the practice of granting exemptions based on certain thresholds had its origins in the legitimate need to address logistical difficulties in implementing the terms of the Labor Guidelines. Our investigation revealed that there was general agreement by all parties that certain companies, such as outside vendors who simply delivered goods to the Main Campus Project, would be considered "exceptions."[17] The reasoning, which we believe was sound with respect to this narrow group, was that workers from these companies were "exceptions" because they were not actually working on the Main Campus Project and it would be impractical for them to be covered by the Labor Guidelines.

There were, however, continuing discussions among Key Parties about expanding the scope of "exceptions," as 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. Mubadala, AF Carillion and EC Harris ultimately agreed that only those subcontractors working on-site for longer than a period of 31 cumulative days, but with less than 30 days between each separate visit, and where the subcontract package value exceeded AED 3.67 million (USD 1 million), would be obligated to comply with the Labor Guidelines. This meant that any contract valued at less than USD 1 million would be exempt from compliance. It also meant that any subcontractor on-site for less than 31 days, or greater than 31 days, but with more than 30 days between each separate visit, would be exempt from compliance.

Although accounts vary as to the extent of each party's knowledge, it appears that Mott MacDonald, the EAA, Tamkeen and NYU did not know about the practice of granting exemptions based on these thresholds or believed that exemptions would be determined on a case-by-case basis regardless of whether contracts fell below the time or monetary thresholds. Correspondence between EC Harris, AF Carillion and Mubadala (on which NYU, the EAA and Mott MacDonald were not copied) refers to NYU and the EAA having been "fully aware" of the details of AF Carillion's implementation plan, which describes both the time and monetary thresholds for exemptions. Further, correspondence between the EAA and Mubadala (on which NYU and Mott MacDonald were not copied) discuss providing a list of potential exemptions to the compliance officers for the EAA and NYUAD. The NYU personnel we interviewed told us that they were not aware of any monetary threshold, although some said that they were aware of a time threshold.[18] Mott MacDonald appears to have been aware of the potential exemptions list, but was unaware of any formal approval of an exemption practice. In any event, there appears to have been significant confusion regarding the exemptions, and the implementation of this *de facto* policy resulted in thousands of workers on the Main Campus Project not receiving the protections of the Labor Guidelines.

[17] For purposes of this report, "exceptions" refers to vendors, such as courier services that made deliveries to the site, who all parties agreed were not required to comply with the Labor Guidelines. "Exemptions" refers to those contractors who were not required to comply with the Labor Guidelines on the basis of thresholds established in the *de facto* exemption policy described above.

[18] The time and monetary thresholds for the exemptions are described together in an AF Carillion September 15, 2010 implementation plan that set out the terms that were ultimately agreed to by Mubadala, EC Harris and AF Carillion. As a result, it is unlikely that someone could be aware of the time threshold without being aware of the monetary threshold. However, the basis for the "exception" policy was also time-based, so it is possible that there was confusion among the Key Parties, including NYU and Mott MacDonald personnel, as to whether they were discussing "exceptions" or "exemptions."

Further, this problem may have been exacerbated by the way in which AF Carillion and its subcontractors were compensated for additional expenses they incurred to implement the Labor Guidelines. As detailed in Section 5.1.2.1 below, contracts between AF Carillion and its subcontractors typically included an additional line item for payment of so-called "compliance-related costs." Compliance-related costs covered the additional costs incurred by the contractor or subcontractor to adhere to the Labor Guidelines.[19] This system provided incentives to subcontract work in smaller contracts that fell below the 31-day minimum, or AED 3.67 million (USD 1 million) thresholds necessary to trigger coverage. This meant that if a subcontractor was paid an additional USD 10 million to cover compliance-related costs, it could then subcontract much of its work into smaller subcontracts that fell under the exemption policy's monetary threshold, thereby decreasing the number of workers eligible for coverage under the Labor Guidelines. It is evident that decreasing the number of covered workers would have had the net effect of lowering compliance-related costs and increasing profits for the company. While our investigation determined that certain safeguards, such as an approval process instituted by AF Carillion and EC Harris, were in place that presumably would have prevented an end-around these thresholds, ultimately, even good faith – and fully vetted – decisions to subdivide contracts would have the effect of lowering the number of covered workers. As outlined in the following sections, given the number of contracts exempt from compliance and not operating under the scrutiny of the compliance monitors, it is not surprising that our investigation revealed that most, but not all, of the more serious allegations involved companies that were exempt from complying with the Labor Guidelines.

3.2 Investigation of Media and NGO Allegations Concerning the Construction of the Main Campus Project

As noted above, several media organizations and NGOs reported that there was evidence of numerous violations of the Labor Guidelines affecting the workers at the Main Campus Project. These same groups also questioned the efficacy of Mott MacDonald's monitoring, as these violations occurred on Mott MacDonald's watch. A summary of our findings as to each of these allegations is set forth below.

3.2.1 Allegation: Mott MacDonald Was Ineffective

Various NGO and media reports questioned the efficacy of Mott MacDonald's compliance monitoring efforts given the limited number of violations reported in Mott MacDonald's public annual reports, which were seemingly inconsistent with the results of investigations conducted by the media and NGOs.

Our investigation determined that the media and NGO reports were based on the limited information that was available to them. These reports assumed Mott MacDonald was the sole company responsible for monitoring the Main Campus Project when, in fact, the Mott MacDonald ILS Team, EC Harris, AF Carillion and AF Carillion's non-exempt subcontractors all had monitoring responsibilities**.**

Further, Mott MacDonald, the Mott MacDonald ILS Team, EC Harris, AF Carillion and AF Carillion's non-exempt subcontractors prepared monthly, quarterly and annual compliance reports. However, other than Mott MacDonald's annual compliance reports, none of those reports were made public. Those

[19] This did not include the costs of compliance monitors, but did include items such as raising salaries to meet the Labor Guidelines' requirements.

reports provided additional and more detailed information than was publicly available about the monitors' efforts to enforce compliance with the Labor Guidelines.[20]

These allegations were also based on the assumption that Mott MacDonald was monitoring all subcontractors for compliance with the Labor Guidelines. As noted above, the *de facto* exemption policy removed numerous companies, and their workers, from the oversight of the monitors. This fact, compounded by the monitors' own narrow interpretations of guidelines involving the reimbursement of recruitment fees and the retention of passports, resulted in significant gaps in compliance monitoring.

For those companies that were not exempt from compliance, our review of compliance reports and interviews with management from Mott MacDonald, Mott MacDonald's ILS team, EC Harris and AF Carillion found that the monitors identified and addressed numerous violations, including several of the allegations appearing in the media and NGO reports concerning Robodh and Al Reyami, two non-exempt subcontractors that worked on the Main Campus Project. We also determined that there was a penalty structure in place for non-compliance, although it appears that penalties were applied rarely and inconsistently.

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. There were, however, several violations we identified, such as involuntary overtime and certain pay-related issues, that were not identified by the monitors. Given the size of our sample pool relative to the 30,000 workers who were employed on the site over four years, it is not possible for us to determine whether these missed violations were an aberration or indicative of more serious failures in the monitoring process. Further, Mott MacDonald, which was responsible for the independent verification of the compliance program, should have clarified the terms of the Labor Guidelines, but failed to do so. As outlined in our recommendations set forth in Sections 6.2.4 and 6.2.5 below, we believe that an increase in compliance interviews and audits would ensure greater compliance.

3.2.2 Allegation: Mistreatment of Striking Workers

3.2.2.1 *The BK Gulf Strike*

The New York Times, The Independent, *Gulf Labor* and *Human Rights Watch*, among others, made a series of allegations concerning the mistreatment of the BK Gulf workers who participated in an October 2013 strike. In connection with the strike, approximately 40 workers were arrested in Dubai and ultimately 200 to 250, including those arrested in Dubai, were dismissed by BK Gulf and had their visas revoked, resulting in their deportation. The inference drawn from these reports was that the strike was related to pay-related violations of the Labor Guidelines involving workers on the Main Campus Project.[21] Our investigation revealed that the causes of the strike were more complex than reported. Our investigation also determined that worker dissatisfaction with their wages on the Main Campus Project did not appear to be one of the causes of the strike. In fact, relative to other projects in the region, the vast majority of BK Gulf workers received higher wages while working on the Main Campus Project. We

[20] The annual reports only reflected violations of the Labor Guidelines that were not rectified within 30 days of a contractor being notified of a violation.

[21] According to BK Gulf, workers from the Main Campus Project accounted for approximately 1,500 out of a total of 4,000 striking workers. The staffing levels for workers on the Main Campus Project provided by BK Gulf in our interviews and in documents were not precise and should be viewed as estimates.

interviewed approximately 100 current or former BK Gulf workers, including 12 workers who were deported after the strike.[22] Approximately 95% of these workers were paid at least AED 800 (USD 217) per month,[23] the minimum wage set by the *Supplementary Specifications*.[24] We also reviewed pay records for 200 workers whom BK Gulf identified as the workers on the Main Campus Project who were deported. More than 85% of the deported workers were also paid at least AED 800 (USD 217) per month.

Our investigation established several contributing factors for the strike, including: (i) dissatisfaction with low wages among long-term workers who were not working on the Main Campus Project; (ii) resentment among workers on the Main Campus Project who believed that colleagues of similar skills were being compensated at higher levels;[25] (iii) resentment among long-term workers that newer workers and workers in another BK Gulf division were paid higher wages; and (iv) general dissatisfaction among Main Campus Project workers whose salaries were going to be cut after they were transferred to a project that inevitably did not enjoy the protections provided by the Labor Guidelines.

Although it did not appear that the strike was ultimately caused by working conditions on the Main Campus Project, more than 75% of those dismissed and deported had been working on the Main Campus Project. BK Gulf stated that striking workers were offered the choice of returning to work or losing their jobs. Site attendance records show that more than 1,000 workers returned to work, so it appears that BK Gulf did not dismiss all workers who participated in the strike. It is not clear whether a choice was actually offered or whether workers were selectively chosen for dismissal. The workers we spoke to did not corroborate BK Gulf's claim. We spoke to numerous current and former BK Gulf workers, including 11 deported workers who had been employed on the Main Campus Project, and not a single worker said that they chose to be dismissed or knew of any one who did.

Further, reports alleged that workers' rights were violated in connection with the *Statement of Labor Values'* guideline concerning the resolution of work disputes. The *Statement of Labor Values* states, in pertinent part, "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." Under then-prevailing and current UAE law, striking is illegal, employers are entitled to dismiss striking workers and are required to notify the authorities of a strike.[26] There were, however, several deported workers who said that they were not involved with the strike. It is possible that those workers were dismissed for other reasons that would not constitute violations of the *Statement of Labor Values,* but without understanding the basis for those dismissals, we cannot determine whether or not violations occurred.

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[22] 11 of the 12 workers were employed on the Main Campus Project.

[23] AED 800 refers to the base salary only. In addition, workers were provided with housing, meals, medical insurance and employer-funded air travel between the UAE and their home country for annual leave.

[24] The wage thresholds set by the *Supplementary Specifications* were benchmarked to the highest wages in the region and were significantly higher than those in the workers' home countries.

[25] The *Supplementary Specifications* set forth a requirement to map workers to specific job titles, which corresponded to specific pay scales. Certain workers were dissatisfied with the pay scale they were assigned by BK Gulf for the Main Campus Project.

[26] It is evident that UAE law is completely inconsistent with labor practices in the US and elsewhere in the West that guarantee, among other things, the right to strike. It is also difficult to reconcile the tension between the *Statement of Labor Values* and UAE labor law. It is evident that the *Statement of Labor Values* edict that "no worker shall be subject to harassment, intimidation, or retaliation in their efforts to resolve work disputes" is at odds with UAE's criminalization of striking, the most powerful tool workers have to express grievances.

Media and NGO reports have implied that Mott MacDonald was deficient in its monitoring duties with respect to the October 2013 strike because Mott MacDonald failed to mention the strike, or the strikers' demand for more pay, in its 2013 annual report. In response to our questions, Mott MacDonald, the Mott MacDonald ILS Team and EC Harris all stated that they were not aware of the BK Gulf strike at the time that it occurred. AF Carillion told us that they were aware of the strike, but believed it did not involve any compliance issues and therefore did not need to be reported to the compliance monitors. Reports implied that Mott MacDonald should have noticed the absence of BK Gulf workers from the site. Mott MacDonald stated that they were not on-site daily and due to the nature of the Main Campus Project – a large site with numerous access points, more than 5,000 workers and various levels of ongoing construction work with workers periodically leaving the site as specific tasks were completed – they would not have noticed the absence of the striking workers. We have conducted site visits to the Main Campus Project and found that Mott MacDonald's explanation is plausible.

3.2.2.2 *The Al Reyami Strike*

Allegations by *Gulf Labor* concerning the treatment of striking workers and Mott MacDonald's response were also made about an earlier strike involving workers from Al Reyami, another subcontractor employed on the Main Campus Project. With respect to the Al Reyami strike, our investigation revealed that Mott MacDonald, the Mott MacDonald ILS Team, EC Harris and AF Carillion were aware of events as they unfolded. Indeed, documents maintained by the monitors showed that the Mott MacDonald ILS Team immediately identified the possibility that the dismissal of four striking workers was a violation of the *Statement of Labor Values'* guideline concerning the resolution of work disputes. Mott MacDonald, the Mott MacDonald ILS Team, EC Harris and AF Carillion acted quickly to investigate the circumstances of the dismissal and determined that the dismissal of the workers was justified due to unsatisfactory performance and therefore did not constitute a violation of the Labor Guidelines.[27]

3.2.3 Allegation: Ineffective Reimbursement Policies for Recruitment Fees Paid by Migrant Workers

A key element of the Labor Guidelines concerns the reimbursement of recruitment fees paid by workers to secure jobs in the UAE. The fees, generally USD 1,000 to 3,000, are typically paid to recruitment agencies, or individual agents, in the workers' native countries. It is illegal for UAE-based recruitment agencies to charge workers recruitment fees, but the UAE law does not apply to companies or agents operating outside the country. These foreign-based agents frequently promise wages that are greatly in excess of what the worker actually earns once they start working in the UAE. Due to the debt workers assumed to pay recruitment fees to foreign agents/agencies, they are effectively bound to their UAE employers, as they need to pay off that debt, and employment at similar wages is not available in their home countries. *Human Rights Watch*, The New York Times and others reported that although the Labor Guidelines required employers to reimburse workers for any recruitment fees they paid, there was no evidence to suggest that the majority of workers on the Main Campus Project had been reimbursed.

Our investigation found that 85% of the workers we interviewed had paid recruitment fees to work in the UAE, although few paid fees specifically to work on the Main Campus Project. If we applied this

[27] As noted above at footnote 11, while we reviewed the actions of the monitors as they related to specific allegations, it was not within our mandate to examine the basis for those actions to assess the merits of the monitors' decisions.

percentage to the total pool of 30,000 workers over the life of the project, more than 25,000 workers on the Main Campus Project would have qualified for reimbursement.

To some extent, NYU and its partners fell victim to their own laudable ambition. They aspired to address the pernicious effect of recruitment fees, but the execution and implementation of their policy was not coextensive with the aspiration. Indeed, implementation of such a sweeping policy comes with real challenges.[28]

EC Harris, Mott MacDonald and the Mott MacDonald ILS Team 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 distinctions. This interpretation eviscerated the pool of workers eligible for reimbursement and undermined the stated intent of the Labor Guidelines. In fact, the only personnel who qualified for reimbursement under this interpretation were approximately 20 operations personnel at the NYUAD Interim Campus who were directly monitored and reimbursed by their employer.

As noted in our recommendations in Section 6.2.2 below, the long-term solution to recruitment fees is not a commercial one, but requires multilateral actions of governments within the jurisdictions where the recruitment fees are paid. That said, 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 using interpretations that effectively disqualified all workers from reimbursement. In practice, this would have involved providing a lump sum amount – without requiring proof of payment[29] – 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. Interpreting a 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, although admirable, requires far greater consideration than was given here.

3.2.4 Allegation: Lack of Adherence to Passport Retention Policies

Numerous media outlets and NGOs alleged that employers on the Main Campus Project that held their workers' passports violated the Labor Guidelines' edict in the *14 Points*, which stated that "Employees will retain all of their own personal documents, including passports..."

Our investigation confirmed that most workers did not hold their own passports, which meant that their employers were not in compliance with the *14 Points*. However, we determined that the actions of Mott MacDonald, the Mott MacDonald ILS Team, EC Harris and AF Carillion were guided not by the public edict in the *14 Points,* but by the contradictory rule in the non-public *Supplementary Specifications*, which stated "The Employer shall not confiscate or restrict access to Employees' passports or any other personal documents…" The *Supplementary Specifications* did not contain any provision that affirmatively required

[28] By way of example, under the Labor Guidelines as written, a worker employed on the Main Campus Project for one week would in theory qualify for reimbursement for recruitment fees that were paid 10 years earlier in relation to another project.
[29] Given the dubious nature of the recruitment agents, most workers do not have proof that they paid a recruitment fee to obtain employment in the UAE.

that workers retain their passports. Thus, while the *14 Points* prohibited employers from holding workers' passports, the *Supplementary Specifications* prohibited employers only from confiscating or restricting access to the documents. Accordingly, given that the monitors were guided by the *Supplementary Specifications*, an employer's retention of passports alone did not constitute a violation the monitors – under this interpretation – were required to report.[30]

Key Party representatives told us that the employers' practice of holding passports and other personal documents subject to return to the workers with 24 to 48 hours' notice was acceptable to most workers, as it meant their documents were secure from the risk of theft or loss.

AF Carillion, EC Harris, Mott MacDonald and the Mott MacDonald ILS Team noted few violations of the *Supplementary Specifications'* guideline concerning passport retention. In contrast, our worker interviews disclosed that more than a quarter of the workers we interviewed employed by companies covered under the Labor Guidelines did not relinquish control of their passports voluntarily. Indeed, BK Gulf acknowledged that it was its practice to retain workers' passports, regardless of their wishes, claiming it was necessary to avoid visa issues.

Accordingly, our investigation revealed that the allegations that employers held workers' passports were corroborated, but also showed that in many cases, this was done with the apparent consent of the workers. Further, our review showed that approximately 30% of workers said that they had to provide their employer with their passport as a condition to work on the Main Campus Project, in violation of the Labor Guidelines.

3.2.5 Allegation: Pay-Related Issues, Including Late Payments and Non-Payment of Back Pay

Numerous allegations have appeared in media and NGO reports involving pay-related issues, including late payment of wages and non-payment of back pay.[31] In addition to general allegations concerning these practices, several of the reports cited specific pay-related violations by Robodh, Al Reyami and Salah Interiors, all subcontractors on the Main Campus Project.

With respect to Salah Interiors, we determined that it was exempt from complying with the Labor Guidelines and was therefore not monitored for compliance. We contacted the company, but it did not respond to our requests to address the allegations.

Workers from Al Reyami and Robodh corroborated the allegations against those companies. Further, our investigation revealed that Mott MacDonald, the Mott MacDonald ILS Team, EC Harris and AF Carillion identified a number of pay-related issues at both Al Reyami and Robodh. In late 2011, the monitors found evidence that Robodh was not paying its workers on time and also owed some workers back pay. In response, the monitors established an action plan that required Robodh to pay its workers in a timely manner and remit back pay they were owed. The monitors subsequently confirmed that payment was made. Collectively, the monitors also conducted multiple follow-up audits and interviewed at least 70

[30] In Mott MacDonald's "Compliance Chart" in its 2013 annual report, it characterized the issue of personal document retention as a "detected" issue "not resolved within reporting period" suggesting that it was a violation but not addressing it as such in the body of its report. (*See* https://nyuad.nyu.edu/content/dam/nyuad/departments/public-affairs/documents/pr/NYUAD-Compliance-Report-2013.pdf).

[31] Non-payment of back pay refers to those cases in which former workers of companies are still owed wages by that employer.

Robodh workers to ensure that the company continued to pay its workers appropriately through September 2012, when Robodh's contract on the Main Campus Project ended. These additional interviews and audits uncovered still more violations that were subsequently addressed and corrected.

In 2012, Mott MacDonald, the Mott MacDonald ILS Team, EC Harris and AF Carillion determined that Al Reyami was paying its workers late and not paying them wages they were contractually owed. They closely monitored Al Reyami's payment practices until they confirmed that the workers had been paid what was required by their contract. Over the next two years, the monitors conducted multiple follow-up audits of Al Reyami's payroll records and interviewed more than 200 Al Reyami workers to ensure that the company complied. When they again uncovered instances of late payments, they renewed monitoring Al Reyami to ensure that the workers were being paid on time and received the monies they were owed.

3.2.6 Allegation: Involuntary Overtime

The New York Times and *Gulf Labor* both alleged that workers were forced to work overtime. While our investigation determined that there were instances of involuntary overtime, it was not a widespread problem, particularly given that many workers were eager to earn additional money. However, a review of monthly, quarterly and yearly compliance reports filed by Mott MacDonald, the Mott MacDonald ILS Team, EC Harris and AF Carillion revealed that the monitors found no instances of workers being forced to work overtime.

In contrast, approximately 30 workers we interviewed reported that their overtime was involuntary, including 18 employed by Robodh. Given that Robodh was being monitored closely for pay-related violations for much of the period when it was working on the Main Campus Project, we could not determine why the monitors did not identify any violations related to involuntary overtime. Further, our sample, small though it was, suggests that forced overtime was a more significant problem than reflected in the monitors' reports.

3.2.7 Allegation: Sub-Standard Housing

A number of media outlets and NGOs alleged that workers were forced to live in sub-standard housing.[32] The Guardian, for example, reported that 43 Bangladeshi painters were observed living in a "filthy, overcrowded camp"[33] while The New York Times reported that workers from City Falcon lived in "squalor" and that in one instance "more than a dozen men share[d] a space of barely 200 square feet."[34] *Human Rights Watch* also cited the City Falcon[35] workers when describing workers' rooms as infested with insects, and plagued by dangerous conditions including exposed wires, filthy kitchens and paint inhalation risks.[36]

[32] Many of the reports appear to refer to the same pools of workers: 43 painters that were housed in the Mussafah Industrial Area and workers for City Falcon.
[33] "In Abu Dhabi, they call it Happiness Island. But for the migrant workers, it is a place of misery," The Guardian, December 21, 2013.
[34] "Workers at N.Y.U.'s Abu Dhabi Site Faced Harsh Conditions," The New York Times, May 18, 2014.
[35] *Human Rights Watch* refers to the workers as being employed by "Falcon City Trading." The description in the *Human Rights Watch* report says that the workers were painters housed in Abu Dhabi city center, which matches the New York Times description of the City Falcon workers.
[36] "Migrant Workers' Rights on Saadiyat Island in the United Arab Emirates – 2015 Progress Report," *Human Rights Watch*, February 10, 2015.

The vast majority of workers employed by companies covered by the Labor Guidelines lived in housing on Yas Island that met the higher standards required under the guidelines. For the most part, workers we spoke to gave positive reviews of the living conditions on Yas Island, with many stating that the conditions were superior to those at other accommodations where they previously resided. We toured the accommodations at Yas Island and confirmed that, at least at the time we visited, they satisfied the housing requirements set forth in the Labor Guidelines.

In those cases where Mott MacDonald, the Mott MacDonald ILS Team, EC Harris and AF Carillion determined that employers required to comply with the Labor Guidelines were housing their workers in sub-standard housing outside of Yas Island, the monitors supervised the relocation of those workers to Yas Island. There were instances where the monitors approved of housing workers in accommodations outside of Yas Island after determining that relocation was not in the best interest of the workers. In one case, this was because the workers worked for a subcontractor who was contracted on the Main Campus Project for a short period of time. In the other case, Chinese workers preferred to remain in their accommodations within a Chinese community rather than move to Yas Island.

With respect to the specific workers named in the media and NGO reports, we determined that City Falcon was exempt from compliance with the Labor Guidelines and therefore was not monitored. Based on our review of non-public compliance reports, we believe that the 43 painters were also employed by a company that was exempt from compliance with the Labor Guidelines.[37]

We were not able to locate and interview any City Falcon workers and we only learned of the location of the 43 painters after we had already concluded our interviews in Abu Dhabi. We did, however, interview workers of other companies that were exempt from compliance. Those workers, who all lived in housing outside of Yas Island, described living conditions that, although not ideal, were better than those described in the media and NGO reports. While our sample pool of workers at exempt companies was small (approximately 35 workers), our findings suggest that not all exempt companies subjected their workers to the extreme conditions cited in reports.

[37] After The Guardian allegations appeared on December 21, 2013 concerning the 43 painters, the compliance monitors identified the remaining workers and relocated them to compliant housing on Yas Island.

4. KEY FINDINGS – BACKGROUND

As noted above, our mandate was to determine the veracity of media and NGO reports alleging violations of the Labor Guidelines and to provide recommendations to strengthen compliance procedures moving forward. Aside from specific allegations of violations, these reports strongly implied that violations occurred due to the lack of a serious compliance monitoring process. To that end, our investigation included a review of the compliance monitoring process in relation to the alleged violations to determine whether the monitors were aware of the specific allegations and, if so, what, if any, corrective measures they took. With these objectives in mind, the Key Findings section begins with a summary of the *de facto* exemption policy and the extent to which it limited the number of workers covered by the Labor Guidelines and reduced the pool of workers to monitor.

The sections that follow address specific allegations and consist of: (i) a brief summary of the specific allegation as it appears in media and NGO reports; (ii) a reference to the relevant Labor Guidelines that apply to the specific allegation; (iii) a review of the compliance monitors' findings concerning each allegation; and (iv) a summary of Nardello & Co.'s findings based on our review of relevant documentation, interviews with management at Key Parties and interviews with workers.

4.1 The *de facto* Exemption Policy

NYU and its government partners made a public commitment to ensure that all workers employed on the construction of the Main Campus Project were covered under the Labor Guidelines. Our investigation determined, however, that numerous subcontractors working on the Main Campus Project were not obligated to comply with the Labor Guidelines, leaving their workers uncovered by those guidelines and the subcontractors free from the scrutiny of the compliance monitors.

4.1.1 The Development of the *de facto* Exemption Policy

Based on our interviews with the Key Parties on the Main Campus Project, considerable discussion took place regarding the implementation of the Labor Guidelines. A key element of those discussions was the issue of exemptions from compliance. There was general agreement that certain companies, such as outside vendors delivering goods to the Main Campus Project, would be considered "exceptions."[38] The reasoning, which we believe was sound with respect to this narrow group, was that workers from these companies were "exceptions" because they were not actually working on the Main Campus Project and it would be impractical for them to be covered by the Labor Guidelines.

In addition to these "exceptions," Mubadala, AF Carillion and EC Harris 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 through its application to all contract packages.[39] From 2010

[38] In addition to interviews with management personnel at all Key Parties, we reviewed thousands of pages of committee minutes, e-mail correspondence and compliance reports from AF Carillion, subcontractors and the monitors concerning the issue of exceptions and exemptions.

[39] The term "contract package" as used within this report refers to the type of service for which a subcontractor was contracted on the Project. This is distinguished from the term "contract," as multiple contracts could be executed to carry out the contract package. For example, a subcontractor who was contracted to carry out Mechanical, Electrical and Plumbing ("MEP") services would be referred to as responsible for the MEP contract package. To complete the contract package, the subcontractor typically would execute numerous contracts with various sub-subcontractors.

through 2011, the thresholds necessary to trigger coverage evolved from a minimum time threshold (EC Harris proposed that all contract packages in which workers worked on the Main Campus Project for less than 60 days should be exempt from compliance) to a shorter time threshold and a monetary threshold. Mubadala, AF Carillion and EC Harris ultimately agreed that all subcontractors working on-site for longer than a period of 31 cumulative days, but with less than 30 days between each separate visit, and where the subcontract package value exceeded AED 3.67 million (USD 1 million) would be obligated to comply with the Labor Guidelines. This meant that any contract valued at less than USD 1 million would be exempt from compliance. It also meant that any subcontractor on-site for less than 31 days, or greater than 31 days, but with more than 30 days between each separate visit, would be exempt from compliance. According to AF Carillion, these thresholds would result in what it described as the "significant majority" of the workers being covered by the Labor Guidelines. However, this decision created a *de facto* exemption policy that left thousands of workers on the Main Campus Project without the protections afforded by the Labor Guidelines.

4.1.2 Lack of Clarity

Our investigation revealed significant differences of opinion among the Key Parties as to whether the cost and time thresholds were ever formally approved. Indeed, the Mott MacDonald ILS Team addressed this issue 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. It appears that Mott MacDonald, Tamkeen, the EAA and NYU were either unaware that companies were being exempted from compliance on the basis of thresholds or believed that exemptions would be determined on a case-by-case basis, regardless of whether contracts fell below the time and/or monetary thresholds.

A lack of finality in certain correspondence relating to exemptions in late 2010 and early 2011 was a critical factor. Correspondence between EC Harris, AF Carillion and Mubadala (on which NYU, the EAA and Mott MacDonald were not copied) refers to NYU and the EAA having been "fully aware" of the details of AF Carillion's implementation plan, which describes both the time and monetary thresholds for exemptions. Further, correspondence between the EAA and Mubadala (on which NYU and Mott MacDonald were not copied) discuss providing a list of potential exemptions to the compliance officers for the EAA and NYUAD. The NYU personnel we interviewed told us that they were not aware of any monetary threshold, although some said that they were aware of a time threshold.[40] Mott MacDonald appears to have been aware of the potential exemptions list, but was unaware of any formal approval of an exemption practice.

[40] The time and monetary thresholds for the exemptions are described together in an AF Carillion September 15, 2010 implementation plan that set out the terms that were ultimately agreed to by Mubadala, EC Harris and AF Carillion. As a result, it is unlikely that someone could be aware of the time threshold without being aware of the monetary threshold. However, the basis for the "exception" policy was also time-based so it is possible that there was confusion among the Key Parties, including NYU and Mott MacDonald personnel, as to whether they were discussing "exceptions" or "exemptions."

The net effect was that each party appeared to have been acting under the terms that they thought should apply to exemptions without actually reaching a consensus. This failure had serious consequences, as, given the number of subcontracts below the thresholds, we estimate that approximately 30% to 35% of the total number of workers on the Main Campus Project were working for subcontractors or sub- subcontractors who did not have to comply with the Labor Guidelines.

Although 65% to 70% of the workers could be considered a "significant majority," it fell far short of the publicly stated commitment to extend the Labor Guidelines' protections to all workers on the Main Campus Project.

4.1.3 The Number of Exempt Workers

It was not possible to determine the exact number of workers covered by the Labor Guidelines due to a variety of factors, including: (i) the sheer number of workers (30,000) who worked on the Main Campus Project at one time or another since work began; (ii) inconsistent information that appeared on subcontractors' self-certified monthly compliance reports;[41] (iii) the possibility that the same worker may have worked on both non-exempt and exempt contracts;[42] and (iv) the fact that no single entity appears to have had access to all relevant documentation. The percentages provided above are estimates and are intended to provide a sense of the scale of workers whose employers were not subject to review by the compliance monitors.[43]

To best understand the complexity of determining exactly how many workers were exempt, one can look at the example of the largest subcontractor engaged on the Main Campus Project, PT Gulf,[44] which had more than 8,000 workers listed on AF Carillion's on-site attendance records. PT Gulf's contract was a non-exempt contract package and therefore PT Gulf was obligated to comply with the Labor Guidelines. However, based on our review of monthly subcontractor compliance reports and additional records supplied by PT Gulf, it appears that PT Gulf used more than 50 subcontractors on the project, most of whom were deemed exempt from compliance. Due to the fact that all workers employed by PT Gulf's subcontractors appeared in on-site attendance records as PT Gulf workers, we were unable to determine the number of workers employed by subcontractors exempt from compliance.

4.1.4 Nardello & Co.'s Findings

Given the number of workers ultimately deemed to be exempt from the coverage of the Labor Guidelines, it is not surprising that most, but not all, of the more serious allegations involved companies that were exempt from complying with those guidelines. (*See e.g.,* Section 5.7 below).

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[41] Subcontractors were obligated to submit monthly reports to AF Carillion that certified compliance with the Labor Guidelines.

[42] AF Carillion records indicate that at least 15 companies had both non-exempt and exempt contracts.

[43] It should also be noted that this estimate of 30% to 35% accounted for a much lower percentage of the total man-hours worked on the Main Campus as, by definition, they worked under smaller contracts either in terms of duration or contract value.

[44] As noted previously, PT Gulf, the Abu Dhabi-based subsidiary of BK Gulf, was a subcontractor on the Main Campus Project. When discussing the October strike which involved both BK Gulf and PT Gulf workers, we have adopted the practice of media outlets and NGOs by referring to all of the workers as "BK Gulf" workers.

Further, it is evident that the compliance program did not do enough to encourage AF Carillion and its subcontractors to expand the pool of workers who would be covered by the Labor Guidelines. As detailed in Section 5.1.2.1 below, bid packages provided to AF Carillion typically included a line item for compliance-related costs,[45] although in some cases the compliance-related costs were built into a lump sum fee covering the entire scope of work. While there were penalties built into contracts to ensure compliance, the reality is that a system in which companies received payments to cover the costs of adhering to the Labor Guidelines in effect provided incentives to subcontract work into smaller contracts that fell below the minimum time and contract value thresholds. For example, if a subcontractor was paid an additional USD 10 million to cover compliance-related costs, it could then subcontract much of its work into smaller subcontracts below the USD 1 million threshold in order to decrease the number of covered workers. Decreasing the number of covered workers would have the net effect of lowering costs and allow the subcontractor to keep more of the USD 10 million payment as profit.[46] It is our understanding that certain safeguards, such as the approval process instituted by AF Carillion and EC Harris (*see* Section 5.1.2.1 below), were in place that would presumably have prevented intentional manipulation of the subcontracting process. Ultimately, even justified – and fully vetted – decisions to subdivide contracts would have the effect of lowering the number of workers covered by the Labor Guidelines. For this reason, as noted in our recommendations in Section 6.1.1 below, it is essential to eliminate the existing thresholds so that no company will financially benefit from this practice.

5. KEY FINDINGS RELATING TO MEDIA AND NGO ALLEGATIONS CONCERNING THE CONSTRUCTION OF THE MAIN CAMPUS PROJECT

During the course of construction of the Main Campus Project, the media and NGOs reported that there was evidence of labor abuses that conflicted with the Labor Guidelines. These reports have focused on a number of issues as set forth below.

5.1 Allegation: Mott MacDonald Was Ineffective

Many media and NGO reports questioned the efficacy of Mott MacDonald (and by extension, the efficacy of the compliance program) given the violations that allegedly occurred on the monitor's watch. The reports noted that the findings disclosed in Mott MacDonald's annual reports appeared to vary widely with the results of the investigations conducted by the NGOs and media outlets.

Given that we found evidence of violations to the Labor Guidelines similar to those alleged in NGO and media reports, there is a legitimate basis for questioning the efficacy of the monitoring process. To that end, we looked at the compliance monitors to identify the scope of their mandate, the process they followed, the extent of their monitoring efforts and whether they identified and resolved violations raised by the media and NGOs. We also looked at external factors that may have affected the scope of the monitoring processes, including the number of workers and companies that fell under their purview.

[45] As noted previously, compliance-related costs covered the additional costs incurred by the contractor or subcontractor to adhere to the Labor Guidelines, but did not include the cost of the compliance monitors.

[46] Determining whether subcontracts, or sub-subcontracts, were awarded for legitimate reasons and were not attempts to profit by minimizing compliance costs was outside the scope of our review.

For example, while The New York Times stated that 6,000 workers were involved with the project,[47] site attendance records indicated that approximately 30,000 workers worked on the construction site at one time or another over the course of four years, a considerably larger pool to monitor.

5.1.1 Specific Allegations

As noted above, several media and NGO reports contrasted what they perceived to be the limited findings of compliance violations in Mott MacDonald's public annual reports with their own findings of violations of the Labor Guidelines. In its May 2014 article, The New York Times referred to Mott MacDonald's 2013 annual report, which "made no mention of the BK Gulf strike, or the strikers' demands for more pay." [48] *Gulf Labor* contrasted the "very few" violations reported by "NYUAD's labor monitors, overseen by Mott MacDonald" with those uncovered by *Gulf Labor* and also by PricewaterhouseCoopers, the appointed compliance monitor for other Saadiyat Island construction projects overseen by the Tourism Development & Investment Company, the asset and development arm of the Abu Dhabi Tourism and Culture Authority.[49] *Gulf Labor* also accused Mott MacDonald of having a conflict of interest, given that the company was awarded a "$27 billion contract"[50] by the Abu Dhabi Water and Electricity Authority to oversee the development of water and electricity systems on Saadiyat Island. *Human Rights Watch,* in its February 2015 report, said Mott McDonald "ha[d] found occasional instances of non-payment of wages, and isolated cases where workers have paid recruitment fees, but in general Mott McDonald reports indicate that compliance with The 14 Points is the norm, and that violations of the code are exceptional, and swiftly rectified."[51] Mott MacDonald's means of enforcement were also questioned by *Human Rights Watch*, which noted "The 14 Points contain no financial penalty provision at all, and there is no mention of the imposition of any financial penalty in any of the three Mott McDonald compliance reports." *Human Rights Watch* added that Mott McDonald had not responded to requests for information on whether the EAA or NYU had a penalty policy in place or whether they sanctioned offending contractors.

5.1.2 Nardello & Co.'s Findings

The strong implication in media and NGO reports is that Mott MacDonald was not effective. First, we note that certain information, germane to evaluating the efficacy of the monitoring process, was not made available to the media, NGOs and the general public.[52] As detailed below, Mott MacDonald was not the sole compliance monitor, but rather part of a compliance monitoring structure that included the Mott MacDonald ILS Team, EC Harris, AF Carillion and subcontractors, all of whom produced non-public compliance reports on a monthly and, in the case of the Mott MacDonald ILS Team, a quarterly basis.

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[47] "Workers at N.Y.U.'s Abu Dhabi Site Faced Harsh Conditions," The New York Times, May 18, 2014.
[48] *Ibid*.
[49] "Gulf Labor's Observations and Recommendations after Visiting Saadiyat Island and Related Sites (March 14-21, 2014)," *Gulf Labor*, May 2, 2014.
[50] *Gulf Labor's* characterization of the size of Mott MacDonald's contract is incorrect. The cost of the entire infrastructure project is valued at USD 27 billion, not the contract awarded to Mott MacDonald.
[51] "Migrant Workers' Rights on Saadiyat Island in the United Arab Emirates – 2015 Progress Report," *Human Rights Watch*, February 10, 2015.
[52] In contrast, we were allowed access to labor accommodations, provided with non-public documentation concerning the compliance program and given greater access to management at several key companies than what was given to NGOs and the media.

Many of those reports detailed additional issues and actions that were not fully reported in Mott MacDonald's publicly available annual reports.[53] Further, the media and NGOs were not aware of how the scope of Mott MacDonald's mandate was effectively narrowed by the *de facto* exemption policy, and could not have known that many of the violations they cited involved companies that were not being monitored by Mott MacDonald or any of the other compliance monitors.[54]

In addition to the exemption policy, Mott MacDonald's own interpretation of the Labor Guidelines further narrowed the scope of its monitoring mandate, particularly with respect to reimbursement of recruitment fees and passport retention. (*See* Sections 5.3.4 and 5.4.4). Further, Mott MacDonald was responsible for the independent verification of the compliance program, and if it was unclear who should have been covered – and who it was supposed to be monitoring – it was Mott MacDonald's duty to obtain clarification. Indeed, Mott MacDonald recognized the problem in its monthly reports. If Mott MacDonald never obtained clarity on the passport retention or reimbursement of recruitment fees issues, it is evident that it also did not take sufficiently robust steps to obtain it. Further, as detailed below, the compliance scheme was overly complex. As noted in our recommendations in Section 6.1.3 below, a simpler process with one monitor invested with sole responsibility and accountability for compliance would be more efficient and effective.

5.1.2.1 *The Compliance Monitoring Process*

While Mott MacDonald had ultimate responsibility as the independent "third party verifier," there was a multi-tiered monitoring scheme that involved several companies, including EC Harris, AF Carillion and the subcontractors obligated to comply with the Labor Guidelines.

The organizational chart reproduced below,[55] which appeared in Mott MacDonald's 2013 public annual compliance report, provides a basic overview of the structure of the compliance monitoring organization for the Main Campus Project and Interim Campus.[56] We have highlighted in orange the portion of the chart that identifies the compliance team for the Main Campus Project. As the chart shows, EC Harris maintained oversight of the Main Campus Project and reported to Mubadala. Mott MacDonald verified EC Harris's monitoring activities.

[53] As previously noted, Mott MacDonald's annual reports only reported the violations that were not rectified within 30 days of a contractor being notified of a violation.

[54] Mott MacDonald claimed that it believed that exemptions would be determined on a case-by-case basis and did not know of any formal approval of an exemption policy. EC Harris was aware of the exemption policy, but claimed that it believed it was approved by all Key Parties.

[55] "New York University Abu Dhabi Compliance Report 2013," *Mott MacDonald*, 2013. (*See* https://nyuad.nyu.edu/content/dam/nyuad/departments/public-affairs/documents/pr/NYUAD-Compliance-Report-2013.pdf).

[56] The chart does not reference the role of AF Carillion or its subcontractors in the monitoring process.

3. Monitoring and Verification Methodology

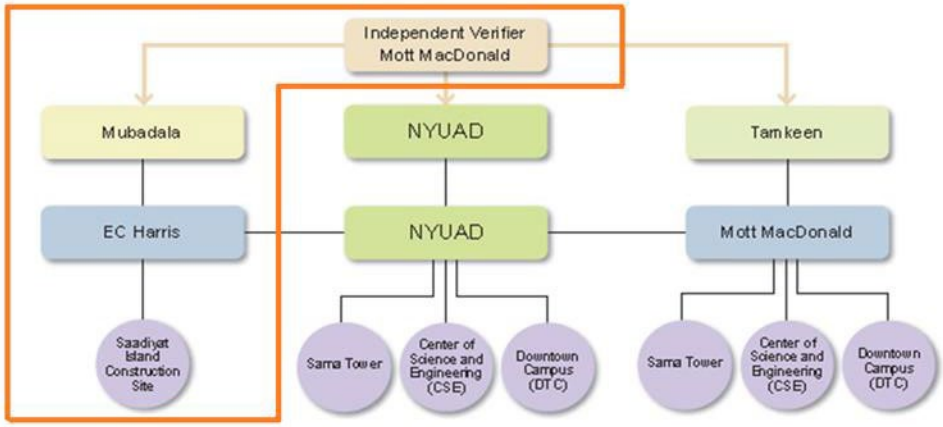
3.1 Institutional Arrangements for Monitoring and Verifying Workers' Rights

To meet NYUAD and Tamkeen's commitment, there has been a monitoring regime instituted that includes Compliance Monitors and an Independent Verifier. The Compliance Monitors are:

- NYUAD (self appointed).
- Mott MacDonald (Tamkeen appointed).
- EC Harris Asset Management (Mubadala appointed).

NYUAD directly monitors NYUAD contracted service providers working at the Downtown Campus, Sama Tower and Center for Science and Engineering (CSE). Tamkeen contracted Mott MacDonald to monitor Tamkeen-contracted service providers. EC Harris is the compliance monitor for staff working at the Saadiyat Island construction site. Mott MacDonald also has the overall role of Independent Verifier to confirm the monitoring results of NYUAD and EC Harris.

Figure 2: Monitoring and Verification Organisation Chart



A more detailed description of the compliance scheme and each company's role is as follows:

- The Tender Process – AF Carillion requested bids for contract packages with an expectation of total compliance with the Labor Guidelines. In many cases, compliance-related costs appeared as a line item in the bid but, in some cases, the costs of adherence were built into a lump-sum fee covering the entire scope of work.

- Contractual Obligations – AF Carillion's design and build contract, executed on April 27, 2010, required AF Carillion and its sub-contractors to comply with the Labor Guidelines. As part of the compliance process, AF Carillion: (i) briefed potential subcontractors about the requirements of the Labor Guidelines during the tender process; (ii) coordinated with EC Harris on the appointment of subcontractors to the project, including obtaining approval of subcontractors' exemption status; (iii) reviewed monthly compliance statements submitted by the non-exempt subcontractors;[57] (iv) interviewed relevant high-level personnel from non-exempt subcontractors;

[57] Pursuant to the terms of the contract between AF Carillion and its non-exempt subcontractors, the subcontractors were required to provide monthly compliance reports to AF Carillion. Among other things, these reports provided a break-out of the number of non-exempt subcontractor workers on the project, the number of non-exempt sub-subcontractor workers on the project and the number of exempt sub-subcontractors (not exempt workers) on the project. The monthly reports were also intended to certify compliance with the *Supplementary Specifications.* In

(v) audited Human Resources ("HR") and payroll records from non-exempt subcontractors; (vi) conducted randomly selected interviews of workers employed by non-exempt subcontractors; (vii) conducted inspections of the accommodations of workers employed by non-exempt subcontractors; and (viii) coordinated with EC Harris and Mott MacDonald regarding any necessary corrective actions to resolve compliance violations. AF Carillion tracked its monitoring and any violations of the Labor Guidelines through a proprietary data-tracking system. Pursuant to the terms of their contract with Mubadala, AF Carillion memorialized these activities and its findings in monthly reports to Mubadala, which, along with snapshots of its data tracking system, were also provided to EC Harris.

- Main Campus Project Monitor – On May 17, 2010, EC Harris was appointed as the project manager for the Main Campus Project, which included responsibilities for overseeing compliance by AF Carillion and its subcontractors. Among other things, EC Harris: (i) approved the appointment of all subcontractors on the project, which included approving subcontractors' exemption status;[58] (ii) reviewed subcontracts to confirm that non-exempt subcontractors were contractually obligated to comply with the Labor Guidelines; (iii) conducted an initial audit of non-exempt subcontractors to verify that they were compliant with the Labor Guidelines; (iv) reviewed reports based on AF Carillion's proprietary data-tracking system; (v) reviewed monthly compliance statements submitted by AF Carillion and the non-exempt subcontractors; (vi) interviewed relevant personnel from AF Carillion and the non-exempt subcontractors; (vii) audited HR and payroll records for AF Carillion and the non-exempt subcontractors; (viii) conducted random interviews of workers from AF Carillion and the non-exempt subcontractors;[59] and (ix) conducted inspections of the accommodations of workers employed by AF Carillion and the non-exempt subcontractors. EC Harris memorialized its efforts in monthly compliance reports issued to Mubadala from June 2010 through the conclusion of the Main Campus Project.

- Independent Third Party Verifier – In or around October 2010, Mott MacDonald was engaged as an independent third party verifier for the Main Campus Project to, among other things, monitor and verify the compliance activities of EC Harris. In that role, Mott MacDonald: (i) reviewed EC Harris's and AF Carillion's monthly compliance reports; (ii) interviewed relevant personnel from AF Carillion, EC Harris and the non-exempt subcontractors; (iii) audited HR and payroll records for AF Carillion and the non-exempt subcontractors; (iv) conducted randomly selected interviews of workers from AF Carillion and the non-exempt subcontractors;[60] and (v) conducted inspections of the accommodations of workers employed by AF Carillion and the non-exempt subcontractors.

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practice, many of the reports only certified compliance with parts of the *Supplementary Specifications* such as housing requirements.

[58] Interviews of relevant personnel from EC Harris revealed that AF Carillion proposed the appointment of an exempt subcontractor to EC Harris by submitting an approval form, which indicated that the subcontractor fell below the time and/or cost thresholds. EC Harris reviewed the form and a copy of the subcontract to determine whether the subcontractor should be exempt.

[59] EC Harris aimed to select a mix of interviewees by trade and accounted for the size of a company's workforce by selecting a larger number of workers for companies with a larger workforce.

[60] Mott MacDonald aimed to select a mix of interviewees by company and grade to ensure that coverage was representative and included a larger proportion of less literate and unskilled workers deemed to be at higher risk for labor abuses.

Mott MacDonald maintained a log to track its compliance monitoring activities and any violations of the Labor Guidelines it identified. Mott MacDonald's activities and findings were further memorialized in monthly and annual reports submitted to Tamkeen from October 2010 through the conclusion of the project.[61]

- Mott MacDonald International Labour and Social Sustainability Specialists – Mott MacDonald brought in specialists from its International Labour and Social Sustainability division. The role of the Mott MacDonald ILS Team was to provide assistance to the Mott MacDonald verification team. The Mott MacDonald ILS Team visited the Main Campus Project for five days each quarter and conducted their own monitoring activities, which included: (i) a review of EC Harris's, AF Carillion's and Mott MacDonald's monthly compliance reports; (ii) interviews of relevant personnel from AF Carillion, EC Harris, Mott MacDonald and the non-exempt subcontractors; (iii) audits of HR and payroll records for AF Carillion and the non-exempt subcontractors; (iv) random interviews of selected workers employed by AF Carillion and the non-exempt subcontractors;[62] and (v) inspections of the accommodations of workers employed by AF Carillion and the non-exempt subcontractors.

  The Mott MacDonald ILS Team's compliance monitoring activities and any violations of the Labor Guidelines it identified were tracked in the Mott MacDonald tracking log described above. The ILS Team's activities and findings were also memorialized in quarterly compliance reports that were provided to Tamkeen from January 2011 through the conclusion of the project. The ILS Team also assisted in drafting Mott MacDonald's annual reports.

As is evident from the recitation above – and in the fact that there was a lack of clarity and finality on certain key aspects of implementation – this process was unduly complicated. It had the effect of not vesting ownership of compliance monitoring with one accountable party. As set forth in our recommendations in Section 6.1.3 below, 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.

5.1.2.2 *Enforcement Options in the Event of Non-Compliance*

As explained to us, in devising penalties for violations of the Labor Guidelines, the Key Parties had no precedent to follow and were not in a position to estimate the number or severity of possible violations. A particularly harsh enforcement policy would likely have had serious financial repercussions, as the replacement of problematic subcontractors would have delayed the progress of construction. An unclear and weak enforcement policy provided no deterrent to companies that believed that they could benefit financially by not complying with the Labor Guidelines.

Description of Penalties

The *Statement of Labor Values*, the *14 Points* and the *Supplementary Specifications* do not call for penalties for compliance violations. The only record of compliance-related penalties we could locate

[61] Apparently Mott MacDonald's first report was issued before its contract was formally executed in December 2010.

[62] As with Mott MacDonald, the Mott MacDonald ILS Team aimed to select a mix of interviewees by company and grade to ensure that coverage was representative and included a larger proportion of the higher risk groups.

appeared in contracts such as those between AF Carillion and its subcontractors. In the event that subcontractors were found to violate the Labor Guidelines, AF Carillion would issue a notice of non-compliance and the subcontractor had seven days to resolve the matter. If, after seven days, the subcontractor failed to demonstrate that it had resolved the matter, AF Carillion would issue a final notice of non-compliance and the subcontractor had an additional seven days to resolve the matter. If the matter remained unresolved after 14 days, AF Carillion would withhold payment to the subcontractor until the matter was resolved. AF Carillion could also terminate a subcontractor at any time following the discovery of a violation of the Labor Guidelines.

Our review of records and interviews with the Key Parties disclosed that the instances in which payments were withheld from AF Carillion due to a subcontractor's violations were infrequent and inconsistent. As explained by several of the individuals we interviewed, and supported by the monitors' reports we reviewed, it appears that in many instances penalties were not imposed because the monitors quickly identified and corrected violations.[63] Also, in certain cases, penalizing contractors would not have resolved the issue at hand and could actually have exacerbated the problem for the workers involved.[64] In these cases, the monitors appear to have worked with the non-compliant subcontractors to correct the problems without enforcing any penalty.

We found evidence to suggest that, within the significantly reduced number of contractors they were charged with monitoring, the compliance monitors for the Main Campus Project made an effort – which was by no means perfect – to enforce compliance and identify and rectify violations of the Labor Guidelines. However, the exemption policy and the interpretations the monitors gave to elements of the Labor Guidelines, together with an unduly complicated monitoring process, reduced the effectiveness of that effort.

5.2 Allegation: Mistreatment of Striking Workers

5.2.1 The BK Gulf Strike

Workers employed by BK Gulf, one of the major subcontractors on the Main Campus Project, were arrested, dismissed and deported as a result of a strike in October 2013. According to BK Gulf management, 4,000 of its workers were involved in the strike, including approximately 1,500 workers from the Main Campus Project.[65]

5.2.1.1 *Specific Allegations*

Media and NGO reports alleged a number of labor abuses in connection with the treatment of workers involved in the October 2013 strike, including allegations of police mistreatment of workers. Our investigation focused on those allegations that qualified as potential violations of the Labor Guidelines

[63] By not imposing penalties for violations, however, there was no deterrent against committing those violations again.
[64] For example, withholding payment from a subcontractor who was found not to have paid its workers due to cash flow problems would not help get the workers paid.
[65] The staffing levels for workers on the Main Campus Project provided by BK Gulf in our interviews and in documents were not precise and should be viewed as estimates.

and did not include a full investigation of police actions.[66] The reports, several of which alleged that the majority of strikers were from the Main Campus Project, characterized the cause of the strike as "demands for more pay," and "low wages and pay discrepancies between new workers and old workers."[67]

Further, several reports alleged that the response of BK Gulf to the striking workers violated the *Statement of Labor Values'* provision that enabled workers to seek a resolution of labor disputes without being subject to harassment, intimidation or retaliation.

5.2.1.2 *Relevant Labor Guideline*

With respect to the allegation that the strike was over demands for more pay, the relevant Labor Guideline was the *Supplementary Specifications*, which set out minimum wage rates based on a worker's title. As noted previously, the minimum rate for workers on the Main Campus Project was AED 800 (USD 217) per month.

In terms of possible violations concerning BK Gulf's treatment of its workers, the operative provision within the *Statement of Labor Values* was:

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

5.2.1.3 *Monitors' Findings*

None of AF Carillion's, EC Harris's, Mott MacDonald's, or the Mott MacDonald ILS Team's reports for the relevant period mentioned the strike or the strikers' demand for more pay.

5.2.1.4 *Nardello & Co.'s Findings*

As noted above, a review of relevant AF Carillion, EC Harris, Mott MacDonald and the Mott MacDonald ILS Team reports did not include any mention of the BK Gulf strike. Representatives of EC Harris and Mott MacDonald told us that the monitors were not aware of the strike until sometime after it was over. AF Carillion told us that they were aware of the strike, but they believed it pertained to an "internal" BK Gulf labor issue and did not qualify as a compliance issue.

Media and NGO reports suggested that Mott MacDonald should have noticed the absence of BK Gulf workers from the site. As previously noted, Mott MacDonald stated that they were not on-site daily and due to the nature of the Main Campus Project – a large site with numerous access points, more than 5,000 workers and various levels of ongoing construction work with workers periodically leaving the site as specific tasks were completed – they would not have noticed the absence of the striking workers. We have

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[66] Several workers we spoke to confirmed the reports that the police broke into their rooms, and also reported being slapped, beaten, or tasered by the police.

[67] *See*, *e.g.*, "Workers at N.Y.U.'s Abu Dhabi Site Faced Harsh Conditions," The New York Times, May 18, 2014; "Dubai workers for British firm beaten by police over strike," The Independent, May 25, 2014; and "Migrant Workers' Rights on Saadiyat Island in the United Arab Emirates – 2015 Progress Report," *Human Rights Watch*, February 10, 2015.

conducted site visits to the Main Campus Project and found that Mott MacDonald's explanation is plausible.

Causes of the Strike

The media and NGO reports implied that workers participated in the 2013 strike in large part due to pay-related grievances related to their work on the Main Campus Project. As detailed below, our investigation showed that the issues behind the strike were significantly more complex than portrayed in these reports.

We conducted interviews with BK Gulf management and workers.[68] Our interviewees included approximately 100 workers who worked on the Main Campus Project at the time of the strike.[69] These included 11 former BK Gulf workers who worked on the Main Campus Project, but who were ultimately deported after the strike.[70] We identified the 11 workers by talking to other workers we encountered informally in markets, outside the gates to housing camps and at other locations, including mosques, where workers routinely gathered. BK Gulf assisted us in identifying two deported workers who we then interviewed.

Our investigation determined that approximately 95% of the present and former workers we interviewed were paid at least AED 800 (USD 217) per month, the minimum wage set by the *Supplementary Specifications*. Further, we reviewed pay records for over 200 workers that BK Gulf identified as the workers who were deported. More than 85% of the deported workers were also paid at least the minimum required wage per month and many of the deported workers we interviewed acknowledged that pay was better on the Main Campus Project than on other sites they had worked on. Given the high rate of compliance with the minimum wage scale required by of the *Supplementary Specifications*, and given what workers told us about the strike,[71] we determined that worker dissatisfaction with wages on the Main Campus Project did not appear to be one of the causes of the strike.

According to BK Gulf management, the strike was triggered by the transfer of workers off the Main Campus Project; those workers faced a 40% reduction in their pay. BK Gulf management claimed that the variation in minimum wage was emblematic of what they described as the "labor standards bubble" on the Main Campus Project, which led to friction when workers were transferred off the project. According to BK Gulf management, the company first informed workers in July 2013 and again at subsequent meetings of their impending transfer from the Main Campus Project to other projects. BK Gulf's assertion

[68] BK Gulf provided us with a list of workers who were formerly employed on the Main Campus Project and the company agreed to transport a set number of workers to a site for our interviews. Although we were able to independently identify and speak to several workers without the company's cooperation (through on-site networking with other BK Gulf workers), we agreed to these conditions in order to increase the pool of interviewees from this key subcontractor. BK Gulf had the names of the pool of potential interviewees, but the information provided by those interviewees, which confirmed several of the allegations appearing in media and NGO reports, suggested that they were cooperating of their own free will and were not pressured to provide information favorable to their employer.

[69] Among these 100 workers were two workers who we believe were identified by The New York Times and *Human Rights Watch*. They are Amir Wahid Sarkar, who was interviewed by *Human Rights Watch* and who we believe was identified by The New York Times as "Mohammed Amir Waheed Sirkar," and a second individual, who requested that his identity be kept confidential.

[70] We spoke with 12 workers employed by BK Gulf who were deported, 11 of which worked on the Main Campus Project.

[71] Several deported workers stated that the strike had nothing to do with the Main Campus Project.

was corroborated by several workers who stated that the strike was initiated by workers protesting their transfer from the Main Campus Project and the consequent reduction in their wages and other benefits. One of the deported workers, who also spoke to *Human Rights Watch*,[72] told us that workers struck because they knew they had to do something to try and get a pay raise when the Main Campus Project concluded. Other workers offered alternative explanations for the strike, including:

- *Low pay and lack of raises for long-term workers*

  According to some BK Gulf workers, the strike was the culmination of long-standing frustrations among workers over broken promises of pay raises and improved working conditions. These workers said that the strike was not initiated by BK Gulf laborers working at the Main Campus Project, but rather by long-term BK Gulf workers employed on other projects who were seeking to have their wages raised to the levels on the Main Campus Project. The workers from the Main Campus Project reportedly joined the movement in a show of solidarity with their colleagues.[73]

- *Resentment that certain workers received higher wages*

  Contractors on the Main Campus Project were required to "map" their workers to certain job titles set out in the *Supplementary Specifications*.[74] These titles corresponded with monthly pay rates. The minimum wage was AED 800 (USD 217) per month with the next highest wage AED 1,200 (USD 325) per month. Some BK Gulf workers who earned a monthly wage of AED 780 (USD 212) prior to joining the Main Campus Project were mapped to the AED 800 (USD 217) level while others were mapped to the AED 1,200 (USD 325) level. This disparity apparently created resentment among workers who had been compensated equally (at lower rates) before joining the Main Campus Project. Two workers told us that they refused their raise from AED 780 (USD 212) to the AED 800 (USD 217) level in protest.[75]

  In some cases, the disparities had nothing to do with the wage mapping on the Main Campus Project. Our investigation found that certain workers were displeased that workers in another BK Gulf division were paid higher wages, while other workers were unhappy that new hires were paid higher base salaries than long-standing workers.

- *Sub-standard wages*

  It is certainly possible that some workers who worked on the Main Campus Project went on strike as a result of compensation below that set by the Labor Guidelines. Our review of payroll records confirmed that a small number of the dismissed workers earned salaries less than AED 800 (USD

[72] Of the 12 deported workers we interviewed, we believe that at least three of those workers were interviewed by *Human Rights Watch*.
[73] BK Gulf management confirmed that low-level workers generally do not receive raises unless there is a company-wide increase and that there are no increases due to seniority. There were some limited exceptions. For instance, some workers who were transferred from the Main Campus Project after the strike received raises because they specialized in trades that were difficult to recruit.
[74] For example, the two lowest levels were "Unskilled Operatives" and "Semi-skilled Operatives."
[75] A review of payroll records of those workers who were either arrested or dismissed after the strike showed several other workers listed at the AED 780 (USD 212) level suggesting that other workers may have also refused raises in protest.

217). As previously mentioned, we were able to confirm that at least two workers chose to be paid sub-standard wages in protest of the small raises they received when joining the Main Campus Project. We were not able to confirm whether this was true for the remainder of the workers who earned sub-standard monthly salaries.

We also reviewed the payroll records for two workers whom we believe were interviewed by The Independent and *Human Rights Watch*. These workers did not receive compliant wages while working on the Main Campus Project. When asked why, a representative of BK Gulf claimed that one of the workers only worked on the Main Campus Project for a week and the second one was paid arrears for the money he was owed based on the difference between his wage and the higher wage required by the Labor Guidelines. We were unable to locate and interview the workers in question.

- *Disparate treatment by ethnicity*

  Disparity in the way certain ethnic groups were treated may have also been a contributing factor to the strike. One worker stated that the Bangladeshi strikers were aggrieved because their Indian colleagues were paid higher salaries[76] while several workers described the strike as the result of low wages paid to Bangladeshi workers over a number of years.

Possible Violations of the Statement of Labor Values

We were not able to determine why more than 75% of the deported workers came from the Main Campus Project given that it does not appear that working conditions on that project were a main cause of the strike. BK Gulf management claimed that workers were given a choice to return to work or be dismissed. Site attendance records we reviewed showed that more than 1,000 workers returned to work. Accordingly, BK Gulf evidently did not dismiss all striking workers but it is not clear whether they actually offered workers a choice or whether workers were selectively chosen for dismissal. The workers we spoke to did not corroborate BK Gulf's claim. We spoke to numerous current and former BK Gulf workers, including 11 deported workers who had been employed on the Main Campus Project, and not a single worker said that they chose to be dismissed or knew of any one who did.

Our findings are less conclusive concerning allegations that workers' rights were violated with respect to the *Statement of Labor Values'* guarantee that disputes be resolved free of harassment, intimidation or retaliation. Striking is illegal in the UAE and thus grounds for dismissal and arrest.[77] There were however, several deported workers who said that they were not involved with the strike. It is possible that the non-striking workers were dismissed for other reasons that would not constitute violations of the *Statement of*

[76] The worker did not specify whether this related to workers on the Main Campus Project or not. We were provided with records from BK Gulf that indicated that Bangladeshis (approximately 48%) and Indians (approximately 40%) comprised the bulk of the workforce employed by the company on the Main Campus Project in October 2013.

[77] As noted previously, it is evident that UAE law is completely inconsistent with labor practices in the US and elsewhere in the West that guarantee, among other things, the right to strike. It is also difficult to reconcile the tension between the *Statement of Labor Values* and UAE labor law. It is evident that the *Statement of Labor Values* edict that "no worker shall be subject to harassment, intimidation, or retaliation in their efforts to resolve work disputes" is at odds with UAE's criminalization of striking, the most powerful tool workers have to express grievances.

Labor Values, but without understanding the basis for those dismissals, we cannot determine whether or not violations occurred.

5.2.2 The Al Reyami Strike

In contrast to the BK Gulf strike, Mott MacDonald, the Mott MacDonald ILS Team, EC Harris and AF Carillion stated that they were aware of a June 2012 strike by workers of the subcontractor Al Reyami as it developed. Our review of relevant documents, including non-public monthly and quarterly reports, disclosed that the monitors identified the possibility that the dismissal of four strikers violated the *Statement of Labor Values*, and proceeded with an investigation to determine the circumstances of the dismissal.

5.2.2.1 *Specific Allegations*

As in the case of the BK Gulf, the Al Reyami strike was the subject of allegations by the media and NGOs that the treatment of striking workers violated the Labor Guidelines. *Gulf Labor* wrote in its May 2014 report that Al Reyami workers engaged in "a four-hour strike in June" and that many of these workers were dismissed and deported without any due process. *Gulf Labor* alleged that these actions "appear[ed] to be in violation of NYUAD's *Statement of Labor Values*."

5.2.2.2 *Relevant Labor Guideline*

The operative provision of the *Statement of Labor Values* was:

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

5.2.2.3 *Monitors' Findings*

The Mott MacDonald ILS Team appears to have been the first to uncover the details of the strike, although Al Reyami was already being closely monitored for pay-related compliance violations by EC Harris, AF Carillion, Mott MacDonald and the Mott MacDonald ILS Team in the months leading up to the strike.[78] The Mott MacDonald ILS Team reported in June 2012 that 145 of Al Reyami's workers held a one-day strike protesting the company's sub-standard treatment of workers. According to the ILS Team, the workers decided to strike after complaints to company management were ignored and workers were told to keep quiet.

The Mott MacDonald ILS Team monitors determined that some of Al Reyami's actions in connection with the strike constituted possible violations of the Labor Guidelines. According to the Mott MacDonald ILS Team, workers told them that Al Reyami asked the strikers to elect four representatives to negotiate with company management. After the four representatives were designated, management dismissed them and threatened all the workers with the same punishment if the strike continued, or if they made further complaints. The Mott MacDonald ILS Team noted, as did *Gulf Labor*, that if the dismissals were in retaliation, it would have constituted a violation of the *Statement of Labor Values*' provision regarding the

[78] The monitors' findings with respect to Al Reyami's violations of pay-related guidelines and sub-standard housing are addressed in Sections 5.5.3 and 5.7.3 below.

resolution of work disputes. Based on these initial findings, it appears that all of the monitors launched an immediate investigation to determine whether the workers had been dismissed in violation of the *Statement of Labor Values.*

Although EC Harris and AF Carillion did not include specific details about their investigation in their monthly reports, a review of Mott MacDonald's reports shows that the monitors' investigation concluded that the dismissal of the four Al Reyami workers was not in violation of the Labor Guidelines. The monitors found that the firings were justified due to the workers' unsatisfactory performance during their three-month probation period on the project.[79] The Mott MacDonald ILS Team further determined that during the period surrounding the strike, Al Reyami did not violate the *Statement of Labor Values* as workers were permitted to raise grievances and meet with management to resolve their issues. They also found that Al Reyami did not retaliate against workers who lodged complaints.

5.2.2.4 *Nardello & Co.'s Findings*

As with the BK Gulf strike, it appears likely that the Al Reyami strike was caused by a variety of factors. However, unlike the BK Gulf strike, all five of the workers we were able to interview said that the strike was caused by pay-related violations on the Main Campus Project. Three of the workers told us that the strike resulted in Al Reyami ultimately paying them the appropriate wages and compensating them for monies owed as a result of its breach of the Labor Guidelines. The other two workers interviewed reported that Al Reyami's violations continued after the strike.

Some workers also told us that they were able to freely voice grievances to their company supervisors, to AF Carillion, or to the compliance monitors. The small number of workers interviewed makes it difficult to draw definitive conclusions on how the strike affected working conditions, but the workers agreed that they ultimately benefited to some degree from the strike.[80]

Our investigation confirmed that the monitors were concerned that Al Reyami's treatment of striking workers may have amounted to retaliation in violation of the *Statement of Labor Values* and addressed the issue in a timely manner. As noted above, the monitors conducted an investigation concerning the circumstances of the dismissal of the four workers and determined that Al Reyami's actions did not qualify as a violation of the Labor Guidelines. This conclusion obviously does not square with worker claims of threats and retaliation, but given our mandate we were not able to conduct an investigation into the merits of the monitors' conclusions.

As noted in our recommendations in Section 6.2.1 below, it is essential that the compliance monitor be made aware of any labor disputes immediately so that it can determine if the actions of employers violate the Labor Guidelines.

[79] Per the *Supplementary Specifications*, within their first three months of employment on the Main Campus Project, a period defined as the "probation period," workers can be terminated without notice.

[80] It is worth noting that as reported in Section 5.5.3 below, Al Reyami was already under scrutiny by the monitors at the time of the strike, making it difficult to determine whether the company's actions to resolve its payment- related issues were in response to the strike, the monitors, or some combination of both.

5.3 Allegation: Ineffective Reimbursement Policies for Recruitment Fees Paid by Construction Workers

As has been widely reported, many workers secure jobs in the UAE through the payment of recruitment fees, typically USD 1,000 to 3,000, to recruitment agencies, or individual agents, within their home countries. Although it is illegal for UAE-based recruitment agencies to charge workers recruitment fees, UAE law does not apply to companies or agents operating outside the country. These foreign-based agents frequently promise wages that are greatly in excess of what the worker actually earns once they start working in the UAE.[81] Due to the debt workers assumed to pay recruitment fees to foreign agents/agencies, they are effectively bound to their UAE employers as they need to pay off that debt and employment at similar wages is not available in their home countries.

5.3.1 Specific Allegations

In connection with the Main Campus Project, The Guardian reported in December 2013 that it spoke with 43 Bangladeshi workers, who complained "of being trapped by recruitment fees that exceeded a year's salary."[82] In its May 2014 article, The New York Times reported that of the dozens of workers it interviewed on the Main Campus, "[v]irtually every one said he had to pay recruitment fees of up to a year's wages to get his job and had never been reimbursed."[83] In its February 2015 report, *Human Rights Watch* noted that, "[i]n reference to recruitment fees, [Mott MacDonald] wrote that only one worker recruited directly for the NYUAD Project had paid recruitment fees and that these had been reimbursed. The [January 2013 Mott MacDonald] report did not address whether workers who had worked on the NYUAD Project but had not been recruited directly for the project had paid recruiting fees."[84]

5.3.2 Relevant Labor Guidelines

Two Labor Guidelines addressed the issue of reimbursement of recruitment fees:

- *14 Points*

"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."

- *Supplementary Specifications*

"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

[81] Although we are aware of these deceptive tactics, it was not within our mandate, and indeed outside the scope of the compliance program for the Main Campus Project, to investigate promises made by recruitment agents outside of the UAE.
[82] "In Abu Dhabi, they call it Happiness Island. But for the migrant workers, it is a place of misery," The Guardian, December 21, 2013.
[83] "Workers at N.Y.U.'s Abu Dhabi Site Faced Harsh Conditions," The New York Times, May 18, 2014.
[84] "Migrant Workers' Rights on Saadiyat Island in the United Arab Emirates – 2015 Progress Report," *Human Rights Watch*, February 10, 2015.

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."

5.3.3 Monitors' Findings

In the case of reimbursement of recruitment fees, the primary issue concerned the implementation of the Labor Guidelines as drafted both in the public *14 Points* and the non-public *Supplementary Specifications*. The *14 Points* called for employers to reimburse workers for recruitment fees without imposing deductions from the workers' pay. The *Supplementary Specifications* provided similar language. Neither document specified that recruitment fees had to have been paid to work specifically on the Main Campus Project nor required workers to provide proof that they had paid the fees. However, all Key Parties – with the exception of NYU[85] – took the position that these conditions were prerequisites for reimbursement.

Accordingly, *no workers* on the Main Campus Project qualified for reimbursement. The only personnel who qualified for reimbursement and were actually reimbursed under this interpretation were approximately 20 operations personnel at the Interim Campus who were directly monitored by NYU. Given the position adopted by the Key Parties – including the monitors – it is not surprising that the monitors' reports do not reflect the failure to reimburse as a violation of the Labor Guidelines.

5.3.4 Nardello & Co.'s Findings

Our interviews with workers of both non-exempt and exempt contractors, as well as with deported workers, confirmed that the payment of recruitment fees is widespread. Approximately 85% of the workers we interviewed said that they had paid recruitment fees. Few of these workers had paid those fees specifically to work on the Main Campus Project, and almost no workers had proof of payment.[86]

[85] 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. And, of course, such fees are prohibited for those newly hired to work on the NYUAD Project; were any workers to present evidence of such fees, he or she would be 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."

[86] Given the dubious nature of the recruitment agents, it is not reasonable to assume that workers would have proof that they paid a recruitment fee to obtain employment in the UAE.

Assuming that our finding that 85% of workers paying recruitment fees is representative of the total work force, more than 25,000 workers paid recruitment fees and should have been eligible for reimbursement.[87]

It appears that the difficulty in implementing the Labor Guidelines as drafted was why the Key Parties adopted a more narrow interpretation. Given that the *14 Points* and the *Supplementary Specifications* were drafted specifically for the Main Campus Project and Interim Campus, the Key Parties apparently concluded that the guidelines referred only to recruitment fees paid specifically to work on the Main Campus Project or the Interim Campus. Beginning in 2011, Mott MacDonald noted in a non-public report that:

> "Payment of Agency Fees is still a cause for concern. This is more difficult to resolve due to the fact that there isn't any written evidence of payments being made. The majority of those employed on the NYUAD project were recruited pre-NYUAD appointment and therefore not subject to the [Supplementary Specifications].
>
> It is recommended that a statement is issued by NYUAD-Tamkeen indicating that any persons *specifically recruited* for the NYUAD project, who have paid agency fees or commission in obtaining that position, should have their monies refunded."

In spite of this recommendation, and in spite of the fact that representatives of Tamkeen told us it was their intention to ensure that no workers paid recruitment fees as a result of their employment on the Main Campus Project and Interim Campus, it appears that neither Tamkeen nor NYU, prior to its 2014 release described above in footnote 85, ever issued such a statement.

Whatever the reason for the narrower interpretation, it was based on considerations that do not appear in the *14 Points* and the *Supplementary Specifications*. Further, that interpretation effectively disqualified almost all workers from reimbursement as evidenced by the fact that only 20 out of approximately 30,000 workers were reimbursed. 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. In practice, this would have involved providing a lump sum amount – without requiring proof of payment – to all workers on the Main Campus Project. This is because the percentage of migrant workers who have paid recruitment fees in their home countries to obtain work in the UAE is so high as to support a presumption that all migrant workers in the UAE paid such fees. Interpreting a 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, although admirable, requires far greater consideration than was given here.

As noted in our recommendations in Section 6.2.2 below, the long-term solution to recruitment fees requires multilateral actions of governments within the relevant jurisdictions where the recruitment fees are paid.

[87] Implementation of the policy as drafted presented challenges. For example, a worker who was employed on the Main Campus Project for one week and who did not have any proof of payment would qualify for reimbursement for recruitment fees that were paid 10 years earlier.

5.4 Allegation: Lack of Adherence to Passport Retention Policies

5.4.1 Specific Allegations

Numerous media and NGO reports alleged that contractors on the Main Campus Project were holding their workers' passports in violation of the *14 Points*. *Human Rights Watch* specifically identified Robodh and Al Reyami as violators. *Human Rights Watch* further noted, "Almost three years since…[the] EAA, and their related international partners committed to allowing workers to retain their passports, it is particularly disappointing that the commitment remains unfulfilled."[88]

5.4.2 Relevant Labor Guidelines

Two Labor Guidelines addressed the retention of workers' personal documents:

- *14 Points*

  "Employees will retain all of their own personal documents, including passports and drivers' licenses."

- *Supplementary Specifications*

  "The EMPLOYER shall not confiscate or restrict access to EMPLOYEES' passports or any other personal documents (*e.g.*, driving license, etc.)."

It is evident that the two citations are inconsistent. The public *14 Points* provided that workers "shall retain" their personal documents including their passports. In contrast, the *Supplementary Specifications*, a non-public document, allowed the employer to hold the workers' passports so long as they did not confiscate or restrict the workers' access to their passports.

Nearly all of the employers on the Main Campus Project followed the *Supplementary Specifications* policy and held their workers' passports. As discussed below, this sometimes resulted in abuses.

5.4.3 Monitors' Findings

Our investigation revealed that the compliance monitors audited contractors' compliance with passport retention based on the *Supplementary Specifications* as opposed to the *14 Points*. The *Supplementary Specifications* required that (i) workers were to be advised of their right to possess their personal documents and (ii) workers were to be given the option of relinquishing possession of their personal documents to the employers. In practice, employers almost always took possession of such personal documents, obtained a signed consent from the worker[89] and retained their workers' personal documents during the duration of the worker's employment.

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[88] "Migrant Workers' Rights on Saadiyat Island in the United Arab Emirates – 2015 Progress Report," *Human Rights Watch*, February 10, 2015.

[89] At the outset, the consent form provided by AF Carillion to its workers requested that the worker acknowledge that AF Carillion was retaining their passports. Mott MacDonald requested that AF Carillion revise the consent form to indicate that the workers consented to giving their passports to AF Carillion, rather than merely acknowledging that AF Carillion was retaining the workers' passports.

In nearly all instances, AF Carillion, EC Harris, Mott MacDonald and the Mott MacDonald ILS Team determined that the above approach was being followed, but there were exceptions.[90] The monitors found at least eleven violations, including contractors who did not have the requisite authorization forms on file, contractors whose consent forms contained improper or insufficient wording,[91] and in at least one instance, a contractor who did not provide access within the 24 to 48-hour time frame. The monitors' compliance reports indicated that all violations were ultimately corrected.

5.4.4 Nardello & Co.'s Findings

Our interviews with the monitors confirmed that most contractors were holding their workers' passports as contemplated by the *Supplementary Specifications*. Similarly, approximately 95% of the workers interviewed confirmed that their employer held their passport.

As noted above, Mott MacDonald relied on the provisions of the *Supplementary Specifications*, a non-public document, rather than the publicly disclosed *14 Points*, which provided that all workers were required to hold their own passports.

In spite of the fact that it monitored based on the *Supplementary Specifications*, MacDonald's annual compliance reports cited the *14 Points* as its working standard:[92]

Point 2 – Personal Documents

Employees will retain all of their own personal documents, including passports and drivers' licenses.

NYUAD and Tamkeen have committed to ensuring that all those operatives involved in the Project have access to their personal documents. Workers are given the choice to keep the documents themselves or they can have access at short notice. This is stipulated in all NYUAD and Tamkeen contract documentation.

Thus, 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*

[90] Mott MacDonald also consistently acknowledged the deviation of this approach from the *14 Points*. From at least April 2012, Mott MacDonald noted in its reports that clarity was required to address the discrepancy. It is not clear if Mott MacDonald ever received such clarification or, indeed, what attempts they made, if any, to try and obtain such clarification.

[91] The letters did not document that workers were aware that providing passports to their employer was voluntary and that they would be entitled to retrieve their passports on 24 to 48 hours' notice.

[92] "New York University Abu Dhabi Compliance Report 2013," *Mott MacDonald*, 2013. (*See* https://nyuad.nyu.edu/content/dam/nyuad/departments/public-affairs/documents/pr/NYUAD-Compliance-Report-2013.pdf).

Points directive it cites. Further, the same annual report includes a "Compliance Chart" to track monthly compliance with the *14 Points*. Under the category of "Personal Documents," 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*. The same chart then notes, "Companies holding passports at workers requests. No findings that workers were denied their passports." 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.

Representatives of the Key Parties told us that employers in the UAE are better suited to manage the administration and protection of personal documents, including passports, than workers. They said that employers maintained relationships with the relevant UAE agencies and local consulates of foreign governments, which were essential to ensuring that employment visas were renewed on time and accompanying passports updated accordingly.[93] EC Harris and Mott MacDonald personnel told us that employers maintained spreadsheets detailing the passport and visa expiration dates and were able to efficiently obtain consular services on their workers' behalf. They also told us that if individual workers were responsible for their own passports it would have required that the worker track expiration dates, take a day off work to renew the document and pay for transportation to the appropriate office.

Several representatives of the Key Parties claimed that the employers' practice of holding passports and other personal documents was "appreciated" by workers, as it provided them with the knowledge that their most important documents were secure from the risk of loss or theft. Further, they claimed that the vast majority of workers elected to have their employer hold their passports, rather than hold such documents themselves. EC Harris representatives told us that they were only aware of one or two workers who decided to hold their own documents.

Similarly, one Mott MacDonald employee claimed that every worker who was asked whether they knew of their right to unquestioned access to their passport confirmed that they understood their right, but for security reasons chose to let their employer hold their passport. He stated that to his knowledge, every worker signed a document affirming that they understood their right to control their personal documents. Several other Mott MacDonald employees told us that workers typically wanted others to hold onto their passports, and that, to their knowledge, workers had access to their passports on a 24/7 basis.

The majority of workers we interviewed told us that they voluntarily agreed to have their employer hold their passport. There were however, 84 workers (approximately 28% of the total 296 workers who said that their employer held their passport) who said that they did not provide the passport voluntarily. Of these 84 workers, 19 worked for Robodh, which we found violated the Labor Guidelines in several other areas as well. (*See* Section 5.5.4 and Section 5.6.4 below).

46 of the workers who told us that they did not provide their passports to their employers voluntarily worked for BK Gulf. BK Gulf representatives acknowledged that the company required workers to

[93] For example, the Human Resources manager of BK Gulf told us that this approach to passport retention by employers stems from the UAE government's practice of freezing any visa transaction for an employer who employs someone with an expired visa. In short, if one worker's visa expires other workers of that employer will not be able to obtain visas until the expired visa is renewed or cancelled. According to this Human Resources manager, employers mitigate this risk by taking control of their workers' passports. Unlike the workers, the reasoning goes, the employers are well-equipped to handle the burdens of the renewal process for passports, visas and other personal documents (including government-issued Emirates identification cards).

surrender their passports to, they claimed, ensure greater control over the visa renewal process. This case represented a clear violation of the Labor Guidelines as workers were constrained to provide their passports as a condition of their employment.

While it appears that the majority of workers may have preferred having their employer hold their passport, the fact that almost 30% of the workers said that maintaining possession of their passports was not an option suggests that abuse of the passport retention policy was more problematic than reported by the monitors and corroborates allegations made by the media and NGOs.

As noted in our recommendations at Section 6.2.3 below, employers should not hold workers' passports as it gives the employer control over the workers' critical personal documents.

5.5 Allegation: Pay-Related Issues, Including Late Payments and Non-Payment of Back Pay

Various media articles and NGO reports alleged violations of the Labor Guidelines with respect to pay. These allegations include late payment of wages and non-payment of back pay[94] and are discussed below.

5.5.1 Specific Allegations

Media and NGO reports cited a wide range of pay-related issues concerning workers on the Main Campus Project, most commonly late payments of wages and non-payment of back pay. In its May 2014 report, *Gulf Labor* stated that subcontractors "failed to pay wages in a timely fashion, and were in arrears by several months"[95] and identified Robodh and Al Reyami as engaging in these practices. In its May 2014 article, The New York Times also identified Robodh when describing late payments and non-payment of back pay.[96] According to The New York Times, it spoke with two Robodh workers who were owed back pay when their jobs came to an end. In their February 2015 report, *Human Rights Watch* said they had spoken to Robodh workers and found that Robodh owed one worker unpaid wages dating back to 2007.[97] The worker also had not received end-of-service benefits for his nine years of employment. One of the men interviewed by *Human Rights Watch* claimed that the total number of workers awaiting unpaid wages was approximately 200. *Human Rights Watch* also spoke to workers from Al Reyami and a company named Salah Interiors whose workers reported violations of pay practices on the Main Campus Project.

[94] Certain broader pay-related issues such as broken promises of pay raises by employers and end-of-service payments were beyond the scope of the compliance program.
[95] "Gulf Labor's Observations and Recommendations after Visiting Saadiyat Island and Related Sites (March 14-21, 2014)," *Gulf Labor*, May 2, 2014.
[96] "Workers at N.Y.U.'s Abu Dhabi Site Faced Harsh Conditions," The New York Times, May 18, 2014.
[97] "Migrant Workers' Rights on Saadiyat Island in the United Arab Emirates – 2015 Progress Report," *Human Rights Watch*, February 10, 2015.

5.5.2 Relevant Labor Guidelines

Three Labor Guidelines addressed wage-related issues:

- *Statement of Labor Values*

"**Wages and Benefits:** The Parties recognize that wages are essential to meeting workers' basic needs. As a minimum, workers providing services to NYUAD 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."

- *14 Points*

"Employees shall receive their full wages or basic salary via electronic bank transfers and on a pre-agreed schedule."

- *Supplementary Specifications*

The *Supplementary Specifications* provide specific minimum pay scales which begin at AED 800 (USD 217) per month. They also provide:

> "All EMPLOYEES shall receive their full wages or basic salary, depending on their contracts on time [sic] (2 days before the last weekend of the month). EMPLOYEES having contracts on yearly or monthly basis shall be paid at least once a month or at least once every two weeks in compliance with the UAE Labor law.
>
> Wages shall be paid through a bank transfer, in the official national currency. All EMPLOYERS shall enroll in the Wage Protection System in the Ministry of Labor."

5.5.3 Monitors' Findings

Monthly and quarterly compliance reports indicate that pay-related violations of the Labor Guidelines were identified by the monitors. Monthly audits of payroll records, together with worker interviews, uncovered pay-related violations on at least 30 different occasions involving 17 different subcontractors. The issues included late payment of wages, payment of sub-standard wages, improper timekeeping/accounting and missing documentation such as pay slips, which undercut the monitors' ability to certify compliance. Each time the monitors identified issues, they took steps to remedy the violations and monitored the company to confirm that the issues did not arise again. Having said that, the monitors were only able to monitor those companies deemed to be subject to compliance. Accordingly, workers at companies exempt from compliance were again not afforded the protections of the Labor Guidelines. With respect to the companies named in media and NGO reports, the monitors' actions are described below.

Salah Interiors

Compliance monitors did not conduct interviews or audits at Salah Interiors as the company was exempt from complying with the Labor Guidelines.

Al Reyami

The monitors' monthly, quarterly and annual reports indicate that numerous compliance violations by Al Reyami were identified and corrected.

When the monitors first discovered that Al Reyami was not paying its workers the full wages owed under their contract, they drafted an action plan that included a strict deadline for Al Reyami to correct any salary shortfalls, pay any arrears and provide its workers with copies of their contracts. Shortly after, the monitors confirmed that Al Reyami had taken the necessary steps to pay the workers what they were owed and to provide the workers with their contracts.[98]

The monitors continued to audit Al Reyami. Between July 2012, when Al Reyami reportedly made the required payments, and June 2014, the monitors conducted multiple audits of Al Reyami's records and more than 200 interviews of its workers. Throughout this period, the monitors uncovered numerous instances of delinquent payments that included the time period at the end of 2013 and the beginning of 2014 when *Human Rights Watch* found that workers had not been paid. Each time the monitors identified these violations, they followed up with Al Reyami to ensure the workers received the money they were owed.

The matters were all reported in the monitors' monthly, quarterly and annual reports. Given that the monthly and quarterly reports were not public, and the annual reports lacked specificity and detail, it is understandable that the media and NGOs did not have complete information on the monitors' efforts to police Al Reyami's violations.

Robodh

The monitors' monthly, quarterly and annual reports reflected a number of serious pay-related violations by Robodh. EC Harris and Mott MacDonald personnel confirmed that Robodh was identified as a problematic subcontractor, with one interviewee stating that the company falsified documents by omitting hours worked from its workers' timesheets, an allegation corroborated by former Robodh workers.

The monitors apparently first uncovered problems in October 2011. Their reports reflect that the company was violating the Labor Guidelines by mapping workers too low against the job titles and pay scales required by the *Supplementary Specifications*. In the following months, the monitors conducted audits of Robodh's records, met with the company's senior management and found other significant problems. At least one of the audits was prompted by an "anonymous e-mail" alleging that Robodh's workers had not been paid their salaries for two months.[99] Mott MacDonald found that workers had not been paid on time from August through November 2011 and salaries for certain months had not been paid at all. Other workers were only receiving half their pay, but were forced to sign documents acknowledging full payment.

At the time Robodh's violations were uncovered, AF Carillion told EC Harris that Robodh was experiencing cash flow problems. AF Carillion offered to terminate Robodh's contract, but ultimately agreed with EC Harris that termination would not benefit the workers. Accordingly, a corrective action plan was put in place that required Robodh to pay arrears for payments owed and monetary penalties were

[98] This resolution of issues was corroborated by the Al Reyami workers we interviewed. (*See* Section 5.2.2.4 above).
[99] Mott MacDonald claimed that Robodh workers did not tell them about these problems in earlier interviews.

imposed against AF Carillion for the violation. Over the course of the next two months, Robodh was closely monitored until it was confirmed that the company was up to date on its payment obligations.

Later in 2012, when the monitors again found that Robodh was not paying its workers on time, they again worked to rectify the matter and monitored Robodh to ensure the company made good on payments owed. From the time the monitors first identified Robodh's pay issues in October 2011 until the conclusion of Robodh's contract in September 2012, it appears that the monitors conducted at least 72 interviews of Robodh workers (including the worker who sent the anonymous e-mail) and conducted multiple payroll audits to confirm the resolution of the pay issues.

The matters were all reported in the monitors' monthly, quarterly and annual reports. Given that the monthly and quarterly reports were not public, and the annual reports lacked specificity and detail, it is understandable that the media and NGOs did not have an accurate sense of the monitors' efforts to police Robodh's violations.

5.5.4 Nardello & Co.'s Findings

The following sections summarize our findings with respect to pay-related issues by the companies cited in media and NGO reports.

Salah Interiors

A review of relevant documentation disclosed that Salah Interiors was deemed exempt from compliance with the Labor Guidelines on the basis that its contract fell below the monetary threshold of AED 3.67 million (USD 1 million). It appears that the company employed approximately 50 workers on the Main Campus Project.

We contacted Salah Interiors, but it did not respond to our requests to address the allegations.

Al Reyami

A review of relevant documentation indicated that Al Reyami was awarded three contract packages, two of which required compliance with the Labor Guidelines and one of which was exempt from compliance. In total, Al Reyami appears to have employed approximately 3,000 workers on the Main Campus Project during the duration of its contracts from 2012 to 2014.

Interviews with five Al Reyami workers, all of whom were apparently covered by the Labor Guidelines, corroborated the media and NGO allegations of delayed payments. Two of the workers reported instances of their salary not being paid on time, with one of these workers saying that his wages were consistently paid one to two months late. The workers also reported other pay-related problems at Al Reyami. One said that he initially was paid a wage below the minimum threshold set by the Labor Guidelines while two of the workers said that they initially were paid AED 900 (USD 244) per month despite signing contracts for the Main Campus Project that stipulated wages of AED 1,200 (USD 325) per month. One of these workers told us that close to 200 workers were subject to the same practice.[100]

[100] As discussed in Section 5.2.2.4 above, these workers told us that after they went on strike at least some of these pay-related problems were ultimately corrected. As Al Reyami was already under the scrutiny of the monitors at the

We reviewed the monitors' monthly, quarterly and annual reports and conducted interviews with personnel working for Mott MacDonald, Mott MacDonald's ILS team and EC Harris. With respect to Al Reyami, we believe that a comparison of the monitors' findings with the violations alleged in media and NGO reports showed that the monitors did more than what was reported in Mott MacDonald's annual compliance reports.

Al Reyami did not respond to our requests for an interview to address the media and NGO allegations.

Robodh

A review of relevant documentation indicated that Robodh was employed on one contract package and was required to comply with the Labor Guidelines. It appears to have employed approximately 1,500 workers on the Main Campus Project.

Interviews with more than 50 current and former Robodh workers corroborated media and NGO allegations concerning delayed payments and unpaid end-of-service benefits.[101] In fact, Robodh workers accounted for roughly 80% of all pay-related allegations we encountered during the course of our interviews of workers employed by companies obligated to comply with the Labor Guidelines. Although we were unable to locate and interview the two individuals identified in The New York Times May 2014 article prior to the conclusion of our field investigation in Abu Dhabi, we spoke to other former Robodh workers whose stories closely echoed those of the workers mentioned in the article. We also uncovered allegations against Robodh concerning overtime-related abuses (*see* Section 5.6.4 below) and passport retention issues (*see* Section 5.4.4 above) as well as charges that the company pressured workers to falsify records and lie to compliance monitors by threatening to transfer the workers off of the Main Campus Project if they did not obey. Further, several workers stated that the company told them to falsify paperwork to indicate that they were being paid AED 1,200 (USD 325) when they were actually being paid 800 (USD 217).

Approximately half of the Robodh workers we spoke to told us that they were owed money by the company, frequently in amounts in the tens of thousands of dirhams.[102] The workers said that when they complained they were threatened with dismissal or simply ignored. Many of these workers have remained in the UAE trying to collect the monies they are owed and echoed sentiments mentioned in The New York Times article, repeatedly saying that "so many of us are stuck here." We were told that at least 200 Robodh workers have filed labor claims against the company. The company has offered settlements, but they only cover a small percentage of the debts, according to the workers.

We reviewed the monitors' monthly, quarterly and annual reports and conducted interviews with personnel working for Mott MacDonald, Mott MacDonald's ILS team and EC Harris. As in the case of Al Reyami noted above, we believe that a comparison of the monitors' findings with the violations alleged in media and NGO reports showed that the monitors did more than what was reported in Mott MacDonald's annual compliance reports.

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time of the strike, it is difficult to determine whether the company's actions to resolve its pay-related issues were in response to the strike, the monitors, or some combination of both.

[101] As previously noted, the payment of end-of-service benefits was not addressed in the Labor Guidelines.

[102] One worker told us that the company owes him AED 25,000 (USD 6,782) for work completed on projects separate from the Main Campus Project over the last 17 years.

Other Companies

We were also told of similar practices by workers from other companies. In the case of Al-Shirawi Contracting LLC, a subcontractor obligated to comply with the Labor Guidelines, several workers said that they earned AED 800 (USD 217) per month, despite promises from the company that their wages would be as high as AED 1,600 (USD 434) per month. These workers also told us that the company instructed them to lie to the compliance monitors and say that they earned AED 1,200 (USD 325) per month.

Overview of Pay-Related Conditions

We spoke to over 300 workers and reviewed pay records for approximately 200 deported BK Gulf workers.[103] While the violations cited above are real and serious, our investigation determined that approximately 95% of this pool of workers received at least the minimum salary mandated by the *Supplementary Specifications* – an amount that, to varying degrees, is believed to have been higher than what workers earned on other projects.

Accordingly, while our investigation corroborated the allegations by the media and NGOs, particularly with respect to Robodh and Al Reyami, it appears as if the majority of non-exempt workers on the Main Campus Project were paid in accordance with the Labor Guidelines.

As noted in our recommendations at Section 6.2.4 below, the monitors must conduct more worker interviews and payroll audits to ensure greater compliance by the employers.

5.6 Allegation: Involuntary Overtime

5.6.1 Specific Allegations

Media and NGO reports alleged that some workers were required to work overtime involuntarily during the construction of the Main Campus Project. The allegations cited long work days as evidence of this violation. *Gulf Labor's* May 2014 report alleged that "[o]vertime (amounting to 11- or 12-hour work days, and sometimes longer) was described as mandatory, not voluntary."[104] The New York Times, in its May 2014 article, wrote, "Most of the men described having to work 11 or 12 hours a day, six or seven days a week, just to earn close to what they had originally been promised, despite a provision in the labor statement that overtime should be voluntary."[105]

[103] We reviewed the pay records for the deported BK Gulf workers to determine whether there was any evidence that the October 2013 BK Gulf strike was caused by workers being paid less than the minimum wages mandated by the Labor Guidelines.
[104] "Gulf Labor's Observations and Recommendations after Visiting Saadiyat Island and Related Sites (March 14- 21, 2014)," *Gulf Labor*, May 2, 2014.
[105] "Workers at N.Y.U.'s Abu Dhabi Site Faced Harsh Conditions," The New York Times, May 18, 2014.

5.6.2 Relevant Labor Guidelines

Three Labor Guidelines address involuntary overtime:

- *Statement of Labor Values*

"**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."

- *The 14 Points*

"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."

- *Supplementary Specifications*

"Where the work circumstances require the EMPLOYEE to work more than the normal number of hours [eight hours per day, six days per week] any period worked in excess shall be treated as Overtime, for which the EMPLOYEE shall receive the wage stipulated for his/her normal working hours, plus a supplement of at least 25 percent of his/her basic wage. Where the circumstances of the work require a worker to work overtime between 21:00 and 04:00 he/she shall be entitled in respect of such overtime to the remuneration stipulated for his/her normal hours of work, plus a supplement of at least 50 per cent [sic] of the remuneration.

Where an EMPLOYEE has to be put on duty on weekends or public holidays, he/she shall be paid his/her basic wage for his/her normal hours of work plus a supplement of at least 50 percent of that wage for overtime periods."

5.6.3 Monitors' Findings

Monthly, quarterly and annual compliance reports indicated that the monitors *did not find a single case of an employer requiring its workers to work overtime*. They did, however, identify several instances where subcontractors were found to be violating the Labor Guidelines' requirements for days off and other instances where subcontractors were found in violation for failing to properly account for workers' overtime hours. Other violations of the overtime protection of the Labor Guidelines were also identified, including instances where subcontractors were found to be paying overtime rates that were below those called for by the Labor Guidelines.

In total, the monitors identified violations of the overtime policy on at least seven different occasions and the monitors' reports show that the violations were typically resolved within a month.

Robodh

Monitors' compliance reports indicated that the monitors failed to identify any instances of Robodh forcing its workers to work overtime. They did however identify one incident when Robodh was not paying its night shift workers the higher overtime rates required by the Labor Guidelines. In response, Robodh reportedly changed the hours of these workers immediately so that they could pay the workers lower rates and comply with the Labor Guidelines.

5.6.4 Nardello & Co.'s Findings

A review of the Labor Guidelines indicates that there is an inconsistency between the language of the *14 Points* and the *Statement of Labor Values*, both of which clearly require that overtime be worked voluntarily, and the language of the *Supplementary Specifications*, which, instead of including any requirement that overtime be worked voluntarily, stipulates that overtime will be worked "*where the work circumstances require*" it.
Based on our interviews, the majority of workers reported that they worked overtime voluntarily so that they could earn more money. However, not all workers reported working overtime voluntarily. Our investigation found that of the workers employed by companies that were contractually obligated to comply with the *Supplementary Specifications*, approximately 10% stated that overtime was not voluntary.

Of this 10%, a majority (18) of the workers worked for Robodh. Some of these workers reported that two hours of overtime per day was compulsory, while several others reported that they were told that if they did not work overtime, they would be transferred from the project. One worker said that if he did not work overtime, Robodh would mark him absent for the day and withhold that day's pay. Equally significant, most of the Robodh workers we spoke with told us that they were not paid the higher rates for overtime as required by the Labor Guidelines. Many of these workers said that they were paid their basic rate for two hours of overtime and either the basic rate or *less* for any additional hours. One worker told us that the company required that workers use one punch card for a standard day's work, which included compulsory overtime, and a separate punch card for "extra overtime."

These accounts support the allegations by the media and NGOs that some workers were forced to work overtime on the Main Campus Project. For that reason, as noted in our recommendations in Section 6.2.5 below, it is important to conduct more worker interviews and audit on-site attendance records.

5.7 Allegation: Sub-Standard Housing

5.7.1 Specific Allegations

The housing conditions of some workers on the Main Campus Project were described by various media and NGO reports as sub-standard. In its December 2013 article, The Guardian described "a filthy, overcrowded camp housing 43 Bangladeshi workers at the heart of the polluted, industrial Musaffah area,"[106] where workers "crammed nine or 10 to a windowless room." *Human Rights Watch* also reported

[106] "In Abu Dhabi, they call it Happiness Island. But for the migrant workers, it is a place of misery," The Guardian, December 21, 2013.

that "43 Bangladeshi painters" were housed in rooms with "no windows" where "the men had no access to any recreational area."[107]

In its May 2014 article, The New York Times reported that certain Main Campus Project workers lived in "squalor."[108] One worker identified as "Munawar," a City Falcon worker, was housed, along with other workers, "in squalid quarters," where "the bedrooms are so crowded that the men must sleep three to a stack — one on the upper bunk, one on the lower bunk and one below the lower bunk, separated from the floor by only a thin pad for a mattress." The article went on to state that, "[t]angles of exposed wiring hang down from the ceiling, and cockroaches climb the walls."

In February 2015, *Human Rights Watch* reported that Al Reyami workers "expressed displeasure about where they were living," and that they lived eight to a room and had no recreational facilities.

5.7.2 Relevant Labor Guidelines

Two Labor Guidelines address housing accommodations:

- *14 Points*

  "In circumstances where contractors provide housing accommodation to those working on the NYUAD Project, the following requirements must be met:

  – No more than four individuals in any bedroom.

  – All rooms must be equipped with ventilation systems and central air conditioning units.

  – All workers are provided with secure wardrobes and/or lockboxes for safeguarding valuables, including personal documents.

  – 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 *Supplementary Specifications* set forth 24 detailed specifications for the design, construction and operation of worker housing related to the Main Campus Project. These included requirements related to: bedrooms, kitchens, bathrooms, recreation, building materials, ventilation and air conditioning, fire safety, water supply and others.

[107] "Migrant Workers' Rights on Saadiyat Island in the United Arab Emirates – 2015 Progress Report," *Human Rights Watch*, February 10, 2015.
[108] "Workers at N.Y.U.'s Abu Dhabi Site Faced Harsh Conditions," The New York Times, May 18, 2014.

For example, the *Supplementary Specifications* required:

"Bedrooms:

- The distance between the bed and the other materials should not be less than 36-inches from sides, and rear, and the rise of the bed not less than 12 inches from the ground.

- Shelves must be put for shoes at the entrance to each room so that operatives can put their shoes [sic] before entering the place of sleep.

- The allowed number of operatives occupying one room must be Four (4) people, with a commitment to space and One (1) bed allocated to each person.

- The height of the bedrooms ceiling should not be less than 7 feet.

- Bedrooms in the Operatives Village shall consider the following:

    - Area per person must not be less than specifications in Table 13;[109]
    - Individual sleeping place regardless of rotations;
    - A bed side table and wardrobe, up to 2 meters per person with individual locks;
    - The distance between the upper and lower bed, should be 27 inches at least;
    - Use of three-story beds is unacceptable."

5.7.3 Monitors' Findings

AF Carillion and its non-exempt subcontractors provided housing to its workers within "Operative Villages" on Yas Island in Abu Dhabi. These Operative Villages were specifically outfitted to comply with the housing conditions mandated by the Labor Guidelines, such as the requirement that no more than four (4) workers be housed per room. At the outset of construction of the Main Campus Project, the accommodations were inspected repeatedly by, among others, Mubadala, AF Carillion and EC Harris, and deemed to be up to standard.

On at least eight different occasions involving seven different subcontractors, the monitors found that workers were housed in sub-standard accommodations outside of Yas Island. In all of these cases, the monitors required the subcontractor to relocate its workers to the Yas Island facility. We found that relocations were completed on a timely basis with appropriate supervision by the monitors.

In at least two of these cases, the monitors did not require workers to be moved to Yas Island because of what they said was the workers' strong preference to remain at their existing accommodation. Both of these cases were reported by Mott MacDonald in their 2012 annual report and one of these cases was also cited by *Human Rights Watch,* which questioned why the subcontractor's workers were not moved into compliant housing.

In the first case, the subcontractor was on the Main Campus Project for approximately six months. The monitors discovered that the subcontractor housed its workers in sub-standard accommodation during the

[109] Table 13 states a range of space required per person based on job title.

third month of the subcontract. According to the monitors, the subcontractor requested that its workers not be moved to avoid the short-term displacement.[110] The subcontractor provided letters from the workers that memorialized their preference to remain at their accommodation. After inspecting the accommodations and interviewing workers, Mott MacDonald determined that the accommodation was sub-standard, but they approved the request due to the short duration of the contract and because the workers confirmed that their preference was to remain where they were. It is, however, not clear why the monitors did not identify the housing violation for three months.

In the second case, the workers, who were all Chinese, told the monitors that they preferred to remain within a community of their countrymen, where they were provided with food and entertainment that catered to their cultural preferences, rather than move to Yas Island and be housed with workers from various ethnic groups. Further, the subcontractor informed AF Carillion that housing its workers in the existing accommodations was a condition of their employment visas. In response, the monitors conducted repeated detailed inspections of the subcontractor's accommodation and interviewed workers to confirm their preferences. The monitors determined that although the conditions were not fully compliant with the *Supplementary Specifications*, the differences were not significant. For example, the workers were housed five to a room, but each had more individual space per square meter than required by the *Supplementary Specifications*. A review of the monitors' monthly, quarterly and annual reports indicated that the monitors approved the accommodation, but Tamkeen requested that certain conditions be upgraded to comply with the requirements of the *Supplementary Specifications* and UAE law, including the ratio of window space to floor space.

Human Rights Watch noted Mott MacDonald's handling of this issue and cited a quote from its 2012 Annual Report that stated "because of cultural issues it is deemed in the best interests of the workers that they remain in the accommodation." *Human Rights Watch* asked Mott MacDonald and the EAA for an explanation of the nature of the "cultural issues," but did not receive a response. However, it should be noted that a separate section of Mott MacDonald's annual report stated that it was "culturally insensitive to isolate a relatively small number of Chinese workers who are currently living with a predominantly Chinese community" and their current housing "has a kitchen and other facilities that cater specifically to a Chinese workforce."[111]

City Falcon

The compliance monitors did not conduct interviews or audits at City Falcon as the company was exempt from complying with the Labor Guidelines.

The 43 Painters

According to NYU and Tamkeen, they first became aware of the gap in the compliance program due to the *de facto* exemption policy after The Guardian's article in December 2013. In the wake of this

[110] A representative of EC Harris told us that typically the consequences of a short-term transfer to the Yas Island accommodations could, in some cases, not ultimately benefit the worker. Once a worker moved out of his existing accommodation, his vacancy was quickly filled and he would likely not be able to move back at the end of his term on the Main Campus Project. This meant that the worker would move to a third accommodation, which we were told was often the least preferable to the worker.

[111] More detail on this matter also appeared in the non-public monthly and quarterly reports.

article,[112] the monitors attempted to identify the 43 painters cited to determine who they worked for and whether they were in fact residing in sub-standard accommodations. The monitors believed the painters to be the workers of an exempt subcontractor, which meant that they were not covered by the Labor Guidelines and not guaranteed compliant housing. NYU and Tamkeen took action to move the remaining number of the company's approximately 20 workers, as well as any other exempt Main Campus Project workers living in sub-standard housing, to Yas Island. The fact that the 43 workers were moved is corroborated by the account of *Human Rights Watch,* which appears to have visited the original accommodation on January 24, 2014 and found that the workers were no longer living there.

Al Reyami

The monitors' non-public monthly and quarterly reports indicate that they found that Al Reyami was not housing its workers in compliant accommodations at the time they uncovered various pay-related violations. (*See* Section 5.5.3 above). The monitors required Al Reyami to move all of its workers to Yas Island.

Over the next two months, the monitors tracked Al Reyami workers to confirm that all of them had been moved to Yas Island. As noted above (*see* Section 5.5.3 above), the monitors also continued to closely monitor the company to ensure that the company remained compliant. Between July 2012 and June 2014, the monitors conducted multiple reviews of Al Reyami's records and more than 200 interviews of its workers. Over the course of these audits, the monitors did not uncover any additional housing violations.

5.7.4 Nardello & Co.'s Findings

Many of the allegations of sub-standard housing reported by The New York Times, *Human Rights Watch* and The Guardian appear to involve the same companies. The allegations in The New York Times focus on the workers of a contractor identified as City Falcon. *Human Rights Watch* appears to report the same allegations, though they identify the company as "Falcon City Trading." The Guardian and *Human Rights Watch* both cited sub-standard conditions among 43 painters housed in the Mussafah Industrial Area. None of the reports appeared to reflect workers complaining of significant problems at Yas Island.

City Falcon

Our review confirmed that City Falcon was a sub-subcontractor on the Main Campus Project and reportedly employed at least nine unskilled workers for a period of roughly four months between 2013 and 2014. Under this contract, City Falcon was exempt from compliance due to the value of the contract.

We attempted to determine whether the reported allegations concerning City Falcon were true. Despite our repeated attempts, City Falcon never responded to our requests to discuss the allegations. We were also unable to locate and interview any City Falcon workers prior to the conclusion of our field investigation in Abu Dhabi.[113]

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[112] "In Abu Dhabi, They Call it Happiness Island. But for the Migrant Workers, it is a Place of Misery," The Guardian, December 21, 2013.

[113] Through a review of records produced by the subcontractor who contracted with City Falcon, we were able to confirm that no individual named "Munawar" (the individual named by The New York Times) worked on the Main Campus Project. The subcontractor produced UAE Ministry of Labor records, which listed the UAE-registered employees of City Falcon. There was no record of a "Munawar" ever working for the company.

The 43 Painters

Based on our review of compliance reports and site-attendance records, the 43 painters cited by The Guardian and *Human Rights Watch* appear to have been employed by a subcontractor that was exempt from compliance with the Labor Guidelines due to the value of its contract. The subcontractor appears to have worked on the Main Campus Project between 2012 and 2014.

We only learned of the location of the 43 painters after we had already concluded our interviews in Abu Dhabi. In any event, our review disclosed that as soon as NYU and Tamkeen learned of their situation, they took steps to move them to Yas Island.

Al Reyami

Interviews of five Al Reyami workers, all of whom appear to have worked under contracts requiring compliance with the Labor Guidelines, confirmed that the company's workers were all housed at Yas Island. Four of these workers reported that they initially resided in sub-standard accommodations prior to their transfer to Yas Island in 2012. In contrast to the *Human Rights Watch* report, these workers' descriptions of their living conditions were generally positive[114] and three of the workers described the conditions as better than other accommodations. However, it should be noted that Al Reyami also had exempt contracts so it is possible that the workers interviewed by *Human Rights Watch* were not covered by the Labor Guidelines.

Our investigation found that of the workers employed by companies that were contractually obligated to comply with the Labor Guidelines, approximately 10% described living in housing conditions that were sub-standard based on occupancy rates. Some of these workers had very positive things to say about their living conditions despite the fact that they were not compliant. Others complained of sub-standard conditions, including unclean bathroom facilities and pest infestations. Under the supervision and direction of facility management, we were able to conduct an inspection of the Yas Island operative villages. Our inspection confirmed that at the time of our visit, the conditions at the accommodations were compliant with the Labor Guidelines.

[114] All but one of these employees worked on the Main Campus Project through January 2014, the period when *Human Rights Watch* interviewed Al Reyami workers.

6. RECOMMENDATIONS

NYU and its government partners' attempt to ensure that certain minimum labor standards were met during the construction of the Main Campus Project was unprecedented in a region where mistreatment of migrant workers is commonplace. 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. This effort would have been even more successful if it had not been undermined by the exemption policy and the monitors' interpretation of the Labor Guidelines regarding passport retention and reimbursement of recruitment fees.

The exemption policy represented a critical failure in the compliance program, but our review also found significant problems in the areas of communication, transparency, consistency and accountability among the Key Parties that also diminished the effectiveness of the program. Accordingly, we offer the following recommendations, responsive to each of the allegations we have addressed in this report, to strengthen compliance with both the letter and spirit of the Labor Guidelines.

6.1 General Recommendations

6.1.1 Abolish Exemptions and Cover All Workers

NYU and its government partners' goal was that all workers benefit from the Labor Guidelines. The practice of granting exemptions based on thresholds, which created financial incentives for subcontractors to avoid obligations to comply with the Labor Guidelines by staying under arbitrary time and monetary thresholds, clearly undermined this goal.

Given that on the whole, non-exempt subcontractors, which were subject to the scrutiny of AF Carillion, EC Harris, Mott MacDonald and the Mott MacDonald ILS Team, had a far better compliance record than exempt subcontractors, we would expect that the number of labor abuses would decline if exemptions are abolished. Accordingly, we recommend the following:

- **Ensure All Workers Benefit from the Labor Guidelines**: In the case of long-term workers,[115] an effort to ensure full compliance is essential, so there should be no exemption policy. In the case of short-term workers, implementing full compliance of the Labor Guidelines can prove difficult and may actually undermine the goal of improving the working conditions for the workers. For example, forcing someone to move out of their long-term housing into compliant housing for a week may be considered a burden, rather than a benefit. With this in mind, we recommend certain steps to ensure that all workers benefit from the Labor Guidelines, either directly through their implementation or where that may be either impracticable or result in hardship to the worker, indirectly through cash payments in lieu of the actual benefits. Accordingly, contractors, as part of their bid packages, should be required to provide additional transparency to their line item quotes for costs related to adherence to the Labor Guidelines, an amount that could be audited and approved by the compliance monitor. Ideally, employers would provide an estimate of such costs on a daily per-worker basis comprised of the total amount

[115] Long-term workers are any individuals employed on a project for more than 31 days.

required to ensure that the worker's treatment complies with the Labor Guidelines.[116] To address the practical and logistical issues relating to short-term workers, the per-day costs to adhere to the Labor Guidelines would form the basis for a cash payment to the worker. Since the employer would be incurring the same costs for all workers – with no exemptions – there would be no financial incentive for employers not to comply.

The one area of potential abuse would be non-payment, or less than full payment, of wages to the short-term workers. Given the short-term nature of their employment, this could prove difficult to adequately monitor as it is possible that the employer and the workers may have completed their work and left the project before problematic issues can be identified. In order to address this potential gap, we recommend that the banking details for all short-term workers be provided to the compliance monitors and that compliance-related payments to the contractors be kept in an escrow account under the control of the compliance monitor as outlined in Section 6.1.2 below.

It is our understanding that all wage and employment-related payments to workers are first directed into an account under the control of their employer before funds are transferred into individual workers' accounts.[117] As such, at the end of a short-term contract, the monitor will make cash payments into the employer's account and then physically oversee the transfer of funds by the employer to the short-term worker to ensure that he is compensated appropriately.

As our investigation showed, the majority of serious allegations involved companies that were not being monitored, so it is essential that some level of interviews and audits be conducted at all companies no matter how big or small.

6.1.2 Establish an Escrow Account under the Control of the Compliance Monitor

In those cases in which contractors fail to comply with the Labor Guidelines, it is essential to ensure that the workers affected are compensated for any loss of benefits. To that end, we recommend that monthly compliance-related payments be maintained in a segregated escrow account under the control of the compliance monitor. In the event that a contractor fails to comply, the monitor will coordinate the process of making cash payments to the workers as described in Section 6.1.1 above to compensate for any unpaid wages or benefits. Alternatively, upon proof of correct payment by the contractor, the monitor can release the funds to that contractor. Specific uses of the escrowed funds appear in the allegation-specific recommendations set forth at Sections 6.2.1 to 6.2.6 below.

6.1.3 Simplify the Compliance Monitoring Regime

- **Appoint One Compliance Monitor**: Several of the problems on the Main Campus Project were related to communication issues between the Key Parties including the various monitors. There should only be one monitor who has overall responsibility for all compliance-related matters on

[116] For example, in terms of housing, this amount would be the difference between the cost of non-compliant housing and the cost of compliant housing. With respect to wages, this amount would be the difference between the workers' pre-project salary and their required salary under the Labor Guidelines.
[117] Worker accounts are reportedly not standard accounts in which funds can be directly deposited by outside parties. We have been told that only the employer can make the distribution of funds to workers.

the Project and has direct reporting lines to all Key Parties. The monitor should provide detailed monthly reports to all Key Parties including NYU and its government partners.

Further, the compliance monitor should have personnel on-site at all times to (i) respond to and redress violations in real time; and (ii) to be easily available to speak to workers with questions or grievances.

6.1.4 Establish and Enforce Strict Penalties for Compliance Violations and Make the Penalties Public

- **Establish and Enforce Strict Penalties for Compliance Violations**: A compliance scheme without penalties is a toothless tiger; any effective program must exact sanctions for violations. At the same time, we recognize certain realities that exist in the regional market may limit the actions that can be taken. For example, on principle, it may make sense to terminate companies for repeated violations of the Labor Guidelines. In practice, several parties have told us that the pool of companies in the region able to take on certain construction projects is limited and therefore termination of a company may not be a viable option. Thus, our recommendation focuses on protecting the interests of the construction worker while maintaining some level of flexibility to address the realities associated with the industry in the region.

  As outlined above in Section 6.1.2 above, we recommend that monthly compliance-related payments be maintained in an escrow account under the control of the compliance monitor.[118] If a contractor is found to be seriously non-compliant,[119] the contractor should receive a warning and the funds held in escrow can be used to compensate the workers[120] in the event that the contractor does not comply immediately.

  If the violation is not resolved within one month, the contractor involved would receive a second warning and would be fined a set percentage of the total value of its contract to be determined and set out in its contract. The process would continue in the second month and the fine would increase by a predetermined percentage. If after three months, the contractor is still not in compliance, it should be terminated. This approach gives the company responsible for hiring the contractor sufficient time to identify possible replacements should the need to terminate arise. Further, since termination of a contractor could, and likely would, delay a construction project, the company responsible for hiring the terminated contractor might also be subject to penalties for not meeting its contractual deadlines. This approach ensures that the hiring company has a direct financial stake in the success of the compliance program, which should have the net effect of encouraging companies to give greater importance to a contractor's compliance policies when evaluating competing tenders.

- **Publicly Acknowledge Enforcement Policies**: Given that the publication of the *14 Points* was prompted by concerns over labor abuses, it would have been appropriate to publicly disclose a range of penalties available for compliance violations. In the future, we recommend that the range

[118] These funds will be in addition to end-of-service funds that all contractors will be required to provide to the compliance monitor at the beginning of each contract.
[119] A list of compliance violations should be prepared and distributed to all companies. This list should identify those violations that rise to the level of potential grounds for termination.
[120] As described in Section 6.1.2 above.

of penalties – such as suspension of payments, escalating fines and/or termination – be made public and that those policies are communicated to the workers in their native languages.

6.1.5 Hire an Independent Compliance Monitor

- **Avoid the Appearance of a Conflict of Interest**: While we found no evidence to suggest that Mott MacDonald's monitoring activities were influenced by the contract it received to oversee the Abu Dhabi Water and Electricity Authority infrastructure project on Saadiyat Island, we recognize that Mott MacDonald's involvement with the project could appear to conflict with its role as the independent verifier for the Main Campus. Similarly, we also found no evidence to suggest that EC Harris's monitoring activities were compromised by its dual role as both Project Manager and compliance monitor. However, it is important that the compliance monitor have no other economic ties to a project in order to avoid even the perception that they are not acting independently.

6.2 Allegation-Specific Recommendations

6.2.1 Mistreatment of Striking Workers

UAE law prohibits striking and provides for the arrest, termination of employment and deportation of those workers who strike. It is evident that there is a tension between existing law and the provision in the *Statement of Labor Values* that states that "no worker shall be subject to harassment, intimidation, or retaliation in their efforts to resolve work disputes."[121] Given that there is no indication that the UAE law will change in the foreseeable future, any recommendation must take into account that the rights of workers in the UAE to vigorously advance their grievances is circumscribed by law. With this in mind, we recommend instituting the following steps to maximize workers' ability to voice their grievances without fear of retribution:

- **Confidential Reporting Channel to the Monitors**: It is essential that workers have a confidential reporting channel to the compliance monitor that allows them to address grievances without their employer's knowledge. This will ensure that information concerning alleged labor abuse reaches the personnel best-placed to investigate and resolve the issue and will minimize the possibility of retaliation by the employer.

- **Notification and Investigation of Labor Disputes**: Contractors should notify the compliance monitor immediately about the occurrence of a labor dispute and whether any workers have been terminated, arrested or deported as a result of the labor dispute. The monitor should be required to review the circumstances of the dispute and any actions taken as a result to ensure that possible violations of the Labor Guidelines are identified and addressed. Failure to notify the monitor in a timely fashion should result in penalties to the company that employed the workers involved in the labor dispute.

[121] *Statement of Labour Values*, 2009. *See* Appendix Exhibit 1.

6.2.2 Ineffective Reimbursement Policies for Recruitment Fees Paid by Construction Workers

As noted above, the long-term solution to the serious issues posed by recruitment fees is not a commercial one as it requires multilateral actions of governments within the relevant jurisdictions where the recruitment fees were paid. 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.

Accordingly, we recommend the following policy to address this issue in the short-term:

- **Employ Contractors Who Are Taking Measures to Mitigate Abuses in the Recruitment Process**: In the near term, we recommend employing only contractors who are taking appropriate steps to ensure that workers they are hiring have not had to pay recruitment fees to obtain their jobs. These steps include, among other things, establishing paying contracts with recruitment agencies (which ensures that the agencies are being paid for their services by the contractors and not by the workers), conducting due diligence on recruitment agencies to determine whether they conduct business legally and ethically, monitoring the agencies to ensure their continuing compliance and establishing significant penalties – including termination of their labor supply contract – to serve as a deterrent to bad acts. We have also been told that some employers are requesting foreign employment agencies to post cash bonds as part of their contract with the employer. In the event that the employer determines that a worker provided by the agency has paid recruitment fees, the employer can use some portion of the cash bond to reimburse the worker for the fees paid. We have not had the opportunity to evaluate the effectiveness of this policy, but we think it is something that should be considered by all employers.

- **Require Contractors Who Have Not Taken Measures to Mitigate Abuses to Institute Appropriate Steps**: Given that the practice of workers paying recruitment fees is well entrenched in the region, it is likely that the number of contractors auditing their overseas labor supply chain is currently limited. Should there be a need to hire a contractor who has not instituted the steps noted above, we recommend that they be contractually required to institute the steps as outlined in an agreed timetable established before they begin work on the project.

6.2.3 Lack of Adherence to Passport Retention Policies

A worker's access to his own documents should not be controlled by his employer given the possibility of abuse. Employer control of passports raises the possibility that the right of workers to free movement will be impeded. We recommend implementation of a policy that accounts for the difficulties in negotiating the administrative complexities attendant to maintaining a work visa in the UAE, the stated desire of many workers for their passports to be secured outside of their living quarters and the right of workers to freely access their documents. Based on these considerations we recommend the following:

- **Prohibition of Employer Retention of Passports**: We believe that workers should control their own passports with access to fireproof and easily accessible lock boxes. In the alternative, we would recommend investigating the possibility of appointing the compliance monitor or other independent third party to hold the passports on behalf of the workers. In either instance, we recommend that employers clearly explain verbally and in writing (in the worker's native

language) both options. For workers who opt to secure documents with the monitor or third party, access should be unrestricted and available on 24 hours' notice.

In the event that a monitor or third party is appointed to hold workers' passports, they and the employer would maintain photocopies of relevant documents for workers to facilitate the tracking of renewal dates for visas, passports and any UAE government-issued identification cards, and would work with the employer to facilitate the visa renewal process.

6.2.4 Pay-Related Issues, Including Late Payments and Non-Payment of Back Pay

Our review determined that the most prevalent violations of the Labor Guidelines involved pay-related violations by both exempt and non-exempt subcontractors. Accordingly, we recommend implementing the following:

- **More Worker Interviews and Payroll Audits**: The volume of pay-related issues we identified indicated that more worker interviews and payroll audits need to be conducted to ensure that contractors are paying their workers in accordance with the Labor Guidelines. Further, these additional interviews and audits should be conducted at *all* companies working on a project.

- **Escrow Compliance-Related Payments**: As noted in Section 6.1.2 above, we recommend that monthly compliance-related payments to contractors be kept in an escrow account under the control of the compliance monitor to be paid out as necessary to workers who have not received the wages they are due.

6.2.5 Involuntary Overtime

Although our review confirmed that most workers welcomed the opportunity to work overtime in order to increase their earnings, we did find that numerous workers were coerced into working overtime against their will. Further, it is necessary to ensure that workers who work overtime are paid wages guaranteed by the Labor Guidelines. Accordingly, we recommend implementing the following steps:

- **Increase the Number of Worker Interviews**: Due to the number of workers on-site who work overtime voluntarily and the fact that workers may be working different shifts, it is difficult to identify those workers who are working overtime involuntarily. For that reason, we recommend that the compliance monitor conduct more worker interviews to increase the likelihood of identifying violations.

- **Audit Onsite Attendance Records**: In the event that the compliance monitor identifies workers who have been on-site for 12 or more hours, the monitor should interview those workers to determine whether they worked the hours voluntarily and whether they were compensated appropriately.

- **Escrow Compliance-Related Payments**: As noted in Section 6.1.2 above, we recommend that monthly compliance-related payments to contractors be kept in an escrow account under the control of the compliance monitor to be paid out as necessary to workers who have not received their overtime wages. In addition, the contractor should receive a substantial fine for the first violation that will escalate if its workers continue to work involuntary overtime.

6.2.6 Sub-Standard Housing

Housing workers at designated accommodations specifically outfitted to comply with the Labor Guidelines was sensible and easy to monitor. However, the implementation of the housing guidelines involved a process in which subcontractors self-certified their compliance in monthly reports that they provided to AF Carillion. One of the consequences of the self-certification process was that certain subcontractors did not move their workers to Yas Island on a timely basis. Accordingly, to ensure workers are housed in appropriate accommodations, we recommend implementing the following steps:

- **Accommodate All Long-Term Workers within Approved Housing**: Placing workers in compliant accommodations should be a relatively simple process as on-site visits to these accommodations will immediately identify any incidents of non-compliance. Contractors should be required to move their workers into these accommodations unless they are contracted for a short period of time.[122] Where it is determined that it is not feasible to move workers into short- term compliant housing, those workers will be compensated based on the predetermined cost of placing the worker in compliant housing for the period of employment. (*See* Section 6.1.1 above). We recommend that housing inspections begin for long-term contractors at the time they are engaged to ensure that workers have all been moved into the approved housing prior to beginning work on-site.[123] Periodic inspections of housing conditions should continue to confirm that as new workers are assigned to the construction project they are placed in approved housing. These inspections should include a comparison of the numbers reported by a contractor for its employees working on the construction site against those reported living within the approved accommodations. To the extent any discrepancy is uncovered, the compliance monitor should immediately follow up to confirm that all workers are benefiting from the Labor Guidelines either because they are in approved accommodations or have received a payment equal to the additional cost of that housing.

- **Escrow Compliance-Related Payments**: As noted in Section 6.1.2 above, we recommend that monthly compliance-related payments to contractors be kept in an escrow account under the control of the compliance monitor to compensate workers who have been housed in sub-standard housing.

[122] To be determined based on consultation with the main contractor and the compliance monitors.
[123] Key Party representatives have told us that this is the current policy on the Main Campus Project.

APPENDIX

Exhibit 1

STATEMENT OF LABOR VALUES

This Statement expresses 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 in the existing laws of the United Arab Emirates (UAE).

NYU and the EAA appreciate that each Party operates within different legal and cultural environments that will affect NYU Abu Dhabi; both Parties are, however, committed to the values set out in this Statement of Values and to their enforcement in the construction, operation, and maintenance of the NYU Abu Dhabi campus. 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.

- **Wages and Benefits**

  The Parties recognize that wages are essential to meeting workers' basic needs. As a floor, workers 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.

- **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.

- **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.

- **Child Labor**

  As required by UAE law and the International Labour 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.

- **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.

- **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.

- **Nondiscrimination**

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

- **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.

- **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.

- **Women's Rights**

  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.

  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.

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

- **Compliance with Laws**

  The labor inspection and remediation requirements of the UAE Labour Law and regulations will be implemented and comprehensively enforced in the construction, operation, and maintenance of the NYU Abu Dhabi Campus.

14 POINTS

The NYUAD Campus Project was governed by the following policies:

The following measures operationalizing the shared *Statement of Labor Values* will be contractual requirements for all companies involved in the construction and operation of the NYU Abu Dhabi campus on Saadiyat Island. Construction is scheduled to commence later this year.

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.
2. Employees will retain all of their own personal documents, including passports and drivers' licenses.
3. Individuals employed in connection with NYU Abu Dhabi will be a minimum of 18 years of age.
4. 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.
5. Employees shall receive their full wages or basic salary via electronic bank transfers and on a pre- agreed upon schedule.
6. Employers will not impose or request employment bans on employees seeking to change jobs.
7. An employee who completes one or more years of continuous service will be entitled to severance pay at the end of their employment.
8. Employees will receive employer-provided medical insurance.
9. Employees will receive employer-funded transport to and from their job sites or an equivalent allowance.
10. Employees are entitled to thirty calendar days of paid annual leave each year.
11. 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.
12. Female employees shall be entitled to maternity leave, with full pay, for a period of up to 45 days.
13. 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.[1]
14. In circumstances when contractors provide housing accommodation to those working on the NYUAD project, the following requirements must be met:

    - No more than four individuals in any bedroom.
    - All rooms must be equipped with ventilation systems and central air conditioning units.
    - All workers are provided with secure wardrobes and/or lockboxes for safeguarding valuables, including personal documents.
    - 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.

[1] This language was updated on March 22, 2011, to correct an oversight in the original posting of this document. The original language stated that foreign employees would receive "...one additional trip, per year...". This statement remains accurate for many job classifications, including most construction-related positions, however, some job classifications are entitled to the airfare allowance every two years.

Exhibit 2

KEY PARTIES AND TERMINOLOGY

The following is a breakdown of the Key Parties on the project:

- *Executive Affairs Authority* is a government agency of the Emirate of Abu Dhabi responsible for providing strategic advice to the Chairman of the Abu Dhabi Executive Council, His Highness Sheikh Mohamed bin Zayed Al Nahyan, Crown Prince of Abu Dhabi and Deputy Supreme Commander of the UAE Armed Forces. The EAA contracted with NYU to establish NYUAD.

- *Tamkeen*, a subsidiary of the EAA, was established with the specific mandate to deliver the Interim Campus and the Main Campus Project on behalf of the Government of Abu Dhabi. Tamkeen was charged with overseeing the projects' commitment to workers' rights, a responsibility it managed through Mott MacDonald.

- *Mubadala Real Estate & Infrastructure* is an Abu Dhabi government-owned real estate developer and was responsible for the construction of the Interim Campus and Main Campus Project. Mubadala appointed EC Harris as the cost consultant and project manager responsible for overseeing, among other functions, compliance to the Labor Guidelines by the main contractor, Al Futtaim Carillion, and its subcontractors.

- *Mott MacDonald Limited* was hired by the EAA as the independent third party verifier responsible for overseeing the compliance practices of EC Harris with respect to the construction of the Main Campus Project. Mott MacDonald was also responsible for monitoring compliance of the contractors appointed by NYU and Tamkeen to operate the Interim Campus.

- *EC Harris International Limited* was appointed by Mubadala as the cost consultant and the project manager of the Main Campus Project with responsibilities that included monitoring the implementation and enforcement of the Labor Guidelines and the construction progress of the main contractor and subcontractors during the construction of the Main Campus Project.

- *Al Futtaim Carillion LLC*, a UAE-based affiliate of Carillion plc, a British construction services company, was appointed by Mubadala as the main contractor responsible for the construction of the Main Campus Project and the implementation of the Labor Guidelines.

- *New York University* worked with the EAA on the design and management of the construction of the Interim Campus and the Main Campus Project. NYU monitored compliance of the contractors it hired to operate the Interim Campus. Although involved in the design and planning of the construction of the Main Campus Project, NYU did not monitor compliance of the workers employed there.

The following is relevant terminology utilized in the report:

- *Contract*: The term "contract" as used within this report refers to the individual contract executed, either between the main contractor and its subcontractors, or subcontractors and sub-subcontractors, to complete the work of the contract package.

- *Contract Package*: The term "contract package" as used within this report refers to the type of service for which a subcontractor was contracted on the Project. This is distinguished from the term "contract" as multiple contracts could be executed to carry out the contract package. For example, a subcontractor who was contracted to carry out Mechanical, Electrical and Plumbing ("MEP") services would be referred to as responsible for the MEP contract package. To complete the contract package, the subcontractor typically would execute numerous contracts with various sub-subcontractors.

- *Exceptions*: The term "exceptions" as used within this report covers those vendors, such as couriers who made deliveries to the Main Campus Project, who all parties agreed were not required to comply with the Labor Guidelines.

- *Exemptions*: The term "exemptions" as used within this report covers those subcontractors working on the construction of the main campus who were not required to comply with the Labor Guidelines. As detailed further within this report, the group included any subcontractor whose workers spent limited time on the construction site over the course of their contract (either less than 31 days, or greater than 31 days, but with more than 30 days between each separate visit), or whose contract was valued at less than AED 3.67 million.

- *Subcontractor*: The term "subcontractor" as used within this report refers to any contractor contracted by the main contractor on the Main Campus Project.

- *Sub-subcontractor*: The term "sub-subcontractor" as used within this report refers to any contractor contracted by any subcontractor on the Main Campus Project.

- *Worker*: The term "worker" as used within this report refers to the workers employed to construct the Main Campus Project or to operate the Interim Campus. The terms "employee," or "laborer," are also meant to be used interchangeably with "worker."

Nardello & Co.

Exhibit 3

PRESS RELEASE ANNOUNCING INDEPENDENT INVESTIGATION

June 25, 2014

Tamkeen has appointed Nardello & Co. to conduct a review into the allegations made in recent media reports regarding labor and compliance standards as outlined in the project's Statement of Labor Values related to the construction of the NYU Abu Dhabi campus on Saadiyat Island.

Nardello & Co. is a leading international investigation firm headquartered in New York. The review will be led by CEO and founder Daniel Nardello, an experienced investigator, litigator, and former US federal prosecutor who served as an assistant US attorney in the Southern District of New York. Mr. Nardello will lead a multidisciplinary team including members of the firm's Middle East practice, which is based in Dubai and London. Mr. Nardello, a graduate of Columbia University and the NYU School of Law, has developed a distinguished record in investigating compliance-related allegations and assisting corporations in bolstering their compliance strategies.

Nardello & Co. will act independently in the conduct of its review. Given the scale and complexity of the review process, the results are expected to be published by the end of the year.

Tamkeen and NYU Abu Dhabi take any allegations of violations of the labor monitoring and compliance program with the utmost seriousness. This appointment follows an international search for the best-qualified firm and consultation with our partner NYU Abu Dhabi. It underscores our joint and ongoing commitment to the safety and welfare of those who built and operate the NYU Abu Dhabi Saadiyat Campus.