



March 09, 2021

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20016

Dear Secretary Mayorkas:

As the non-governmental organizations involved in the FGV Holdings Berhad (FGV) withhold release order (WRO), Global Labor Justice- International Labor Rights Forum (GLJ-ILRF) Rainforest Action Network, SumofUs, and Freedom United, are writing to share our recommendations for what should be required of FGV to successfully demonstrate that their palm oil is not being produced by forced labor. These recommendations are based on the underlying principle that eliminating forced labor in supply chains requires respect for and upholding of fundamental rights of workers. The points below are lifted from International Labour Organization (ILO) guidance materials, especially the ILO's "Combating Forced Labour: A Handbook for Employers and Business", with some additional points from the KnowTheChain benchmarking methodology.¹

CBP indicated that the WRO issued against FGV "is the result of a year-long investigation that revealed forced labor indicators including abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual abuses, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime."² These constitute serious abuses that result from systemic abusive company practices that need to be reformed.

These recommendations should serve as a starting point for discussions with local and international partners in developing the criteria to be presented to CBP, but the final recommendations should be based on the most pertinent needs on the ground, and the priorities set alongside partners.

I. Respect and uphold freedom of association

In addition to being a right, freedom of association enables workers and employers to join together to protect better not only their own economic interests but also their civil freedoms such as the right to life, to security, to integrity, and to personal and collective freedom. This principle is crucial in order to realize all other fundamental principles and rights at work, and to address the forced labor indicators that are present in this case, namely including abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual abuses, intimidation and threats, retention of identity

¹ [Combating Forced Labor: A Handbook for Employers and Business; Special Action Programme to Combat Forced Labour](#), ILO, Checklist and Guidance to Combat Forced Labour.

² CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-palm-oil-produced-forced-labor-malaysia>



documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime.

The Fair Labor Association, which is affiliated with FGV Holdings Berhad to monitor FGV's Action Plan 2020, published its first findings report on September 30, 2020. It is clear from this report that several initiatives to address forced labor and other labor rights violations are currently in progress or have yet to begin. The next update from the Fair Labor Association is due to be published on March 31, 2021. In the meantime, we are especially concerned about the findings in *Annex 1* and expect that they will be resolved before lifting the WRO is considered.

In accordance to international instruments and guidance³ we recommend the following:

In the workplace:

- Proof of FGV policies that respect the right of all workers in its supply chain to form and join a trade union of their choice without fear of intimidation or reprisal, in accordance with national law;
- Proof of non-discriminatory FGV policies and procedures with respect to trade union organization, union membership and activity in such areas as applications for employment and decisions on advancement, dismissal or transfer;
- Proof of FGV providing worker representatives with appropriate facilities to assist in the development of effective collective agreement.

II. Align company policies and practices with ILO standards

- Show proof that FGV has put in place policies and codes of conduct to combat forced labor across their supply chains, and that these are aligned with ILO core labor standards, relevant Conventions, Protocols and Recommendations, ILO instruments such as the Declaration on Fundamental Principles and Rights at Work and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Anti Trafficking in Persons and Smuggling of Migrants Act, Convention on the Elimination of All Forms of Discrimination Against Women, the UN Convention on the Rights of the Child and the UN Guiding Principles on Business and Human Rights. Refer to the ILO's Guiding Principles to Combat Forced Labour as guide.
- Show proof that FGV has policies that are easily accessible, translated into relevant languages of workers, and ensure that FGV has established clear responsibilities and accountability for the implementation of its supply chain policies.⁴

³ [Combating Forced Labor: A Handbook for Employers and Business; Special Action Programme to Combat Forced Labour](#), ILO, Checklist and Guidance to Combat Forced Labour.

⁴ [Benchmark Methodology – Food and Beverage Sector](#), KnowTheChain, Management and Accountability.



- FGV must show proof of policies to address the issues below⁵:
 - *Freedom and termination of employment*: Ensure that all workers have the right to enter into and leave employment voluntarily and freely, without the threat of a penalty, and taking into account the legal rights and responsibilities of both parties in the employment relationship. Coercion should not be used under any circumstances to threaten workers or pressure them into accepting or staying in a job. A worker's vulnerability should not be used to offer employment conditions below the legal minimum, and employers should refrain from using any practices that restrict a worker's ability to terminate employment.
 - *Threat of violence, harassment and intimidation*: Prohibition against threats or use of violence, harassment or intimidation directed towards workers, their families or their close associates as a means to intimidate individual employees or the workforce as a whole.
 - *Coercion in wage payment, including debt bondage and bonded labor*: Wages should be paid regularly and directly to the worker; they should be paid in legal tender, and "in-kind" payments, where allowed by law, should only be partial. Non-cash payment should not be used as a means to in debt a worker, and payment in the form of vouchers and promissory notes is prohibited, as are methods of payment that have the effect (intended or not) of depriving the worker of the ability to terminate employment. Workers shall not be held in debt bondage or forced to work in order to pay off an actually incurred or inherited debt. Wage advances and loans (and related interest rates) should not exceed the limits prescribed by law. Abusive practices shall not be used to bind workers, including migrant workers and those belonging to indigenous and tribal peoples, to employment. Such abusive practices may include, but are not limited to: Charging excessive recruitment fees; delayed or non-payment of wages, and allowing wage arrears to accumulate; deception in the calculation and payment of wages, including wage deductions; requiring workers to lodge deposits; and the offer of wage advances or loans with malicious intent, or charging excessively high interest rates.
 - *Disciplinary measures*: Disciplinary measures should not include sanctions that result in an obligation to work, and forced or compulsory labor should not be imposed as a means to discipline workers or to punish them for having participated in a strike.
 - *Compulsory overtime*: Prohibition against required overtime work that exceeds the hours than allowed by law or collective agreement.
 - *Freedom of movement*: Prohibition against workers being confined, imprisoned or in any way detained in the workplace or employer-operated residences, either during or

⁵ [Combating Forced Labor: A Handbook for Employers and Business; Special Action Programme to Combat Foced Labour](#), ILO, Checklist and Guidance to Combat Forced Labour.



outside working hours. Illegal restrictions on workers' freedom of movement, physically and psychologically should also be prohibited.

- *Migration for employment and recruitment of migrant workers:* Migrant workers should be treated fairly, irrespective of their legal status. They must have the right to voluntarily and freely enter into and terminate employment (with reasonable notice in accordance with national law or collective agreement), without being subject to threats of any kind. Measures to prevent abusive conditions and fraudulent practices that may lead to coercion or trafficking for labor exploitation should be in place. Irregular migrant workers and their family members should never be threatened with denunciation to the authorities or otherwise coerced into employment. Practices such as confiscating or withholding worker identity documents must be prohibited. However, if requested by employees, employers may provide secure storage for such documents, provided that workers have free access to them at all times.
- *Private employment agencies and contracts of employment:* Fees and costs related to recruitment should not be charged directly or indirectly, in whole or in part, to workers, but should rather be borne by FGV or the private employment agency. When working with private employment agencies FGV should ensure that such workers receive adequate protection in relation to minimum wages, working hours, overtime and other conditions related to preventing forced labor. There should be written contracts of employment in language that all workers can easily understand and that clearly indicate their rights and responsibilities with regard to payment of wages, working hours, valid grounds for termination, and other issues related to preventing forced labor.
- *Worst forms of child labor:* FGV shall take immediate and effective measures to prevent and eliminate these worst forms of child labor, and seek to ensure that any private employment agencies engaged on their behalf are not involved in such practices.
- FGV should provide proof of process to assess forced labor risks, and publicly disclose forced labor risks identified in different tiers of its supply chains. The disclosures should include: (1) details on how FGV conducts human rights supply chain risk or impact assessments that include forced labor risks or assessments that focus specifically on forced labor risks; and (2) details on forced labor risks identified in different tiers of its supply chains.⁶
- FGV must provide proof of knowledge and understanding of their suppliers and their workers throughout its supply chains by publicly disclosing the names and addresses of its suppliers, and other relevant data points on its suppliers' workforce.⁷
- Proof that FGV tracks and improves implementation of its supply chain policies that address forced labor and human trafficking, and that FGV monitors its suppliers.⁸

⁶ [Benchmark Methodology – Food and Beverage Sector](#), KnowTheChain, Risk Assessment.

⁷ [Benchmark Methodology – Food and Beverage Sector](#), KnowTheChain, Transparency and supply chain traceability.

⁸ [Benchmark Methodology – Food and Beverage Sector](#), KnowTheChain, Monitoring process.



III. Directly engage with workers and other key stakeholders

- Proof that FGV speaks directly with workers about practices related to the issues listed above, to determine whether FGV is in compliance with law, ILO standards, and its own policies or codes of conduct. (Interview a representative selection of workers, including those on different types of contracts. Take particular care to ensure the confidentiality of these interviews to protect the worker from any possible retaliation. If possible, meet workers off-site.)
- Proof that FGV speaks with managers and human resource personnel about policies and practices linked to forced labor and its indicators.
- Proof that FGV regularly discusses with recruiters or employment agencies and workers the company policies to address forced labor.
- Show proof that FGV meets with representatives of recruiters or employment agencies to discuss recruitment policies and procedures.

IV. Examine law, contracts, wage records, and other documentation

- Show proof that FGV examines host country laws to ensure they are in line with international labor standards, and has planned steps to address gaps.
- Documentation regarding disciplinary measures and sanctions (e.g. company policies and procedures; and written warnings or reprimands given to workers).

V. Ensure effective remediation and other corrective action

- Show proof of immediate corrective action taken in cases of forced labor that provides for the full protection of workers.
- Proof of repayment of recruitment fees.
- Proof of a grievance mechanism for cases of forced labor. Such mechanisms should meet the effectiveness criteria under the UN Guiding Principles for Business and Human Rights.

Recent Malaysian Government Policies and Programs

Finally, we would like to bring to your attention new policies that impact this case. In recent months, the Malaysian government and palm oil producers have announced new programs and policies aimed at addressing the labor shortage in the palm plantation sector. Many of these programs raise red flags as they can endanger workers, particularly those that are undocumented, and need to be clarified or reformed to prevent forced labor. In the context of the WRO against we recommend that CBP seek clear answers from FGV and that FGV publicly disclose how they are engaging with these government policies before any consideration of lifting the WRO.

Prison and drug rehabilitation centers for sourcing workers

In September 2020, after the failure of the Malaysian government's plan to recruit local workers to fill the labor shortage in the palm oil plantation sector, Malaysian palm oil producers put forth a proposal to recruit workers from prisons and drug rehabilitation centers — a plan labelled "institutional forced



labor” by workers’ rights experts. Despite the clear risk of sourcing labor from vulnerable populations, Ahmad Parveez Ghulam Kadir, director general of the Malaysian Palm Oil Board (a government body that promotes the industry), told *The Guardian* that “It’s a win-win situation for the prisoners and for the industry.”⁹ However, we agree with Liva Sreedharan, a specialist in migrant and labor rights, who stressed that “We should be wary of looking for alternatives that perpetuate poor labour practices, especially in the context of such unequal bargaining power.”

Illegal Immigrant Recalibration Plan: Labour Recalibration Programme and Return Recalibration Programme

In November 2020, the Malaysian government announced a two-prong approach to dealing with undocumented migrant workers called the “Illegal Immigrant Recalibration Plan” that will last from November 16, 2020 to June 30, 2021.¹⁰ The first part, the “Labour Recalibration Programme” aims to regularize undocumented migrant workers and allow them to be legally employed in the manufacturing, construction, agriculture, and plantation sectors, and the second part, the “Return Recalibration Programme” aims to allow undocumented migrants to be repatriated through voluntary returns.

We are most concerned by the Labour Recalibration Programme. While employers are technically supposed to pay the nearly 2,800 Ringgit (\$700) in fees for recruiting each worker, in practice it is not clear if companies are forcing undocumented migrant workers to pay the fees, a situation that could put them into debt bondage. Notably, this program only applies to peninsular Malaysia — not Sabah or Sarawak — though both FGV and the Fair Labor Association have admitted that the greatest risk of forced labor is among undocumented migrant workers in Sabah. The program also requires that workers did not previously flee their former employer, even in cases of abuse, and that they present a negative COVID-19 test when applying. Again, it is unclear how undocumented migrant workers can safely access a COVID-19 test without risk of being prosecuted for immigration offenses, or if they will be required to pay for the tests themselves.

Migrant workers pressured to not return home

In December 2020, Reuters reported that migrant workers on palm oil plantations were being pressured by their employers to not return to their home countries despite wanting to leave.¹¹ Additionally, migrants working for Felda, the largest shareholder of FGV that is in the process of trying to take over FGV, were profiled by Reuters:

One Indian worker at a plantation run by the state Federal Land Development Authority (Felda) told Reuters he had been asking to go home since March, in part because of ill health, and his contract expired in June.

⁹Pete Pattison, “Malaysian prisoners may face ‘forced labour’ on palm oil plantations,” *The Guardian*, September 16, 2020, <https://www.theguardian.com/global-development/2020/sep/16/malaysian-prisoners-may-face-forced-labour-on-palm-oil-plantations>.

¹⁰Jerene Ang, “Everything Malaysian employers need to know about the Labour Recalibration Program,” December 9, 2020, <https://www.humanresourcesonline.net/everything-malaysian-employers-need-to-know-about-the-labour-recalibration-program>

¹¹Mei Mei Chu, “Malaysia palm oil workers discouraged from going home, rights groups say,” Reuters, December 11, 2020, <https://www.reuters.com/article/malaysia-palmoil-labour/malaysia-palm-oil-workers-discouraged-from-going-home-rights-groups-say-idUSL4N2IQ2CU>



The worker, who declined to be identified for fear of reprisals, said he paid 500 ringgit (\$125) towards the cost of getting his passport but had no idea when he could leave.

Another worker at the estate said he had been trying to go home since January. He said he had paid 2,000 ringgit (\$493) to break his contract after two years, get back his passport and for a flight but was waiting.

Both said they had continued to work.

Felda told Reuters it had not received any reports of such cases but the Indian High Commission in Malaysia said it had received requests for assistance from Felda workers and was working with the company to repatriate them.

Unless these policies are implemented with transparency and accountability there is a high-risk of FGV — and the entire palm oil sector — being tied to exploitative practices that can constitute forced labor, meriting continued enforcement of the WRO.

We look forward to working with CBP in preventing goods made with forced labor in the FGV supply chain from entering the U.S.

Thank you for your attention to this important matter.

Sincerely,

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Executive Director
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Forum

Robin Averbeck
Forest Program Director
Rainforest Action Network

Fatah Sadaoui
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CC:

The Honorable Richard M. Neal
Chairman
Committee on House Ways and Means
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Annex: 1 Criteria of most concern from Fair Labor Association Findings on the Progress of FGV's Action Plan 2020

- 1.2.1(a) The revised SCOC is aligned with the FLA CoC on Employment Relationship, Non-discrimination, Harassment or Abuse, Child Labor, Forced Labor, Health, Safety and Environment, and Compensation. The SCOC is not yet aligned with the FLA CoC elements on Freedom of Association and Collective Bargaining; and Hours of Work (HOW).
- 1.2.1(b) FLA reviewed the draft revised GSP3.0 and it is now aligned with the FLA CoC for Employment Relationship, Non-discrimination, Harassment or Abuse, Child Labor, Forced Labor, Health, Safety and Environment, Freedom of Association and Collective Bargaining and Compensation. The GSP is not yet aligned on Hours of Work.
- 1.2.2 The FGV mills currently work beyond the stipulated working hours limit as defined in the FLA CoC. This was confirmed during interviews with the estate management and FGV's Core Group. To understand the root causes and define a way forward FGV will undertake hours of work (HOW) study to document and understand HOW practices at the plantations and mills. The estate management and FGV Core Group were found to be aware of the study.
- 1.3.1(a) FLA received evidence that it is currently revising its policy on Responsible Recruitment of Foreign Workers (GPRRFW), based on the ILO General Principles and Operational Guidelines for Fair Recruitment. The revision will be further informed by the IOM-EF report on labor supply chain mapping.
- 1.3.1(b) FLA received the revised contract agreement with the recruitment agencies that FGV engaged with, on September 18, 2020. FLA is currently undertaking a technical review of the document to determine consistency with the FLA CoC. FGV has not yet submitted a socialization and monitoring plan to brief and monitor the recruitment agencies to explain the new terms and conditions and monitor compliance with the revised contract.



- 1.3.1(b) Interviews with Indonesian and Bangladeshi workers at the estate level found that they lack awareness about key contents of their employment contract (e.g., regular hours of work, rest periods, medical benefits). The sample included migrant workers who have worked with FGV for over ten years.
- 1.6.1 FLA received a draft copy of FGV's policy statement against forced labor. As of September 18, 2020, the revised policy statement is not yet adopted by FGV's top management. The process to identify indicators of forced labor, address incidences of forced labor, and resolve issues if and when grievances are raised is to be developed as part of the internal monitoring protocols (in Quarter 4).
- 1.7.1 FLA confirms that FGV is currently developing a remediation process (a guidance) to address issues or grievances raised related to child labor incidences and risks. FLA received a copy of the draft guidance document on child labor grievance in September. FLA notes that the draft guidance lacks remediation protocols for child labor and case-management when a child labor case or risk of child labor is identified. This gap was communicated to FGV.
- 1.8.1(a) Based on the interviews with Indonesian and Bangladeshi workers FLA found lack of awareness and understanding on their right to association, including the benefits for workers having collective bargaining. The workers explained that they currently have worker leaders (based on workers' nationality), acting as the spokespersons to raise and resolve their issues with the estate management. Workers informed that the most common areas raised to management through the workers leaders include issues related to working overtime, calculation of wages, facilities at the workers' accommodation, provision and replacement of PPEs. Some workers mentioned that their issues were resolved in a timely manner and on several instances.
- 3.1.3 In Q4, FLA is expecting to receive a plan for briefing sessions and for monitoring of recruitment agencies. Representatives from the CSOs indicated that regular monitoring and assessment of recruitment agencies' practices on fair recruitment needs attention and improvement.
- 4.1.1 FLA confirms that the concept note for a one- year training collaboration between FGV and the local NGO includes workers' productivity, human and labor rights, forced labor and human trafficking, grievance mechanism for workers (including migrant workers) and other sustainability topics. FLA has concerns if this training initiative will be able to cover the wide variety of topics effectively, and recommends emphasis on human and labor rights, forced labor and human trafficking, and grievance mechanisms. The training activities are yet to start in the field.
- 7.1.2 FGV submitted to the FLA a series of letters from the authorities clarifying that the workers who are undergoing the regularization process can work under temporary conditions. FGV needs to engage with legal experts to provide legal opinion on the status of migrant workers under regularization program.
- 7.1.3 FLA reviewed FGV's top management directive (written as "Memorandum" dated 11 February 2020), addressing all plantation units in Sabah to prohibit the recruitment of workers, including undocumented migrant workers, without prior permission from the top management. The directive



instructs all plantations to inform the management on the status of regularization of their respective migrant workers every two weeks. While this directive serves as a reminder to plantation units, this does not serve as a procedure in preventing the hiring of documented migrant workers as planned under this specific action item.

- FLA's conclusion based on research and engagement with several palm stakeholders: The hiring of undocumented migrant workers is an industry-wide problem in the palm sector in Sabah (East Malaysia). This issue is not unique to FGV. While the government-initiated regularization programme is able to legalize the immigration and employment status of undocumented migrant workers, the long process of approval have delayed the legalization process. This eventually puts undocumented migrant workers at risk of labor rights exploitation, including forced labor.
- 7.2.3 FLA received no evidence to confirm that FGV is reviewing its repatriation policies and practices, in alignment to FLA Standards.
- 8.1.1 FGV's SCOC has recently been revised on several provisions, yet it needs to be fully aligned with FLA CoC. FLA also received the revised copy of the contract agreement with suppliers and vendors on September 18 and is undergoing a technical review of the document. FLA recommends undertaking a comprehensive assessment of child labor and forced labor issues in FGV's upstream supply chain in the coming months (as COVID-19 related restrictions are lifted) to identify gaps both in labor standards management systems and working conditions in the small-holder farms.