

Title: Democracy in Transition: Civil Society Organisations and the Malaysian Universal Periodic Review

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Abstract:

In Malaysia, democracy exists in a more procedural form instead of being substantive. The participation of citizens in public policy process is still deemed limited under the semi-authoritarian state. The Universal Periodic Review (UPR) by the United Nations Human Rights Council (UNHRC) provides a great avenue for illustrating the role of Civil Society Organisations (CSOs) in public policy making process as it brings into focus highly debatable human right issues. The objective of this paper is to investigate the role of CSOs' participation in the state's decision-making process of the Malaysian UPR. To achieve this objective, this research considers two main points: (1) the main players in the Malaysian UPR process; and (2) the approaches taken by CSOs to influence state's decision-making in the UPR process. Interview sessions are conducted with officers from the state and representatives from CSOs who are involved in the Malaysian UPR process. Secondary data including reports, memorandum, press statements and other related information from official websites are also reviewed to obtain related data. The findings from this research show that CSOs are participating actively in the public policy making process via several approaches, which differ between religious and secular CSOs. Participation of CSOs has impact on selected issues in the Malaysian UPR process and on issues affecting indigenous people, women, children, person with disabilities, and the national mechanisms on human rights. However, the role of CSOs and substantive democracy policy in the country are still procedurally being heard, and the old paradigm of democracy still continues. This paper aspires to contribute to the existing body of knowledge on democracy, focusing on its substantive practices in public decision-making within government institutions with regards to human right policies.

Keywords: Civil Society Organisations (CSOs), Universal Periodic Review (UPR), democracy, Malaysia.

INTRODUCTION

The Malaysian Civil Society Organisations (CSOs) play their role in public policy process since decades ago by responding to the current issues and giving comment in the policy formulation process (Hassan, 2003; Tan & Bishan, 1994; Weiss, 2003). Currently, the state is keen on opening their door to invite the involvement of CSOs in public policy process through engagement sessions as well as other types of consultation including by appointing the representative from CSOs to the policy-making committees. However, dissatisfaction of CSOs in certain public policies especially on human rights issues has brought discredit upon the public administration. This has raised questions about the role of CSOs in the state's decision-making on human rights issues and how far is the influence of these groups in public decision-making process. This is important because human rights issues are the matter about basic needs that should reach everyone. It is an argument that democracy in Malaysia exist in a more procedural instead of being substantive model. Despite, the CSOs are active in the society as well as public policy process since decades ago, and the state seems open the door of policy-making widely recently.

The Malaysian CSOs continue their active role in the Universal Periodic Review (UPR), a mechanism to review the human rights records in the member states of the UN through the UN Human Rights Council (UNHRC) with the aim of improving the human rights situation in each of the member states by addressing human rights violations and making recommendations to improve the situation¹. The mechanism was established during the creation of the UNHRC on 15 March 2006 by the UN General Assembly in Resolution 60/251. The mandate to the UNHRC to commence the UPR was stated in article 5(e), which provides: "*Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by*

¹ <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States”

CSOs are proactive in participating in the review process since the first cycle of Malaysian UPR. The number of involved CSOs have increased throughout the 2 cycles of UPR process in 2009 and 2013. In fulfilling the encouragement of the UNHRC, the state has open up the door to engage the stakeholders in the UPR process, these including the CSOs, National Human Rights Institution (NHRI) as well as individuals who have expertise in the related human rights issues. This initiative enhances the transparency of public policy-making in the UPR process. However, there are questions that is all of these opinions being heard by the policy-maker? How far is the state considering the opinion by the CSOs? And, what are the considerations being concerned by the state in the policy-making process? These questions occur as important facts in producing a more transparent and effective decision-making in the UPR process where it could give impact to the transformation of democracy in the country.

This article seeks to analyse the role of CSOs in the state’s decision-making in the Malaysian UPR process. To achieve this objective, the research considers two main points: (1) the main players in the Malaysian UPR process; and (2) the approaches taken by CSOs to influence state’s decision-making in the UPR process. This study contributes to the study of democratisation in Malaysia by analysing the influence of CSOs in international human rights mechanism which has been committed by the state of Malaysia to the international society.

STATE, CIVIL SOCIETY AND DEMOCRACY IN MALAYSIA

The concept of democracy was introduced by the Greek philosophers with literally means “rule by the people” (Birch, 2007). In applying the spirit of democracy, public policy-making takes

considerations of the voice of people and society as they are the stakeholders of the policy. Public opinion is significant in public decision-making because every single decision affects the life of members in the society (Jacobs & Shapiro, 1994). CSOs play an active role in public policy-making, and are the agents of democratic change, serving as a status quo agent whose activities under authoritarian rule contributes to the stability of the existing political order (Croissant & Giersdorf, 2011). Hence, CSOs was deemed crucial contribute to the advocacy and transformation of democracy (Lee, 2004, pp.1). Therefore, the participation of CSOs in public policy-making is one of the ways in supporting democratisation in the country.

Malaysia as a typical developing country with a multi-ethnic plural society has been defined as a hybrid regime or semi-authoritarian and highly centralised state where the authority practise a semi-democracy system (Case, 2009; Weiss, 2014; Case, 1993; Farduk, 2006; Funston, 2001; Neher, 1994; Verma, 2002; Meredith L. Weiss, 2003). Slater (2012) pointed out that authoritarianism might be seen as needed to stabilise the multi-ethnic plural society and manage expectations from different groups of the society (Slater, 2012). Singapore and Malaysia are the countries which have been governed under authoritarian rule but have developed well for a long period (Przeworski & Limongi, 1997). However, the involvement of CSOs is the major pre-requisite for the success of democracy in a country (Banu, 2003).

The establishment of CSOs in Malaysia started since decades ago, even before its independence in 1957. CSOs had grown steadily since 1970s as the defender of religious and women's rights against the authoritarian state (Farduk, 2006). The Malaysian CSOs have contributed to the democratisation of the country from the political, social and economics perspectives (Weiss, 2003, p.17). In the past two decades, there were two major social movements in Malaysia including the *Reformasi* movement, which began in 1998 and the Coalition for Clean and Fair

Elections (Bersih) rally, which was established since 2007². The *Bersih* movement has contributed to the democratisation of the country as it promoted citizen's participation within the authoritarian state (Khoo, 2016). Although these two movements were triggered by dissimilar cause and motivation with different claim, however, these are the ways where the people and civil society playing their role in democratisation of Malaysia.

As a semi-autocratic country, the state is always in the position to determine the level of participation of non-state parties in public policy-making. Therefore, the relationship between the state and civil society is in a top-down model, where the state has been condescending towards the CSOs (Abdullah, 2017). This relationship makes the CSOs stay in a very dependent situation where they have limited chances to participate in the public policy-making process. However, CSOs in Malaysia have never give up in taking part in the public policy-making and contributing to the democratic process of the country. The role of civic actors as agents of democratic change emerged (Heinrich, 2008, p. 2) while civil society is valuable at all stages of the democratization process (Linz & Stepan, 1996). Howard has summarised the five components of democracy by Juan Linz and Alfred Stepan (1996) into an illustration as figure 1. These five components include civil society, political society, economic society, the rule of law, and state bureaucracy. Each of these components interact with each other and mutually reinforce the platform of democratic consolidation (Howard, 2010, p.186).

² <http://www.bersih.org/about/background/>

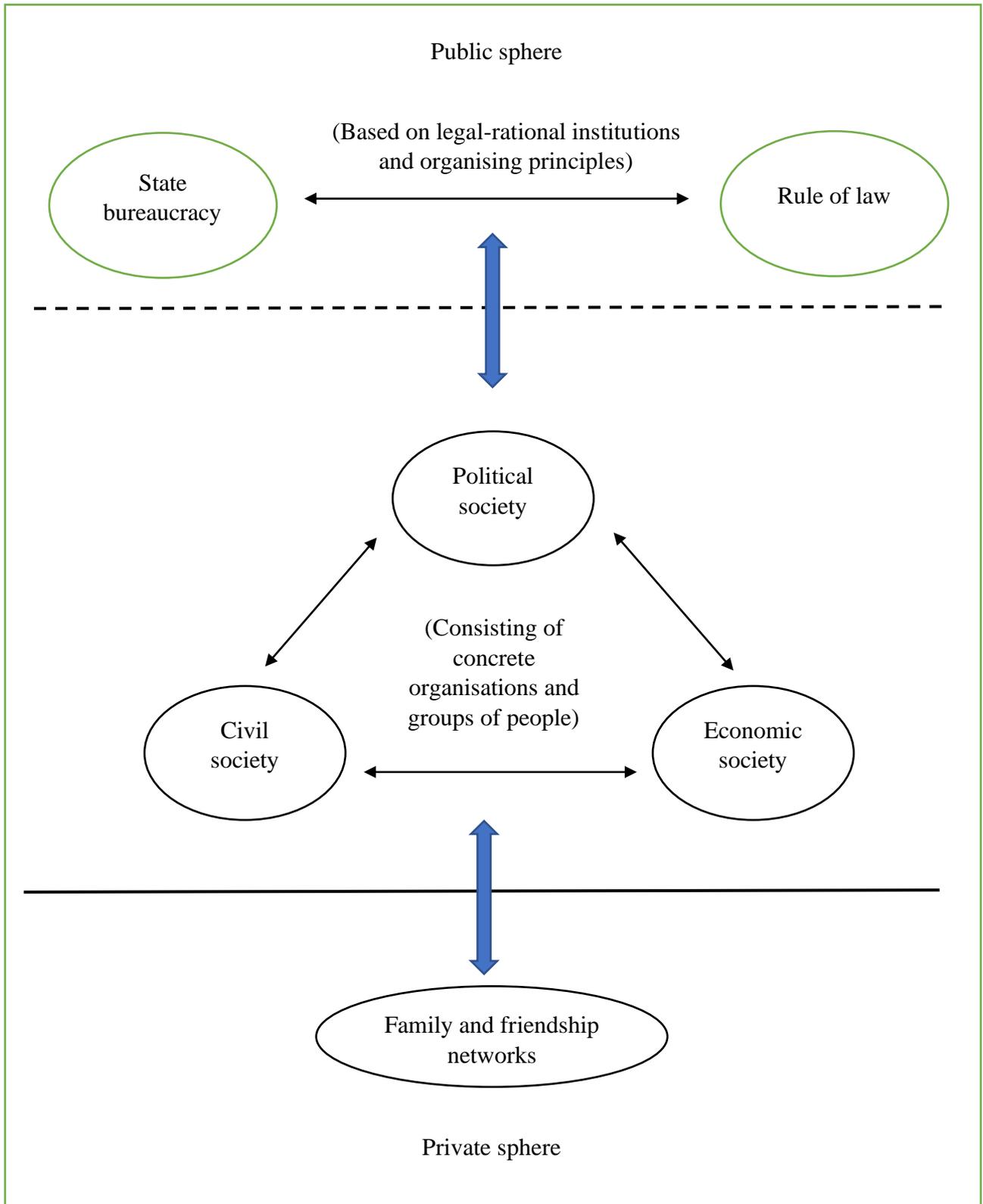


Figure 1: The arenas of democratisation (Howard, 2010)

As part of the democratic process, a civil society that is active and vibrant in the public policy process is the key for success of a democratization in a country. This is true for both developed countries and developing countries (Howard, 2010). CSOs practise different approaches during their involvement in the public policy process. The differences in the approaches are due to their background, beliefs and objectives in participating in this process. Lewis (2013) has pointed out that the cultural, functional and attitudinal approaches are the three approaches to explain the interaction between the authoritarian state and CSOs. These approaches offer a framework to understand the cooperative relationships between the state and CSOs in the public policy process. However, he also proposed the Young's Dualistic approaches to describe the relationship between state and civil society from the perspective of self-organisation and the public-sphere when the interaction between these 2 parties are in a highly-contested relationship (Lewis, 2013).

Young (2000) pointed that democracy is a process that connect the people to the powerful in public decision-making, and the civil society is appropriate to view in two approaches including self-organising and public sphere. Self-organising emphasises the intention of being democratic by creating an organisation which is free from any discipline regimes of coercion, contribute to self-determination and self-development by giving support in terms of identity, voice and providing goods and services. While public sphere referring to the communication networks that able to create a public discourse to discuss particular topic especially which related to public policy or the performance and accountability of the state (Young, 2000, p.154-179)

Contemporary studies split democracy into 2 different categories, procedural and substantive democracy where access to the public sphere is largely limited to the process instead of

outcomes and conditions of the policy (Box et al., 2002). Procedural democracy refers democratic as a form and method in protecting political freedom through institutionalism arrangement³. Saffon & Urbinati (2013) pointed that procedural democracy is the most plausible conception of democracy in contemporary political theory based on 5 normative criteria, which are uncertainty; openness and contestation; participation and emendation; responsiveness; and nontriviality (Saffon & Urbinati, 2013). While substantive democracy focuses on the substance and contents of democracy instead of the procedure or method. There is opinion that procedure is inadequate in realising democracy practises, public opinion should be heard and being considered in the decision-making of government institutions. Substantive democracy as a societal model, considers the way of living and organising public affairs, including issues of social justice and economic inequality (Box et al., 2002). Hence, both procedural and substantive democracy are needed to complete the process of democratisation (Banu, 2003).

The role of CSOs in democratic transition have been practising through their involvement in the public policy process from the stage of policy-making until the policy implementation. In Malaysian, the social movements have brought the country towards substantial democratisation where the people and CSOs are expecting a higher degree of involvement in the public policy process. The contribution of CSOs in the Malaysian UPR process are being underexplored as it is a new developed international human rights mechanism. The interaction between the state and CSOs in the UPR process is framed by the setting of this international mechanism where the role of CSOs is acknowledged and the states are encouraged to involve CSOs in the process. Hence, this study tends to fill the theoretical gap on the interaction between the state and CSOs

³ See, for all, Kelsen. "The Essence and Value of Democracy". Edited by Urbinati & Accetti. 2013. Rowman & Littlefield Publishers, Inc.; See, for all, Schumpeter. "Capitalism, Socialism and Democracy". 2003. Taylor & Francis.

in the Malaysian UPR process where the nature of this newly developed international human rights mechanism is differing from other general type of public policy process due to the expectation and consideration of the international community, state and CSOs.

METHOD AND DATA

This study adopted qualitative approach through two data collection methods including analysis of secondary data and in-depth interview with the persons who were involved in the first and second cycle of Malaysian UPR process. In order to get an overall understanding of the UPR process and the role of state and CSOs in the review, the secondary data source includes the summary report prepared by the UN Working Group, country report presented by the Government of Malaysia, stakeholder reports and mid-term reports by SUHAKAM as the National Human Rights Institution (NHRI) and CSOs as well as memorandum and written comment from CSOs to the state. Apart from that, press statements and other related information from official websites of the ministries and government agencies, SUHAKAM and CSOs were reviewed to obtain related information on the decision-making of the state in accepting the UPR recommendations. The secondary data have been analysed through inductive content analysis due to the lack of previous study on the UPR process (Elo & Kyngäs, 2008).

The second source of information was from purposively selected interviews with the representatives of the responsible government departments and agencies, SUHAKAM and CSOs who participated in the first and second cycle of UPR. Among the government departments approached for the purpose of this research was the Ministries of Foreign Affairs, Malaysia (MOFA), which acted as the coordinator in the Malaysian UPR process, preparing the country report based on the input and comment from the related government departments

and agencies. There are two different types of discussion session organised by MOFA, which are the internal meeting within the government departments and agencies, and engagement session with representatives of CSOs.

The invitations to the discussion and engagement sessions are based on the classification of recommendations. MOFA has classified the UPR recommendations to 7 clusters, namely (1) international obligations; (2) civil and political rights; (3) economics, social and cultural rights, and the rights of indigenous peoples; (4) women, children and person with disabilities; (5) foreign workers, refugee, asylum seeker and trafficking in persons; (6) national mechanism on human rights; and (7) general recommendations, international cooperation, human rights education training, enforcement agencies and national unity and social cohesion. A total of 20 departments and agencies from the Federal Government have been involved in the UPR process by providing their input on the issues under their purview under the recommendations. Apart from that, the official from all the 13 State Governments have been invited to attend the discussion session organised by MOFA. This is because the authority on land and religion are under the jurisdiction of the State Governments.

Structured interviews were conducted with 11 persons who are active and have wide knowledge about the Malaysian UPR process. These include 2 desk officers from MOFA, 3 senior officers from the Ministry of Women, Family and Community Development (MWFCD), senior officers from the Ministry of Home Affairs (Security and Public Order Division), Legal Affairs Division (BHEUU), as well as Department of National Unity and Integration (JPNIN) from the Prime Minister's Department. Other than that, the representatives from SUHAKAM and CSOs including the Coalition of Malaysian NGOs in the UPR Process (COMANGO) and Malaysian Alliance of Civil Society Organisations in the UPR Process (MACSA) have been

interviewed for further information. Although the issues under UPR recommendations are varied and involve a number of departments and agencies, it is sufficient to collect the data through the key players who shape the UPR process, who were responsible for the decision-making of the UPR recommendation and facilitate the mapping of UPR recommendations through their active participation. Interview sessions with these government officials and representative from CSOs are important for empirical data collection because they are the people who involved directly in the Malaysian UPR process.

THE UPR PROCESS: WAY OF DEMOCRATISATION

The Malaysian UPR process

The UPR is a unique and dynamic mechanism to review the human rights situation of all UN member states regularly. Each cycle of UPR runs for a four years and are based on four basic pillars including (1) the Charter of the United Nations; (2) the Universal Declaration of Human Rights (UDHR); (3) the international human rights instruments to which a member state is party; and (4) voluntary pledges and commitments made by member state, namely those undertaken when presenting their candidatures for election to the UNHRC (UNHRC, 2007). Basically, the UPR is based on three main documents comprising the national report by the State under Review (SuR); the report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) base on its observation on the country and information provided by the relevant stakeholders including the NHRI and CSOs.

In 2009, Malaysia accepted 62 of the 103 recommendations at its first cycle of review. The accepted recommendations in respect of various human rights issues including accession to international human rights treaties, review of existing laws and judicial systems, rights of the vulnerable groups including indigenous peoples, women and children, foreign workers,

trafficking in persons, as well as education, economic and healthcare rights. Four years later, the percentage of accepted recommendations in the second cycle of review of UPR was 64.66%, where 150 recommendations were accepted while the remaining 82 recommendations remained as Noted or was yet to be accepted by the government of Malaysia. Table 1 shows the number of recommendations and the acceptance of the Malaysian government during the first and the second cycles of UPR.

Table 1: The First and Second UPR Recommendations for Malaysia.

Cycle of UPR	Recommendation	Accepted	Noted
1 st Cycle (11 February 2009)	103	62 (60.20%)	41 (39.80%)
2 nd Cycle (24 October 2013)	232	150 (64.66%)	82 (35.34%)

Source: <https://www.upr-info.org/en/review/Malaysia>

Among the proposed recommendations, issues about economics, social and cultural rights, the rights of indigenous peoples, women, children and person with disabilities and national mechanisms on human rights have getting higher percentage of acceptance by the state during the 2 cycle of UPR.

The main actors in the Malaysian UPR consist of the state, the NHRI (SUHAKAM) which represent the role of third party between the state and civil society, the stakeholders as well as the international bodies. Stakeholders in the UPR process include, inter alia, the CSOs, human rights defenders, researchers and academia from the institution as well as the regional organisations (OHCHR, 2017). As a state-driven process, the Malaysian UPR committee appoints the ministries and agencies who would be in-charge of the issues under the UPR recommendations. Hence, the appointed ministries and agencies act as the main actors in the process. Input from these ministries and agencies are crucial in the UPR process as they are the parties who are well acquainted to the current situation of each issue, as well as the implementer of accepted recommendations. Their contributions lie in clarifying the actual situation, identify

the pro and con of a recommendation, and the possibility of implementation of a recommendation. Further, in compliance with recommendations made by the UNHRC, the government of Malaysia has sought for the input and contribution of other non-state stakeholders, including SUHAKAM and the related CSOs in the Malaysian UPR process.

The Malaysian UPR process is coordinate by the Ministry of Foreign Affairs (MOFA) with the cooperation of all related government agencies in preparing the country report and feedback on the recommendations. These government agencies are also responsible to the implementation of the accepted recommendations where the completion of recommendations is being reviewed in the UPR process every four years. Currently, there are 20 agencies from the Federal Government and 13 State Government being involved in the UPR process under specific category of the recommendations. Although MOFA is the main coordinator in the UPR process but not the main implementer of the recommendations. It will be the related agencies that will act as the “owner” of the particular public policy and will be responsible for the effectiveness and efficiency of the policy in question. Hence, there is a challenge for MOFA to create awareness and understanding for officials in other government departments and agencies about the commitment and responsibility of the government to the UPR. Thus, networking between the government agencies and CSOs should be promoted to enhance the effectiveness of UPR in human rights development.

CSOs Participation in the Malaysian UPR Process

The UPR provides a great avenue for illustrating the role of CSOs in public decision-making process as it concerns highly debatable human right issues. The submission of CSOs to the UPR Working Group has been increased from the first cycle to the second cycle due to the increase in awareness among the group of civil society on this mechanism. 6 domestics CSOs

and 6 international CSOs had submitted their respective written reports (Table 2). As a typical hybrid regime, the grassroots through CSOs have always taking effort to press liberalisation to the state by participating the policy process and deliver their voices and opinion through the discussion with the state (Weiss, 2014). Hence, there was not surprisingly that the participated CSOs are those who are active in democratic movements for variety human rights issues. These including the Bar Council Malaysia, SUARAM and other prominent CSOs who participated the Malaysian UPR process through the establishment of COMANGO. The Bar Council Malaysia, a body of legal practitioners has supporting the social movements and line up with the CSOs by providing their advice on legal profession and taking actions whenever is necessary.

Category	Name of CSOs
Domestic (6 CSOs)	<ol style="list-style-type: none"> 1. Bar Council Malaysia (BCM) 2. COMANGO 3. SUARAM (Joint submission with FIDH) 4. Migration Working Group (MWG) 5. Northern Network for Migrant and Refugees 6. Indigenous Peoples Network of Malaysia (<i>Jaringan Orang Asal Semalaysia</i> – (JOAS))
International (6 CSOs)	<ol style="list-style-type: none"> 1. Amnesty International (AI) 2. Becket Fund for Religious Liberty (BF) 3. European Centre for Law and Justice (ECLJ) 4. Federation Internationale des Ligues des Droits de l’Homme (FIDH) (Joint submission with SUARAM) 5. Human Rights Watch (HRW) 6. Jubilee Campaign (JC)

Table 2: CSOs submission during the first cycle of Malaysian UPR in 2009⁴.

In comparison, the involvement CSOs in the UPR process have been increased during the second cycle of UPR, where a number of 13 domestic CSOs, 23 international CSOs and 3 UN agencies have submitted their written report during the second cycle of UPR (Table 3). The

⁴ <https://www.upr-info.org/en/review/Malaysia/Session-04---February-2009/Civil-society-and-other-submissions#top>

CSOs from both local and international community have contribute their comment and opinion on the status of human rights in Malaysia actively during the second cycle of Malaysian UPR in 2013. The active involvement of CSOs in the UPR shows the believe and expectation of these groups of people on the UPR process where it acts as a platform and even a tool in the human rights development in the country.

Apart from that, the CSOs from the Islamic community have also starts to participate in the review by attending the review session at Geneva and having discussion on the UPR recommendations. However, they didn't submit the stakeholder report to the UPR Working Group during the second cycle of UPR due to the time-shortage of their participation in the review. The participation of Islamic CSOs in the UPR process has created a new environment of the Malaysia UPR process due to the conflict of these groups with the selected groups of secular CSOs with preference of liberalism.

Category	Name of CSOs
Domestic (13 CSOs)	<ol style="list-style-type: none"> 1. Bar Council Malaysia (BCM) 2. Centre for Independent Journalism Malaysia (CIJ Malaysia) 3. COMANGO 4. SUARAM 5. Migration Working Group (MWG) 6. Child Rights Coalition Malaysia 7. Indigenous Peoples Network of Malaysia (<i>Jaringan Orang Asal Semalaysia - JOAS</i>) 8. <i>Orang Asli</i> Network Peninsular Malaysia (JKOASM) 9. Knowledge and Rights with Young People through Safer Spaces (KRYSS) 10. Seksualiti Merdeka 11. Justice for Sisters 12. Federation of Reproductive Health Association of Malaysia (FRHAM) 13. Reproductive Rights Advocacy Alliance Malaysia (RRAAM)
International (23 CSOs)	<ol style="list-style-type: none"> 1. Amnesty International (AI) 2. Human Rights Watch (HRW) 3. World Vision Malaysia 4. Commonwealth Human Rights Initiative (CHRI) 5. The Child Rights International Network (CRIN) 6. European Centre for Law and Justice (ECLJ) 7. The Equal Rights Trust (ERT)

	<ol style="list-style-type: none"> 8. The International Foundation for the Protection of Human Rights Defenders (Front Line) 9. Global Initiative to End All Corporal Punishment of Children (GIEACPC) 10. International Commission of Jurist (ICJ) 11. International Publisher Association (IPA) 12. CIVICUS - World Alliance for Citizen Participation 13. PaxRomana- International Catholic Movement for Intellective and Cultural Affairs (Asia) 14. Article 19 15. Lawyers for Lawyers (L4L) 16. The Law Society of England and Wales 17. The Advocates for Human Rights 18. Harm Reduction International 19. PT Foundation 20. World Organisation Against Torture (OMCT) 21. Clean Clothes Campaign (CCC) 22. The Sexual Rights Initiative 23. Society for Threatened Peoples
UN Agencies (3 CSOs)	<ol style="list-style-type: none"> 1. International Labour Organisation (ILO)) 2. United Nations Country Team Malaysia (UNCTM) 3. United Nations High Commissioner for Refugees (UNHCR)

Table 3: CSOs submission during the second cycle of Malaysian UPR in 2013⁵.

THE ROLE OF CSOS IN THE MALAYSIAN UPR PROCESS

COMANGO

In order to make their participation in Malaysian UPR actively, a coalition called Coalition of Malaysian NGOs in the UPR Process (COMANGO) has been established⁶. This coalition, which was formed in 2008, comprises 52 CSOs. The secretariat of COMANGO includes two prominent human rights CSOs in Malaysia, namely *Persatuan Kesedaran Komuniti Selangor* (EMPOWER) and *Suara Rakyat Malaysia* (SUARAM)⁷. COMANGO has started take part in the Malaysian UPR process since its first cycle on 2009. Apart from engaging with the state

⁵ <https://www.upr-info.org/en/review/Malaysia/Session-17---October-2013/Civil-society-and-other-submissions#top>

⁶ <http://www.suaram.net/?tag=comango>.

⁷ <https://uprmalaysia.com/>

particularly with MOFA, this coalition has also maintained a good contact with SUHAKAM and professional organisation such as the Malaysian Bar Council.

Other than EMPOWER and SUARAM, the prominent human rights CSOs who joined COMANGO include All Women's Action Society (AWAM), Association of Women Lawyers (AWL), Pusat *Komunikasi Selangor* (KOMAS), Education and Research Association for Consumers, Malaysia (ERA Consumer), National Human Rights Society (HAKAM), *Tenaganita*, Sisters in Islam (SIS), Foreign Spouses Support Group (FSSG), Centre for Independent Journalism (CIJ), the Kuala Lumpur and Selangor Chinese Assembly Hall (KLSCAH) Youth Section, the Malaysian Youth and Student Democratic Movement (DEMA), ASEAN Institute for Early Childhood Development *and Jaringan Kampung Orang Asli Semenanjung* Malaysia (JKOASM) and Association of Women with Disabilities Malaysia.

This coalition comprises participants from variety of groups of CSOs who works on the protection and development of human rights in Malaysia for decades, including CSOs who works for the rights of women and children, rights of people with disabilities, freedom of press, consumers' rights, foreign spouses' issues, groups from the Chinese community, youth and students. These groups have also played an active role in democratisation of Malaysia by raising the issues of human rights abuse to the state, society and even in the international community by organising activities, publishing reports and training workshops on democracy.

Members from this group majority are the human rights and social activists while some of them are the practitioner lawyers. They have much experience in human rights activities and social movements, including the *Reformasi* movement as well as the *Bersih* rally. Therefore, the nature of this coalition is more on liberal concept of human rights where they respect the rights

of individual simultaneously also respecting the rights of consensus which is the rights of group of people.

There was a circumstance that the Ministry of Home Affairs (MOHA) through its press statement on 8th January 2014 declared that COMANGO is a non-registered coalition because the coalition was not registered under the Registry of Societies of Malaysia (ROS). However, this is actually more of a procedural and technical issue that does not have any serious negative effect that will impact COMANGO's ability to contribute as the experts in human rights issues of Malaysia. Indeed, EMPOWER (which is the secretariat of COMANGO) and other CSOs that were members of COMANGO have had good interaction with MOFA and have been invited to the CSOs engagement session organised by MOFA in 2017. Apart from that, the interaction between the state and COMANGO seems to have improved with the changing of ruling party on 9th May 2018 where the coalition has a chance to meet up with the new Minister of Foreign Affairs on 15 August 2018 to discuss the issues of UPR and other related human rights issues.

INGOs - MuslimUPRo, CENThRA and MACSA

Apparently, this coalition seems to lack involvement from the religion-based NGOs especially the Islamic NGOs (INGOs), which have a significant role in the public policy process in this country due to its status as the religion of the Federation⁸. The INGOs have taken part in the public policy process and social movements of Malaysia. This participation has started decades ago, with the prominent INGOs such as the Muslim Youth Movement of Malaysia (ABIM) and Sisters in Islam (SIS) (Hassan, 2003).

⁸ Article 3 in the Federal Constitution of Malaysia.

In 2013, the activities of COMANGO has attracted the attention of the INGOs as most of the CSOs of COMANGO are from the liberal groups and the opinion of COMANGO on several human rights issues such as Lesbian, Gay, Bisexual and Transgender (LGBT) and freedom of religion contradict the views of the INGOs. Furthermore, certain groups of INGOs are of the opinion that the practice of Syariah law should only be discussed by the Syariah experts and scholar of Islamic jurisprudence instead of people who with purely a secular human rights background to make sure the role of religion treated as a comprehensive element in the scope of human rights⁹.

The INGOs have later expanded their involvement in the second cycle of Malaysia UPR in 2013 through a coalition named Coalition of Muslim NGOs in the UPR Process (MuslimUPRo). The MuslimUPRo has supported by group of people from different INGOs including Islamic and Strategic Study Institute (ISSI), Malaysian Muslim Solidarity (ISMA) and Concerned Lawyers for Justice (CLJ). During their participation in the second cycle of Malaysian UPR in 2013, the coalition wished to ensure the country report of Malaysia in the UPR properly based in Syariah laws and the Federal Constitution¹⁰.

The coalition has later facilitated the establishment of Centre for Human Rights Advocacy (CENTHRA), an organisation that has been incorporated as a limited liability company under Malaysian Law but operates as an NGO. The members of this new developed INGO are from two major groups, namely the practising lawyers and the academic scholar from tertiary institutions. Since that, the involvement of INGOs in the UPR process have been operated

⁹ <https://www.thestar.com.my/news/nation/2013/10/13/muslim-ngos-to-observe-malaysias-session-in-un/#sOYpfyzZ2O8Y4SDg.99>

¹⁰ <https://www.thestar.com.my/news/nation/2013/10/13/muslim-ngos-to-observe-malaysias-session-in-un/#sOYpfyzZ2O8Y4SDg.99>

under the name of CENHRA. However, CENHRA has expended its focus on a broad area of human rights issues instead of specifically the UPR process.

The Malaysian Alliance of Civil Society Organisations in the UPR Process (MACSA) was established in 16 November 2017 with the specific aim to advocate the human rights issues in Malaysia through participation in the Malaysian UPR process. There are 36 INGOs at the beginning of the establishment. The number of members of MACSA later increased to 47 INGOs who shared the common interest of human rights from the Islamic perspective. Currently, the chairman of this coalition is the representative of CENHRA and the post of co-chairperson is held by the representative from the International Women's Alliance for Family Institution and Quality Education (Wafiq).

Subsequently, the coalition of INGOs has started taking part in the second cycle of UPR process since 2013 through the establishment of the MuslimUPRO, CENHRA and MACSA. Currently MACSA act as the coalition of INGOs in the UPR process by doing acts such as submitting a stakeholder report, attending the engagement session by the state, publishing articles in the newspaper, conducting interview sessions in the radio station (Institute of Islamic Understanding Malaysia - IKIM FM), holding internal discussion session and training workshops as well as submitting its report to the newly appointed Minister in the Prime Minister's Department for Religious Affairs.

CONCLUSION

A better understanding between the state, NHRI and CSOs contributes greatly to the democracy of the country. Democratisation is a collaborative process where the contribution of all the actors in the society is needed and it is affecting the progress and substantive of democracy

process. Definitely, COMANGO and MACSA practice different approaches in participating of the Malaysian UPR process. The state tends to be more open to involving coalitions into the UPR process the greater their expertise, experience and substantial action. The number of solid and empirical reports which have been submitted to the UPR Working Group and MOFA by the respective coalitions are taken into account by the state in determining their level of involvement in the UPR process.

Both COMANGO and MACSA were formed by initiative of the local CSOs as a self-organised coalition, and they are outspoken in the public atmosphere to educate the society about their comment and opinions. These 2 coalitions tend to act in social capital approach in the Malaysian UPR process, where they maximise the use of resources that they have accessed to, these including connection with the government ministries and departments, the opportunities to appear in public media such as radio station as well as the publish of article in the newspaper. Opportunities for them to interact directly to the state are still very limited which is only through the engagement sessions organised by the state perhaps once in a cycle. Hence, the influence of CSOs in the Malaysian UPR process is still limited although engagements with CSOs have been conducted and reports submitted by the CSOs. Participation of CSOs is giving impact in certain issues in the Malaysian UPR comprising economics, social and cultural rights, the rights of indigenous peoples, women, children and person with disabilities as well as national mechanisms on human rights.

Despite the state's willingness to open the space for civil society in the UPR process, the formulation of UPR process is guided by requirement of the mechanism itself and request by the civil society. Instead, the substantive aspect of what civil society exactly want to see has not really being concerned. Substantive democracy will be the order that determine public

policy. This paper finds that the role of CSOs and substantive democracy policy in the country such as Malaysia are still procedurally being heard, and the old paradigm of democracy still continues. The logic of procedural democracy still prevails. This study aspires to contribute to the existing body of knowledge on democracy through the case of the Malaysian UPR process, focusing on its substantive practices in public decision-making with the participation of different type of CSOs from the local community.

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