

**STATEMENT TO THE NYU COMMUNITY FROM THE COALITION FOR FAIR LABOR ON  
NEW NYUAD SUPPLIER CODE OF CONDUCT**

*December 4<sup>th</sup>, 2016*

The [Coalition for Fair Labor \(CFL\)](#), a faculty-student alliance, established in 2009 as an advocate for high labor standards for employees on NYU projects, played an instrumental role in pushing for recommendations that were adopted into NYUAD's original *Statement of Labor Values*. As the NYU community knows from [New York Times](#) coverage, the [Nardello report](#) concluded that 10,000 employees hired to build NYUAD were not covered by these labor principles, and set forth several recommendations including: abolish all exemptions to coverage; hire an independent compliance monitor; increase transparency; and implement and enforce policies that prevent future losses.

CFL is now deeply concerned that the NYUAD administration's new [Supplier Code of Conduct \(SCC\)](#) for contractors is a badly flawed response to these explicit recommendations from Nardello & Co.—a firm hired by NYU and its Abu Dhabi partner to assess labor violations.

On November 1<sup>st</sup>, the NYUAD administration posted the SCC for employers contracted for all campus operations. Request from members of CFL to see earlier drafts of the SCC were ignored. Though we have worked on NYUAD fair labor provisions for almost eight years, and have accumulated a great deal of knowledge about the labor economy and international efforts to improve migrant worker conditions in the Gulf region, the NYU administration clearly does not regard this faculty-student group as a legitimate community of interest, let alone of expertise.

That is particularly unfortunate and it suggests that lessons have still not been learned from the blemished record of the past several years. If the original advice of CFL had been followed, NYUAD would have appointed an appropriate external monitor to oversee labor conditions during the construction of the campus. Failure to do so resulted in significant worker maltreatment, and, according to the Nardello report, the exclusion of a third of the workers from adequate protection under NYUAD's standards. After this scandal was exposed, the Coalition pushed again for an appropriate monitor to be appointed for the operational phase of the campus.

Unfortunately, the SCC, which we have been told by NYUAD now replaces all prior labor governance documents, includes no concrete language about oversight by an external monitor. In that document, compliance is defined as an internal matter, dependent on self-reporting and subject to NYUAD's own compliance evaluation process. This arrangement flies in the face of standard practices in the labor auditing sector. No employer, no matter how benevolent, can be trusted to oversee labor compliance. The need for independent auditing and verification is a bedrock principle. The *Code* does reserve vaguely defined rights of investigation to "authorized agents" of the university, but, in view of the past failures in monitoring, this minimal mention, in passing, of some unnamed and undefined entity is a wholly inadequate gesture.

But this is only one of several shortcomings in the policies laid out in the *Code*. Others are listed below. In our overall estimate, NYUAD has failed to implement key lessons and recommendations from the Nardello report, and must take steps to address the inadequacies of the new *Code* before fresh abuses occur.

Why does the NYU administration, both here at Washington Square and in Abu Dhabi, continue to operate in a spirit of non-transparency, with respect to faculty and student access, and nonconformity, with respect to international norms in the field of labor compliance? All of us are affected adversely when NYU's name is tarnished by association with human and labor rights abuse. Why does our administration continue to put the institution's reputation at risk?

## NYU ABU DHABI FAILS TO HEED INDEPENDENT MONITOR RECOMMENDATIONS

### *New policy presents major risks to laborers on NYU Abu Dhabi campus*

In its new labor standards, NYU Abu Dhabi (NYUAD) has failed to implement key lessons from a major independent investigation, conducted at its behest, which had concluded that arbitrary, vague, and non-transparent labor standards allowed major human rights abuses to occur in the construction of its campus. Released in October, the *Supplier Code of Conduct* (SCC) governs all contractors and subcontractors for labor at NYUAD in the operation of its campus.<sup>1</sup> Yet the *Code* codifies arbitrary standards, maintains general language, and fails to disclose any information about how the policy is put into practice. Conducting an independent investigation (resulting in the Nardello report) demonstrated a commitment to respecting human rights at NYUAD. Disregarding many of its findings does not. Especially for its most vulnerable workers, low-wage subcontracted manual laborers, the *Code* is an inadequate protection against human rights abuses at NYUAD.

#### **Background:**

In April 2014, NYU commissioned an independent investigation, conducted by Nardello & Co, into its failure to prevent major labor abuses in the construction of its Abu Dhabi campus. On paper, NYUAD had made a public commitment to protect workers' rights in its *Statement of Labor Values and 14 Points*. In practice, as summarized in its report, Nardello & Co. found NYUAD, the UAE government, multiple compliance monitors, and numerous construction companies privately used the general language of the *Statement of Labor Values and 14 Points* to reduce labor protections far below what had been originally intended.

This occurred in two major ways. First, short-term workers were interpreted to be outside NYUAD's policy altogether. This loophole entirely excluded 10,000 workers from NYUAD protections, intended to ensure basic levels of housing, sanitation, and food, payment of a minimum wage, and prevention of debt bondage by compensating workers for their recruitment debts. These protections are especially vital because UAE construction workers hold *kefala* visas that bind them to their employer.

Second, NYUAD issued a private document, the *Supplementary Specifications*, that in practice nullified key parts of the *Statement of Labor Values and 14 Points*. For example, the *14 Points* publicly promised to compensate recruitment debts, but the *Specifications* privately created such a high bar for getting compensation that only a tiny fraction of workers would ever be eligible.

The SCC replaces the *Statement of Labor Values and 14 Points*, but NYUAD has not made public any operationalizing documents, such as the *Specifications*. As a result, it is unknown how NYUAD is putting the SCC into practice. This is especially concerning because NYUAD continues to use contracted or subcontracted low-wage manual labor. From available documents, it appears NYUAD has hired facilities management corporation Serco, to supply any building repairmen, landscapers, cleaners, or other low-wage laborers at NYUAD's Saadiyat Island campus.<sup>2</sup> On other UAE campuses and at NYUAD's much smaller interim campus, Serco had subcontracted this work out to smaller firms.<sup>3</sup> Subcontracted low-wage manual labor is among the most vulnerable and the most difficult to protect in the UAE. In response to the Nardello report, NYUAD pledged to close the loopholes that allowed these workers to be excluded from protection and committed to covering contractors. But it must actually develop and disclose policies practically designed to regulate them.

#### **CFL's Response:**

The points below detail how the SCC falls far short of what is required to protect workers' rights:

- 1. The SCC makes no reference to a basic tenant of the Nardello report recommendations and standard practice in the labor auditing sector – that an independent compliance monitor should be hired.<sup>4</sup>**

No employer can be trusted with its own oversight. The SCC does reserve vaguely defined rights of investigation to "authorized agents" of the university, but, in view of the past failures in monitoring, this minimal mention of some unnamed and undefined entity is wholly inadequate. While the Coalition for Fair Labor at NYU has been informed that Impactt has a consulting relationship with labor compliance officers at NYUAD, this practice must be codified so that NYUAD can be held accountable to it.<sup>5</sup> Currently, though NYUAD has extensive social media about its education and appreciation programs for workers on its website, there is no mention of Impactt actually serving as a monitor.<sup>6</sup> Furthermore, Impactt is a for-profit contract firm, not an independent monitor, creating a potential conflict of interest between its reporting practices and it keeping its contract with NYUAD.

- 2. The SCC definitions do not include basic general terms that were previously defined in the *Supplementary Specifications*, including standards for housing and minimum wages.**

The SCC is far more ambiguous than the previous Supplementary Specifications regarding standards for housing. The SCC only codifies the bare bones requirements in UAE law for safe housing, although the *Supplementary Specifications* had a detailed standard that allowed parties to easily measure whether or not they were in compliance. Though there is basic human rights language that accommodation provided by the employer ensure “structural safety and reasonable levels of decency, hygiene, and comfort,” the general terms provided here, without further detail, makes it difficult to hold contractors and subcontractors accountable for violations of the standard.<sup>7</sup>

The SCC does not contain a minimum wage. It is on this basis of the minimum wage contained in the former *Supplementary Specifications* that workers are currently being compensated for the violations uncovered by Nardello & Co. The SCC as it currently stands risks depriving workers of the possibility of compensation for unpaid wages.

The SCC relies on a number of terms that are general and open to broad interpretation, such as: “essential” needs and living standards;<sup>8</sup> “good-faith” grievances;<sup>9</sup> “give preference” to contractors that demonstrate the use of ethical recruitment practices.<sup>10</sup> Given the failures of the broad language of the *Supplementary Specifications*, as noted by Nardello report, clear standards are especially important for communicating to contractors and subcontractors covered by the SCC.

### **3. The SCC neglects the recruitment fee reimbursement policies recommended by Nardello.**

The provisions of the SCC on recruitment are a codification of a policy that the Nardello report explicitly rejected. The SCC deals with recruitment in the section entitled *L. Hiring Practices*,<sup>11</sup> which states that NYUAD will not reimburse recruitment fees unless the worker can show evidence of payment, and unless the worker was hired for the NYUAD site exclusively (or if the fees were incurred within 12 months of being hired by NYUAD).<sup>12</sup> However, as recognized by Nardello, these requirements effectively disqualify all workers from reimbursement, as documentation of recruitment fees is virtually non-existent and workers are recruited to work for particular firms, rather than at particular sites. As written in the Nardello report, “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.”<sup>13</sup>

### **4. The SCC neglects passport retention policies recommended by Nardello.**

While the SCC requires that the employer safeguard the right of employees to retain their personal documents, the SCC fails to include the recommendation contained in the Nardello report that in all circumstances, “employers clearly explain verbally and in writing (in the worker’s native language)” that they can store their passports in their lockbox or secure documents with a monitor or third party.<sup>14</sup> While UAE law requires that all employer-provided housing be equipped with lockboxes, the most important driver of employer passport holding is workers’ perception that they must give it over. The SCC ignores the importance of communicating to workers’ their rights, and lacks clear guidance on how to do so.

### **5. The SCC has no information about operationalizing its provisions, rejecting the Nardello report’s recommendations on penalties and compensation for non-compliant employers and for independent third-party oversight.**

The SCC ignores the Nardello report recommendation that NYUAD should create a schedule of escalating, public penalties for non-compliant contractors.<sup>15</sup> The SCC in its section on remedies requires only that employers take “immediate steps to remedy ... deficiencies or failures” and “reserves the right” to reserve future payments to the Employer, increase the frequency of monitoring and auditing, terminate the agreement, or seek any other remedy or penalty in UAE law or other applicable authority. Without a policy about how these will be used, remedies may be guaranteed on paper but never enforced in practice.

### ***Conclusions:***

Clearly, NYUAD has not made sufficient disclosures about its labor policy. Its own recent institutional history demonstrates that lack of transparency weakens its labor protections and thereby exposes it to human rights risks. In parallel, the United Nations Guiding Principles on Business and Human Rights acknowledge that businesses cannot respect human rights “unless they have certain policies and processes in place” – a public policy like the SCC, but also due diligence policies that assess human rights impacts, integrate and act on findings, track responses, and supply enough information to the public that external stakeholders can evaluate their adequacy.<sup>16</sup> Examples of such information include disclosures of subcontractors in NYUAD’s supply chain, examples of auditing and monitoring forms, and measurements of how many grievances have been lodged and contract entitlements redeemed.

To take its stated commitments from paper to practice, NYUAD must have such policies. Just as importantly, it must officially and publicly institute a labor monitor – ideally, an independent third-party firm – who has a clear mandate to release information about them and to issue ongoing public reports about compliance with them.

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<sup>1</sup> Available at: <https://nyuad.nyu.edu/content/dam/nyuad/departments/public-affairs/documents/nyuad-project-supplier-code-of-conduct.pdf>.

<sup>2</sup> See NYUAD, *Social Responsibility*, <http://nyuad.nyu.edu/en/about/social-responsibility.html>. The site has a chart with a breakdown of contractors; it is unclear whether the chart represents NYUAD contracted employees as a whole or employees who have taken English in the Workplace courses. Serco supplies skilled and unskilled workers to NYUAD. See also *Serco Wins New York University FM Contract*, FM WORLD (2 February 2011) <http://www.fm-world.co.uk/news/business-news/serco-wins-nyu-fm-contract/>. Either low-wage manual work is supplied by Serco under this contract (see note 2, *infra*) or it is independently handled by separate contractors. The last available Mott MacDonald report, dated 2012, is unclear on this point because of the fractured compliance process in place at the time (critiqued by Nardello); for example, it lists the Emirates Landscaping compliance as occurring only at one facility, the CSE, even though landscaping was required at the DTC as well. No updated reports by any monitor have been issued since operations moved to Saadiyat Island.

<sup>3</sup> See “The Custodians,” FACILITIES MANAGEMENT ME (January 2013), <http://origin.misc.pagesuite.com/pdfdownload/2b30f96c-8bd9-4988-83b6-b85cbfcaede4.pdf> (noting “four key associated service partners” for outsourced estate services, security, cleaning and waste management, and landscaping at Zayed University in Abu Dhabi, run by Serco).

<sup>4</sup> See Nardello report, p. 61.

<sup>5</sup> See Coalition for Fair Labor, CFL RESPONSE TO ANNOUNCEMENT OF NEW NYUAD COMPLIANCE MONITOR <https://fairlabornyu.wordpress.com/2015/07/13/cfl-response-to-announcement-of-new-nyuad-compliance-monitor/>.

<sup>6</sup> See NYUAD, *Social Responsibility*, <http://nyuad.nyu.edu/en/about/social-responsibility.html> (last accessed December 3 2016).

<sup>7</sup> In I. Accommodation, I(3), the SCC references principles ILO Recommendation No. 115 out of context. While the ILO recommendation proposes the requirement of “reasonable levels of decency, hygiene and comfort” as a principle on which further requirements should be based, the SCC presents it as a standard in itself. I(4) is presumably intended to provide detail on the standard, but it is insufficient and far more ambiguous than the former *Supplementary Specifications*.<sup>7</sup>

<sup>8</sup> SCC, p. 1.

<sup>9</sup> *Id.*, p. 9.

<sup>10</sup> *Id.*, preface.

<sup>11</sup> There are several inconsistencies in the section on hiring practices that make the obligations of parties involved ambiguous, listed in the order they appear. On L(4)(c)(i), there is no provision for what happens when UAE labor law and the applicable law of the jurisdiction from which the worker is recruited conflict, as commonly occurs (many states allow recruitment agencies to take some fees; the UAE allows no fees). On L(5), NYUAD requires employers to pay for “the services of any Recruitment Agency used” “in order to ensure that Employees have not borne recruitment costs and fees ...” If NYUAD wants to make sure employees are not paying for the cost of their recruitment, then it should pay all costs of recruitment – which includes but is not limited to the items in L(7)(a-e). The language in L(5) suggests that employers are obligated to pay for service fees but not any other costs until *after* a worker has been hired – but this must be balanced against the tremendous burden workers face to pay these costs beforehand (the alternative being that they be covered through a payment to the recruitment agency). Note that of a-e, only 7(d) is a fee paid to an agency – the remainder are government-imposed fees on the sending and receiving side and flight costs, which should be built into the expected costs of hiring overseas workers. The principle “employer pays” is the human rights standard on recruitment. L(1) seems to suggest the same value when it states “No Employer may charge directly or indirectly, in whole or in part, any recruitment, processing, or placement fees to Employees.” However, does the Code mean fees or does it mean costs? The two terms are used to the exclusion of each other later in L, for example in L(6) and L(7). Either instance would require harmonizing with the remainder of L.

<sup>12</sup> See SCC, p. 7, L(6).

<sup>13</sup> See Nardello report, p. 41.

<sup>14</sup> See *id.*, p. 62-3.

<sup>15</sup> The SCC also ignores the Nardello report recommendation that NYUAD create an escrow account to ensure that workers are paid compensation in the event that their employer does not comply with labor standards.

<sup>16</sup> See *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework*, UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER ON HUMAN RIGHTS (2011) p. 15-24. Available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).