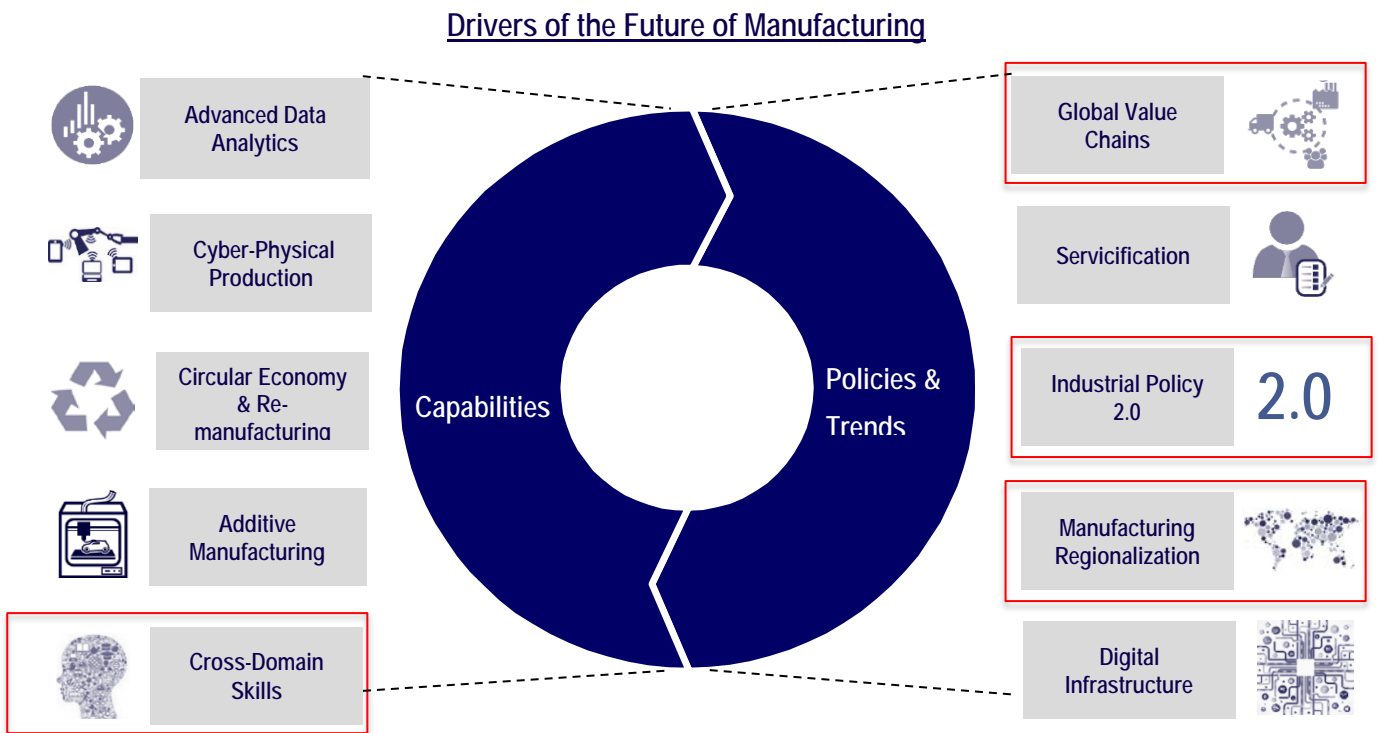
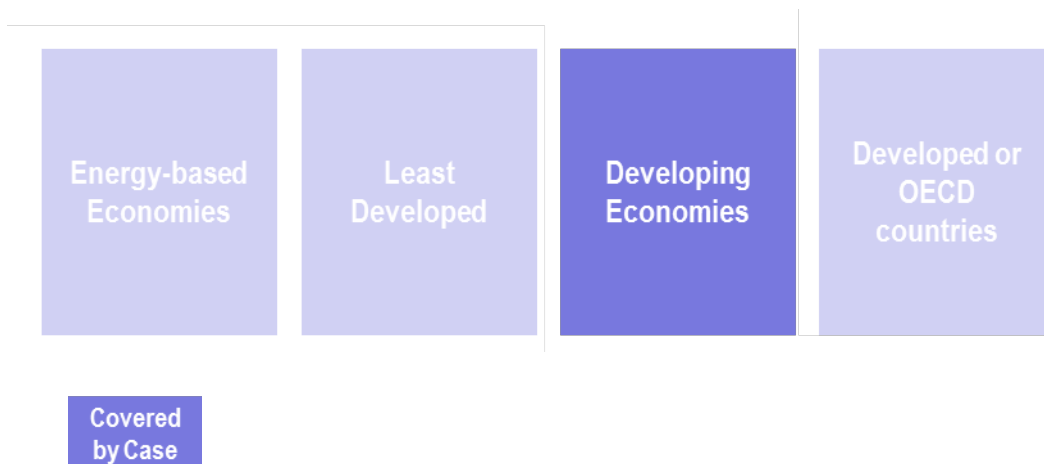


Case 5

Civil Society Advocacy for Better Treatment of Migrant Workers in Malaysian Electronics Production



Source: World Economic Forum Global Agenda Council on the Future of Manufacturing, Whiteshield Partners framing



1. Challenge Confronted

A complex network of private employment agencies (PEAs) recruits foreign workers from their home countries and places them in jobs in Malaysia. Licensed agencies in Malaysia partner with agencies in "sending countries" and in varying degrees of formality to facilitate the recruitment, selection and hiring of foreign workers for Malaysian industry. Sometimes these workers remain under the management of a PEA while working on-site.

This employment system provides a flexible and low-cost workforce for employers. It is also well documented that it creates risk, for workers and their employers, of serious labour rights violations, including forced labour. There are several drivers of vulnerability for workers:

- Workers pay the cost of recruitment themselves; fees are invariably in excess of legal limits and industry norms, and average from \$1,200 to \$3,500 per worker for jobs that pay around \$200 per month.
- Almost three-quarters of workers borrow money to pay these recruitment fees. Interest rates are commonly as high as 32% per year. Half of the workers who borrow money require more than one year to repay the loans, meaning they often work half of their initial two-year contract to pay off recruitment debt.
- Over 90% of workers reported that their employer held their passports and identity documents, constraining their freedom of movement.
- Work permits for foreign workers in Malaysia link a worker to one employer, meaning workers cannot leave harmful or exploitative employment without subjecting themselves to the risk of deportation as an illegal immigrant.
- Worker vulnerability is exacerbated by the strongly anti-immigrant tenor of conversations in Malaysia related to immigrant labour. The "People's Volunteers" patrol cities and production locations of special economic zones. Almost half of workers surveyed had been threatened with detention or physical harm, or reported having to pay a bribe.

Debt combines with restrictions on freedom of movement to create serious vulnerability for foreign workers in Malaysia. Protection for foreign workers consistent with Malaysian law and ethical codes is systematically absent in Malaysian electronics manufacturing. Verité's 2014 report, conducted with funding from the US Department of Labor, concluded that 32% of foreign workers surveyed in Malaysia face conditions of forced labour under the International Labour Organization's (ILO) definition.

2. Solution Used

Civil society organizations have undertaken numerous and varied interventions to support improvements in ethical treatment of foreign workers in Malaysia. The intent is to influence business and government to adopt enhanced protection. The focus has been in three areas:

1. Research and advocacy, or campaigning for change
2. Standard setting and policy development
3. Collaborating to support solutions

The combined efforts of a diverse range of civil society organizations, at times in collaboration with the private sector and government and at times in opposition to them, have begun to bring about change.

Civil Society Advocacy

Dates: 2010 - 2015

Keywords: workers' rights, labour law, ethical code of conduct, civil liberties

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Entities involved: Verité, ILO, EICC

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Key facts:

- Foreign workers and employers face risks of serious labour rights violations in Malaysia (with the electronics industry as an example).
- Intervention by civil society organizations seeks to improve the ethical treatment of foreign workers in Malaysia.
- Investigation of and reporting on conditions faced by workers helps to raise awareness, increase transparency and advocate for change
- A definition of standards follows the ILO's international standards and change to the code of conduct by the Electronics Industry Citizenship Coalition.
- The government is becoming engaged to understand and address key risks.

Research and advocacy

Civil society organizations were the first to highlight the challenging, illegal and non-compliant working conditions faced by foreign workers in Malaysia. A 2010 report from the International Trade Union Congress noted that its Malaysian national member organization, the Malaysian Trade Unions Congress, received hundreds of reports every month of abuse of migrant workers at the hands of government officials and employers. The Malaysian non-governmental organization (NGO), Tenaganita, and the Asian Migrant Center, as well as international NGOs such as Amnesty International and the Dutch group, Somo, have investigated and reported on the lives of migrant workers and the conditions they face. The United Nations Special Rapporteur on the Right of Food reported risks faced by migrants during a 2013 mission. In 2012 and 2013, the ILO's Committee of Experts on the Application of Conventions and Recommendations expressed "concern" about the extent of trafficking. The Interfaith Center on Corporate Responsibility, a coalition of faith-based investors, amplified calls for change through shareholder advocacy.

Verité's 2014 report, funded by the US Department of Labor, aimed explicitly to quantify the risk of forced labour and other labour exploitation in electronics production in Malaysia. The conclusion was that the risk is extremely high: one in three of the 501 workers surveyed faced conditions that rise to the ILO's definition of forced labour. One outcome of the most recent report was the inclusion of Malaysian electronics on the Department of Labor's annual list of Goods Produced by Child Labor or Forced Labor (see <http://www.dol.gov/ilab/reports/child-labor/list-of-goods/>).

Standard Setting and Policy Development

Civil society organizations have also been central to defining standards for measuring corporate performance. "Voluntary" standards, as codes of conduct and vendor standards, have emerged as a focus for advocacy. They are driven by recognition that labour law is often unenforced in most low- and middle-income countries where export manufacturing takes place. Starting in the late 1990s, civil society organizations have prompted multinationals to adopt codes obligating them to ensure that workers in their supply chains and direct operations enjoy safe, fair and legal working conditions.

Because of pressure from civil society and other stakeholders, most if not all exporters and manufacturers operating in Malaysia have adopted codes of conduct that aim to promote ethical working conditions and avoid violations of Malaysian labour law and international norms of practice. These codes typically follow the ILO's Fundamental Conventions of Rights at Work. The ILO itself is governed by a tripartite structure involving governments, businesses/employers and trade unions. The ILO Core Conventions, as they are known, obligate countries and companies to eliminate child labour and forced labour, promote or allow equality and prevent discrimination, and protect freedom of association and collective bargaining. They also obligate the public and private sectors to pay legal and fair wages, and provide safe conditions at work.

These codes have become more detailed since 2014 in response to greater attention to the specific risks faced by migrants. For example, Apple enhanced its code to include a strict limit on the amount of fees workers can pay to get a job in a facility producing for the company. In November 2014, Hewlett-Packard required its suppliers to ensure that all workers making HP products work directly for the supplier, rather than for the third-party labour recruiter. In April 2015, the Electronics Industry Citizenship Coalition (EICC), the industry's main social responsibility body, adopted fee limits and provisions ensuring that workers have access to their passports and other identity documents. These code revisions are in direct response to research and advocacy by civil society.

As a result of such advocacy, new laws have emerged in the past few years requiring companies to disclose and otherwise account for the risk of severe labour abuses in their supply chains. Civil society organizations, such as UNSEEN in the United Kingdom, and ASSET and ATEST in the United States, helped define and push for the adoption of The California Transparency in Supply Chains Act of 2011 and the UK Modern Slavery Act of 2015, which require disclosure. The US Government's Federal Acquisition Regulations were revised between

2012 and 2015 as a result of education and policy advocacy by US NGOs to ensure that government contractors demonstrate compliance with anti-slavery criteria in their supply chains and operations.

Adopting solutions

Business associations – another form of civil society organization -- have advocated with the private sector and government to recognize the problems facing foreign workers in Malaysia, and to adopt protections for those workers.

Out of concern for the substantial ethical violations covered in Verité’s 2014 report, as well as the potential for reputational, compliance and business risk for its members, the EICC undertook substantial changes to its code of conduct in April 2015 and has since begun to revise its internal accountability mechanisms. The EICC has also sought to engage with Malaysian government authorities to understand and address these risks. Apple and HP, both large EICC members, had previously undertaken such changes for their own operations, smoothing the path for the EICC as a whole. The EICC has partnered with numerous civil society organizations, including Verité, the Fair Hiring Initiative and the International Organization for Migration, to shape its response and that of its members.

3. Lessons Learned



1. Civil society organizations have widely varied institutional structures. Civil society includes advocates and campaigners, technical specialist organizations, trade unions, and business or multistakeholder associations. Civil society can advocate for change, as did the groups outlined earlier in this case study, or maintain the status quo, as do certain Malaysian business associations.



2. Collaboration among the different types of civil society organizations in alliances of varying degrees of formality are increasingly common. On the issue of working conditions in Malaysian electronics, for example, campaigners and advocacy organizations collaborated with research bodies, ethical investment coalitions and, ultimately, business associations to define and push for change.



3. Civil society has great impact on the private sector when it focuses on legal changes. In relation to forced labour in supply chains, civil society advocacy for the emerging regulatory regime described earlier has driven companies to more meaningful engagement with the issue as opposed to doing so on a purely voluntary basis.

Description of the Work Performed

1. Research conducted by civil society organizations defined an issue of concern for multinationals.
2. Investors and campaigners pressured multinationals to adopt new approaches to issues of concern, including forced labour in electronics production.
3. Multinationals organized in business associations helped to facilitate change, and undertook advocacy themselves with relevant governmental bodies.

Key Outcomes

The traditional and stereotypical paradigm of the opposition between the private sector and civil society is breaking down, as certain actors in the NGO sector create alliances with private-sector and regulatory institutions, and as the private sector learns how to engage civil society. To address labour exploitation in Malaysian electronics production, civil society action has been mediated through a loose coalition of civil society organizations, including researchers, advocates, campaigners, consultants, trade unions, international organizations and business associations. The work of these disparate organizations has led to substantial positive change in the structures that offer protection to foreign workers in Malaysian electronics. Workers themselves are only just starting to feel this change; for example, Apple has facilitated the return of over \$21 million in fees from suppliers and recruiters to workers who were charged beyond code limits. However, scaling through coordinated action by the EICC is on the immediate horizon.

Drivers & Enablers



Awareness of international rights violations and information



Detailed research and clear goals



Robust plan of action

Barriers

- The private sector can be resistant to change. Within it, a handful of leading companies in each sector generally adopts leadership-level approaches to non-financial risks (such as forced labour in supply chains). Broader adoption by these companies' competitors and collaborators is generally slow.
- Governments often resist or seek to quash civil society's influence.