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Human Rights Protection to Women in Times of Natural Disasters in the Frame of ASEAN Regulations

Natalia Yeti Puspita*

In the last decade, the occurrences of natural disasters in ASEAN (Association South East Nations) regions have intensified. ASEAN was prone natural disasters such as earthquakes and tsunamis which frequently hit the region and as we know natural disasters can happen anytime. In a disaster management process, an understanding of law especially in the context of human rights protection is crucially needed, including in the prior disaster phases, in the emergency-disaster phase, and in the after-disaster phase. If such elements are excluded, it may postpone the implementation of humanitarian aid program and may even be a threat to the victims' rights. This situation is more concretely illustrated in the after-disaster phase, where law is needed to protect the vulnerable societies, namely in handling the problem of illegal adoption of an orphan child, child and women trafficking, and violation to marginal groups and discrimination in humanitarian aid distribution. The understanding human rights law in disaster situation will be tested in the field, as it often occurs that the law is not compatible with the situation, or that it is not complete or contrary to the system of law, or the lack of understanding regarding the law. Human rights are the basic rights which must be conferred to everyone. The international law and human rights posted the obligation to the state to protect, respect, and fulfill those rights without discrimination. ASEAN as a Regional International Organization has had the ASEAN Agreement on Disaster Management and Emergency Response and also The ASEAN Coordination Center for Humanitarian in related with disaster management.

Keywords: ASEAN, Women's Rights, Natural Disasters, Human Rights

I. Introduction

Human Rights are fundamental right which must be conferred to everyone. Human rights are needed in normal and also disaster conditions. But in the fact, the enactment and understanding of law and human rights have not been prioritized in a disaster management. On the other hand, in a disaster management process, an understanding of law especially in the context of human rights protection is crucially needed, including in the prior disaster phases, in the emergency-disaster phase, and in the after-disaster phase. If such elements are excluded,

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it may postpone the implementation of humanitarian aid program and may even be a threat to the victims' rights.

This situation is more concretely illustrated in the *after disaster phase*, where law is needed to protect the vulnerable societies, namely in handling the problem of illegal adoption of an orphan child, child and women trafficking, and violation to marginal groups and discrimination in humanitarian aid distribution. The understanding human rights law in disaster situation will be tested in the field, as it often occurs that the law is not compatible with the situation, or that it is not complete or contrary to the system of law, or the lack of understanding regarding the law.

In this paper, writer would analysis concerning human rights protection to women and child in times of natural disaster in the frame of ASEAN regulations.

II. Human Rights Protection in Times of Natural Disaster¹

A. The View of Natural Disasters

1. The Definition of Natural Disasters

Natural disaster is the effect of a natural hazard (e.g. flood, tornado, volcano eruption, earthquake, or landslide) that affects the environment, and leads to financial, environmental and/or human losses.² The resulting loss depends on the capacity of the population to support or resist the disaster, and their resilience. This understanding is concentrated in the formulation: "disasters occur when hazards meet vulnerability."³ A natural hazard will hence never result in a natural disaster in areas without vulnerability, e.g. strong earthquakes in uninhabited areas. The term *natural* has consequently been disputed because the events simply are not hazards or disasters without human involvement.⁴ On other hand, United Nations Development Programme (UNDP) stated that natural disaster was a serious disruption of the functioning of a society, causing

¹ See also, Natalia Yeti Puspita, "Paper for Asian Law Institute Seminar at National University of Singapore", 12 February 2010.

² See http://en.wikipedia.org/wiki/Natural_disaster, retrieved on 26 October 2009.

³ Ibid.

⁴ Ibid.

widespread human, material, or environmental losses which exceed the ability of affected society to cope using only its own resources.⁵ Natural disaster also refers to the consequences of events triggered by such natural hazards as earthquakes, volcanic eruptions, landslides, tsunamis, floods and drought that overwhelm local response capacity. Such disasters seriously disrupt the functioning of a community or a society causing widespread human, material, economic or environmental losses, which exceed the ability of the affected community or society to cope by using its own resources.⁶

2. The Cause of Natural Disasters

There are many causes of natural disasters. Based on culture and faith of traditional community, disasters appear as a natural stabilization and also as a punishment for human being which violate community rules. Another theory stated that natural disaster happened because of a natural phenomenon. Some see natural disasters as nature's way of some monumental system of checks and balances, designed to control the world's population. Finally, this argument make an opinion that natural disaster is God's Will. However, natural disaster can happen because of a natural phenomenon and also human involvement.

3. The Types of Natural Disasters

There are many types of natural Disasters. Earthquake is effectively a self – defining term – the Earth quakes, the Earth shakes, and we feel the vibrations.⁷ The other hand, an earthquake is defined as the sudden, fast shaking of the earth, caused by the breaking and shifting

⁵ A.B. Susanto, *Disaster Management di Negeri Rawan Bencana*, Aksara Grafika Pratama, Jakarta, 2006, p. 2.

⁶ "Human Rights and Natural Disasters, Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disasters". Brookings-Bern Project on Internal Displacement. See also IASC IDP Policy, Annex 3 (referring to Sylvie Giossi Caverzasio (ed), *Strengthening Protection in War – A Search for Professional Standards*, Geneva, ICRC, 2001, P.6. See also the glossary of the International Society for Disaster Reduction; <http://www.unisdr.org/eng/library/lib-terminologyeng%20home.htm> (16 May 2007).

⁷ Patrick L. Abbott, *Natural Disasters*, 4th Edition, the McGraw-Hill, 2004, p. 61

of subterranean rock.⁸ Extreme Heat, dry weather may occur on long or short time scales. As continents drift and ocean basins open and close, large regions may be cut off from moisture supplies and kept in long – term desert conditions.⁹ So, extreme heat is defined as a heat wave is long period of extreme heat often with high humidity.¹⁰ Floods, downpour with high rainfall intensity can cause floods. Global warming is considered as cause floods. Hurricanes - Hurricanes are severe tropical storms that form in the southern Atlantic Ocean, Caribbean Sea, Gulf of Mexico and in the eastern Pacific Ocean.¹¹ A hurricane is the only natural disaster that is given a human name. For example, Camille, Hugo, Iniki, Mitch, Pauline, etc. hurricanes are large tropical cyclones. They are heat engines that convert the heat energy of the tropical ocean into winds and waves.¹² Landslides and Debris Flow - Landslides, also known as mudslides or debris flow, occur in all U.S. states and territories.¹³ Thunderstorms and Lightning - All thunderstorms produce lightning and all have the potential for danger. Those dangers can include tornadoes, strong winds, hail, wildfires and flash flood.¹⁴ Thunderstorms occur where warm, moist air has absorbed enough heat and moisture to be significantly less dense than the surrounding air.¹⁵ Tornadoes - Tornadoes are nature's most violent storms. They can appear suddenly without warning and can be invisible until dust and debris are picked up or a funnel cloud appears.¹⁶ Tsunamis - Tsunamis, also known as seismic sea waves. Volcanoes - When pressure builds up within a volcano's molten rock, it has the potential to erupt, sending lava flows, poisonous gases and flying rock and ash that can sometimes travel hundreds of miles downwind.¹⁷ Winter Storms and Extreme Cold - That could mean snow or subfreezing temperatures, as well as strong winds or even ice or heavy rain storm.¹⁸

⁸ See http://en.wikipedia.org/wiki/Natural_disaster, retrieved on 26 October 2009.

⁹ Patrick L. Abbott, *Op. Cit.*, p. 299.

¹⁰ See http://en.wikipedia.org/wiki/Natural_disaster, retrieved on 26 October 2009.

¹¹ *Ibid.*

¹² Patrick L. Abbott, *Op. Cit.*, p. 302.

¹³ See http://en.wikipedia.org/wiki/Natural_disaster, retrieved on 26 October 2009

¹⁴ *Ibid.*

¹⁵ Patrick L. Abbott, *Op. Cit.*, p. 283.

¹⁶ See http://en.wikipedia.org/wiki/Natural_disaster, retrieved on 26 October 2009

¹⁷ *Ibid.*

¹⁸ See <http://www.ways2cope.com/Articles/Disaster/Disaster%20-%20natural%20>

4. The Impact of Natural Disasters

Natural disasters always cause loss than advantage. This loss covers all the human life, such as a physic impact, a mental health impact, an economic impact, a social and a culture impact. The physic impact is the death of people and others, injury victims, buildings destructions, environmental destructions, etc. The Psychic impact is trauma which is suffered by natural disasters victims. A.B. Susanto (Indonesian disaster management expert), stated that there are some factors which can make worse natural disaster, among other:¹⁹ Poverty- a theory stated that poverty has correlation with disaster. Poverty makes a society become close to natural disaster. Population growth- there are many victims in territory which is dense of population rather than in territory which is rare of population. Urbanization - transfer of population from village to city make new problems in related with environmental management. The Population quantities which increase in a city make land more crowded, and there is no choice for people to stay in a natural disaster prone territory such as in a river side. The environmental destructions- the environmental which are damaged can cause natural disasters. Such as illegal logging, rubbish throwing in the river can cause floods. Lacks of awareness and information - lacks of awareness and information on a natural disaster prone territory in Indonesia make amount of victims in time of disaster increase. Lacks of legal enforcement - the awareness of society on natural disasters knowledge without a legal enforcement can make disaster management cannot be conducted.

B. The International Regulation on Human Rights Protection in Times of Natural Disasters²⁰

1. Definition of Human Rights Protection

a. Definition of human rights

Human rights are a basic right of human being. There are three generations of human rights, the first generation: - Civil and political rights, this generation start to develop in a capitalist society, they claim a freedom to express opinion and others. The second generation: -

[disaster.aspx](#), retrieve on 26 October 2009.

¹⁹ A.B. Susanto, Op. Cit., P. 4 - 8.

²⁰ Natalia Yeti Puspita, Loc.Cit.

economic-social and culture rights- this generation start to develop in socialist society; they claim the education rights, labor right, the healthy right, etc, from their state. And the third generation- Now, the human rights is in this level, such as the right to peace, the right to self determination, the common heritage of mankind principle, the right to development, minority rights and the right to a clean environment.²¹

b. Definition of protection

“Protection” encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. international human rights law and, where applicable, international humanitarian law).²² Protection activities of the international actors can be:

- 1). Responsive: aimed at “stopping, preventing or mitigating a pattern of [ongoing] abuse”;
- 2) Remedial: “aimed at restoring people’s dignity and ensuring adequate living conditions subsequent to a pattern of violation, through rehabilitation, restitution, compensation and repair”;
- 3). Environment building: “aiming to create and/or consolidate an environment, political, social, cultural, institutional, economic and legal – conducive to full respect for the rights of the individual”.²³

Based on that explanation, we can know that definition of protection is included responsive act, remedial act and environmental building act.

c. Definition of human rights protection

Human rights protection is an action which is related with prevention, responsive, rehabilitation, reconstruction and environmental development in connection with human rights.

2. The International Regulations on Human Rights

²¹ Peter Malanczuk, Akehurst’s *Modern Introduction to International Law*, <http://www.netlibary.com/libproxy1.nus.edu.sg/Reader/> retrieved on 19 January 2010, p. 209-210.

²² Human Rights and Natural Disasters, Loc. Cit.

²³ Ibid., p. 9.

The international regulations on Human Rights can be seen in these regulations, such as:

The United Nations Charter Article 1, and also Article 55, 56 (which is more explained in the Advisory Opinion of International Court of Justice (ICJ) in the Namibia Case. ICJ stated to establish, "Distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, color, descent, or national ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the charter".²⁴

The Universal Declaration on Human Rights (UDHR) 1948. UDHR is a resolution which was passed by the United Nations General Assembly on 10 December 1948.²⁵ After the preamble, the opening words of the resolution: The General Assembly proclaims this UDHR as a common standard of achievement (ideal commun a atteindre) for all peoples and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.²⁶ And this is more explained in the UN Conference on Human Rights at Teheran in 1968 passed a resolution proclaiming, inter alia, the UDHR... constitutes an obligation for the members of the international community.²⁷

The International Covenant on Civil and Political Rights 1966 & its protocol. This covenant regulates human rights in civil and political aspects.

The International Covenant on Economic, Social and Cultural Rights 1966 & its protocol. This covenant regulates human rights in economic, social and cultural aspects and only knows a reporting system

And also there are numerous other international human rights treaties that have been adopted under the auspices of the UN since 1948.²⁸ They included the 1948 Convention on the Prevention and Punishment of Genocide, the 1965 International Convention on the Elimination of

²⁴ Peter Malanczuk, *Op. Cit.*, P. 212.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*, P. 216.

All Forms of Racial Discrimination, the 1979 Convention on the Elimination of All Forms for Discrimination against Women, the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, The 1989 Convention on the Rights of the Child. In addition, there are many other human rights treaties concluded under the umbrella of the International Labor Organization, UNESCO and other specialized agencies of the UN.²⁹

If in the beginning, human rights didn't get attention from the international society and the government, such as in the United Nations Charter, as shown by the *travaux preparatory*, originally did not attach as much significance to the promotion and protection of human rights as the maintenance of international peace and security.³⁰ And then, now there is no other argument to do not care human rights. Human rights protection is the most important thing; this is can be seen from the words of International Court of Justice in the Barcelona Traction Case 1970, certain basic rights of the human person, such as protection of slavery, racial discrimination, or genocide as obligations *erga omnes*. Furthermore, the International Law Commission of the United Nations classified in Article 19 of the draft articles on State Responsibility, a serious breach on widespread scale of an international obligation of essential importance for safeguarding the human being such as those prohibiting slavery, genocide and apartheid as an international crime.³¹ Such fundamental human rights, which perhaps also include protection from torture, may even be *ius cogens*. The jurisprudence of the international Court of justice shows that the Court has clearly accepted that obligation to respect fundamental human rights is an obligation of general international law.³²

Unfortunately, until now there is no well recognized and comprehensive regulations which identify internationally agreed rules, principles and standards for the protection and assistance of people affected by natural disaster which is legal binding. And also, many international disaster response operations are subject to ad-hoc rules and systems, which vary dramatically from country to country and

²⁹ Ibid.

³⁰ Ibid, P.220.

³¹ Ibid.

³² Ibid.

impede the provision of fast and effective assistance-putting lives and dignity at risk.

3. International Regulation on Disaster Management³³

Until now there are no well recognized and comprehensive which identify internationally agreed rules, principles and standards for the protection and assistance of people affected by natural and technological disasters.³⁴ There are some existing relevant international legal instruments related to disaster management, among others:

a. International Conventions (Hard Law)

- 1) Convention establishing an international relief union of 1927;
- 2) Convention on assistance in the case of nuclear accident or radiological emergency of 1986;
- 3) Convention on early notification of a nuclear accident of 1986;
- 4) Council's of Europe Agreement on the Prevention of, Protection against, and Organization of Relief in Major Natural and Technological Disaster of 1987;
- 5) Convention on Temporary Admission of 1990 (in particular annex B.9 concerning goods imported for humanitarian purposes);
- 6) Inter-American Convention to Facilitate Disaster Assistance of 1991;
- 7) The Tampere Convention on the Provisions of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998;
- 8) The International Convention on the Simplification and Harmonization of Customs Procedures as amended in 1999;
- 9) Framework Convention on Civil Defense Assistance of 2000;
- 10) The "Seville Agreement" on the Organization of International Activities of the Components of the International Red Cross and Red Crescent Movement of 1997.³⁵

³³ See also Natalia Yeti Puspita, "Paper for Presentation on 3rd Conference Asian Society of International Law (AsianSil)", Sunworld Dynasty Hotel Beijing, 27-28 August 2011

³⁴ Appeal No.01.100/2004, International Federation of Red Cross and Red Crescent Societies, Loc.Cit.

³⁵ IBR. Supancana, "International Disaster Response Law, Rules And Principles (IDRL) Programme of The International Federation of Red Cross And Red Crescent

And also (UN Conventions):

- 1). UN Convention on the Privileges and Immunities of the United Nations 1946;
- 2). UN Convention on the Privileges and Immunities of the Specialized Agencies 1947;
- 3). UN Convention on the Safety of United Nations and Associated Personnel, 1994;
- 4). Optional Protocol to UN Convention on the Safety of United Nations and Associated Personnel 2005.³⁶

And also (Regional Cooperation Agreements):

- 1). EUR-OPA Major Hazards Agreement (Partial Agreement on the Prevention of, Protection Against, and Organization of Relief in Major Natural and Technological Disasters), 1987;
- 2). ASEAN Agreement on Disaster Management and Emergency Assistance, 2005;
- 3). Inter-American Convention Disaster Assistance, 1991.³⁷

b. General normative guidance

- 1). UN General Assembly Resolution 46/182, 1991 "Strengthening of the coordination of humanitarian emergency assistance of the United Nations";
- 2). UN General Assembly Resolution 57/150 of 2002
- 3). IASC Operational Guidelines on Human Rights and Natural Disasters (2006) and their Manual (2008).³⁸

c. Normative Guidance on Specific Issue

- 1). INSARAG Guidelines (Urban Search and Rescue), 2002;
- 2). Guiding Principles on Internal Displacement;
- 3). UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), 2005;
- 4). Civil-military-relations (OSLO Guidelines, MCDAGuidelines).³⁹
- 5). Guidelines for the domestic facilitation and regulation of in-

Societies (IFRC)", p 3.

36 [Http://ocha.unog.ch/drptoolkit/PNormativeGuidanceGeneral.html](http://ocha.unog.ch/drptoolkit/PNormativeGuidanceGeneral.html). Retrieve on 1st April 2011

37 Ibid.

38 Ibid

39 Ibid.

ternational disaster relief and initial recovery assistance (IDRL Guidelines) 2007.⁴⁰

Other relevant legal documents, including but not limited to:⁴¹

- 1). Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disaster of 2000.
 - 2). The statutes of the International Red Cross and Red Crescent Movement as amended in 1995.
 - 3). The Principles and Rules of Red Cross and Red Crescent in Disaster Relief as amended in 1995.
 - 4). The Supplementary measures to enhance the implementation of the Seville Agreement of 2005.
 - 5). The Hyogo Framework for Action of 2005.
 - 6). The measures to Expedite International Relief of 1977.
4. The Basic Principle of the Human Rights Protection in Times of Natural Disasters⁴²

In the frame of the human rights protection in time of natural disaster, the protection is not limited to securing the survival and physical security of those affected by natural disasters. Protection encompasses all relevant guarantees—civil and political as well as economic, social and cultural rights—attributed to them by international human rights and, where applicable, international humanitarian law. Although all human rights are fundamentally interrelated, for practical reasons, these rights can be divided into four groups, namely:⁴³ (A) rights related to physical security and integrity (e.g. protection of the right to life and the right to be free from assault, rape, arbitrary detention, kidnapping, and threats concerning the above); (B) rights related to the basic necessities of life (e.g. the rights to food, drinking water, shelter, adequate clothing, adequate health services, and sanitation); (C) rights related to other economic, social and cultural protection needs (e.g. the rights to have access to education and work as well as to receive

⁴⁰ <http://www.ifrc.org/en/what-we-do/idrl/guidelines/>, retrieve on 30 May 2011

⁴¹ Ibid.

⁴² Natalia Yeti Puspita, "Paper for Asian Law Institute Seminar at National University of Singapore", 12 February 2010

⁴³ Human Rights and Natural Disasters, Op. Cit., P. 8.

restitution or compensation for lost property); and (D) rights related to other civil and political protection needs (e.g. the rights to religious freedom and freedom of speech, personal documentation, political participation, access to courts, and freedom from discrimination). The first two groups of rights are most relevant during the emergency, life-saving phase. Only the full respect of all categories of rights, however, can ensure adequate protection of the human rights of those affected by natural disasters, including the displaced.⁴⁴

In the disaster management, at least there are three phases and three needs which are applied:

1. The need to get information = pre- natural disaster phase: in this phase, the society which stays in a natural disaster prone-territory must get good information about natural disaster. In connection with this phase, education, training on natural disaster and also preparing of evacuation location are needed in this phase.
2. The need to ensure non - discrimination in natural disasters condition = emergency-natural disaster phase: in this phase, there is no discrimination to distribute assistance. Definition of non-discrimination in this-meaning is the people have same position before the law. But we must respect and recognize that differences. For example, we must respect to Muslim society in food assistance distribution and also must divide women and men who are not their "mahram" in evacuation location (shelter).
3. The need to monitor = after/post natural disaster phase: in this phase, a monitoring in assistance distribution, in rehabilitation, and in development recovery is most the important thing. It is essential to establish effective monitoring mechanisms, benchmarks and indicators to ensure that the protection of the human rights of those affected by natural disasters, including those who are internally displaced, is effectively implemented. Furthermore, all disaster prevention, relief and recovery should be assessed so as to evaluate whether those activities are being carried out in accordance with international human rights and humanitarian standards as outlined in the Operational Guidelines.⁴⁵

44 Ibid., and See also Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, E/CN.4/2006/71, paragraphs 4-8

45 Human Rights and Natural Disaster, Op. Cit, P.13

5. The regulation on Human Rights Protection in Times of Natural Disaster (Ideal Condition in Natural Disasters)⁴⁶

- a. Protection of Life, Security, Physical, Mental and Moral Integrity
Below are the articles which are relevant with human rights protection:⁴⁷
- 1). Every human being has the inherent right to life, which shall be protected by law.⁴⁸
 - 2). Every human being has the right to dignity and physical, mental and moral integrity. Everyone shall be protected, in particular, against torture, cruel and inhuman or degrading treatment or punishment⁴⁹; rape and other acts of gender-based and gender-specific violence or indecent assault and domestic violence.⁵⁰
 - 3). Everyone has the right to be protected against acts of violence threatened or committed by private parties and other non-state actors.⁵¹
 - 4). Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.⁵²
 - 5). Every human being has the right to liberty of movement and freedom to choose his or her residence.⁵³
 - 6). Every human being shall be protected against forced or compulsory labor and human trafficking or other contemporary forms of slavery such as sale into marriage, forced prostitution or sexual exploitation. Services exacted in order to deal with the consequences of the disaster and necessary for the life or well-being of the community shall not be regarded as forced or compulsory labor.⁵⁴

46 Natalia Yefi Puspita, "Paper for Asian Law Institute Seminar at National University of Singapore", 12 February 2010.

47 Ibid, P. 19.

48 See also Art. 3 UDHR; Art. 6 CCPR; Common Article 3 to the 1949 Geneva Conventions.

49 See also Art. 5 UDHR; Art. 7 CCPR.

50 See also Art. 5 UDHR in conjunction with Art. 1 UDHR; Art. 7 in conjunction with Art. 2, para. 1 CCPR.

51 See also Human Rights Committee, General Comment No. 31, para. 8.

52 See also Art. 9 UDHR; Art. 9 CCPR.

53 See also Art. 13 UDHR; Art. 12 CCPR.

54 See also Art. 4 UDHR; Art. 8 CCPR.

7). Children shall be protected against economic exploitation and hazardous or harmful work, particularly against the worst forms of child labor, including recruitment into armed forces or groups.⁵⁵

b. Protection of Rights Related to Basic Necessities of Life

Below are the articles which are relevant with human rights protection:⁵⁶

1). In providing humanitarian assistance as well as access to it, discrimination of any kind on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, age, disability or other status is strictly prohibited.⁵⁷

2). Every human being has the right to an adequate standard of living for him or herself and his or her family. At a minimum, persons affected by disasters have a right to have access to or be provided with (a) essential food and water; (b) basic shelter and housing; and (c) appropriate clothing.⁵⁸

3). Every human being has the right to health. At a minimum, those affected by disasters have the right to receive essential medical services and sanitation.⁵⁹

4).

5). Protection of other Economic, Social and Cultural Rights

6). Below are the articles which are relevant with human rights protection:⁶⁰

7). Every human being has the right to education. As soon as conditions permit, children affected by disasters, whether displaced or not, have the right to receive education that shall be free and compulsory at the primary level.⁶¹

55 See also Art. 32 CRC; Art. 3 ILO Convention on the Worst Forms of Child Labor, Nr. 182; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

56 Human Rights and Natural Disasters, Op. Cit. P. 29.

57 See also Art. 2 in conjunction with Art. 25 UDHR; Art. 2, para. 2 CDESCR.

58 See also Art. 22 and 25 UDHR; Art. 11 CDESCR.

59 See also Art. 25 UDHR; Art. 12 CDESCR.

60 Human Rights and Natural Disasters, Op. Cit. P. 40.

61 See also Art. 26 UDHR; Art. 13 and 14 CDESCR; Art. 28 CRC.

- 8). No one shall be arbitrarily deprived of property and possessions. Everyone has the right to recover, to the extent possible, property and possessions lost in the course of the disaster.⁶²
- 9). Everyone has the right to work and to have access to a livelihood without discrimination.⁶³

c. Protection of other civil and political rights

Below are the articles which are relevant with human rights protection:⁶⁴

- 1). Every human being has the right to recognition everywhere as a person before the law,⁶⁵ and to be provided, for this purpose, with the necessary official documents.
- 2). Every human being has the right to liberty of movement and freedom to choose his or her residence.⁶⁶
- 3). Every human being has the right to respect of his or her family,⁶⁷ including the right to know the fate and whereabouts of missing relatives.
- 4). Every human being has the right to freedom of thought, conscience, religion or belief, of opinion and expression, of assembly, and of association.⁶⁸
- 5). Every citizen has the right to take part in the conduct of public affairs and to vote and be elected at genuine periodic elections.

States may not take measures derogating from these rights unless the disaster creates a public emergency which threatens the life of the nation and the existence of which is officially proclaimed. Such measures must be strictly required by the exigencies of the situation, cannot be inconsistent with the States' other obligations under international law and cannot involve discrimination based on race, color, sex, language, religion or social origin. Derogations from the right to recognition everywhere as a person before the law, to freedom

62 See also Art. 17 UDHR; Art. 1 Protocol 1/ECHR.

63 See also Art. 23 and 24 UDHR; Art. 6 and 7 CESCR.

64 Human Rights and Natural Disaster, Op. Cit, P. 51

65 See also Art. 6 UDHR; Art. 16 CCPR.

66 See also Art. 13 UDHR; Art. 12 CCPR.

67 See also Art. 12 UDHR, Art. 17 CCPR.

68 See also Art. 18 - 20 UDHR; Art. 19 - 22 CCPR.

of thought, conscience and religion are never permissible.⁶⁹

III. Human Rights Protection to Women in times of Natural Disaster in the frame of ASEAN Regulation

A. Human Rights Protection to Women in times of Natural Disaster

The people and communities affected by the natural disaster may be further exposed to violence if law and order break down. The risk of gender-based violence, in particular among displaced populations living in camps, increases over time because of the disruption of family order, protection and coping mechanisms combined with the loss of income and livelihoods.

In Human Rights principle (in related with women protection) was stated that, "Every human being shall be protected against forced or compulsory labor and human trafficking or other contemporary forms of slavery such as sale into marriage, forced prostitution or sexual exploitation. Services exacted in order to deal with the consequences of the disaster and necessary for the life or well-being of the community shall not be regarded as forced or compulsory labor."⁷⁰

Women play an important role in disaster prevention, response and recovery. In some instances, women may be disproportionately affected by the disaster suffering higher numbers of deaths and injuries than men. This is especially the case where women may not have the physical strength or skills to withstand the force of the disaster. In other instances, women survive the disaster but may lose husbands and male partners and are left as single heads of household.⁷¹ Women's marginalized status in many societies, coupled with discriminatory laws and policies, can mean that they face particular barriers in obtaining the assistance, support, land, property and assets to which they are entitled. Moreover, in the aftermath of a disaster, the breakdown of family support structures, inadequate housing and a lack of community support may expose women to greater physical insecurity, including rape, sexual and gender based violence, forced prostitution and trafficking.⁷² Ensuring

69 Human Rights and Natural Disasters, Loc.Cit.

70 See also Art. 4 UDHR; Art. 8 CCPR.

71 Human Rights and Natural Disasters, Op.cit, p. 65

72 Ibid, p. 66

women's equal access to assistance and protecting them against threats to their physical security should be central to the emergency response and recovery efforts. Special efforts need to be made to include women, especially female heads of households, in any registration or census exercise following a disaster. It is also essential to ensure that they receive registration documents in their name, which will entitle them to the assistance they need.⁷³

Humanitarian agencies and organizations need to address the specific social, economic and legal protection needs of women, especially those who are single and women heads of household, in all relief, recovery and rehabilitation efforts. If humanitarian agencies are creative in their approach, re-building after a disaster may provide the opportunity to improve women's living conditions and raise their social, economic and legal status in society.⁷⁴

In times of natural disaster (pre, emergency, and post disaster) women need protection about:⁷⁵

- 1). Protection against trafficking, forced labour and contemporary forms of slavery;
- 2). Camp security;
- 3). Adequate provision of goods and services without discrimination;
- 4). Special attention to health needs of women;
- 5). Psycho-social care for victims of sexual abuse;
- 6). Equal participation in education;
- 7). Specific arrangements to help women to (re-)claim their property rights;
- 8). Protection against illegal attempts to deprive property and possessions;
- 9). Consultation and participation in planning and implementation.

B. ASEAN Regulation on Disaster Management

In the ASEAN region, ASEAN have the regulation on disaster management, there are:

- 1). Agreement on Disaster Management and Emergency Response,

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid., p. 67.

Vientiane, 26 July 2005;

- 2). ASEAN Declaration on Mutual Assistance on Natural Disasters. Manila, 26 June 1976;
- 3). Declaration on Action to Strengthen Emergency Relief, Rehabilitation, Reconstruction and Prevention on the Aftermath of Earthquake and Tsunami Disaster of 26 December 2004;
- 4). The ASEAN Agreement on Transboundary Haze Pollution of 10 June 2002;
- 5). The ASEAN Agreement for the Facilitation of Search for Aircrafts in Distress and Rescue of Survivors of Aircraft Accidents of 14 April 1972;
- 6). The ASEAN Agreement for the Facilitation of Search of Ships in Distress and Rescue of Survivors of Ship Accidents of 15 May 1975;
- 7). The Agreement on the ASEAN Food Security Reserve of 4 October 1979.

The ASEAN Agreement on Disaster Management and Emergency Response (AADMER) is a regional legally-binding agreement that binds ASEAN Member States together to promote regional cooperation and collaboration in reducing disaster losses and intensifying joint emergency response to disasters in the ASEAN region.⁷⁶ AADMER is also ASEAN's affirmation of its commitment to the Hyogo Framework for Action (HFA).⁷⁷ AADMER contains provisions on disaster risk identification, monitoring and early warning, prevention and mitigation, preparedness and response, rehabilitation, technical cooperation and research, mechanisms for coordination, and simplified customs and immigration procedures.⁷⁸ AADMER also provides for the establishment of an ASEAN Coordinating Centre for Humanitarian Assistance on disaster management (AHA Centre) to undertake operational coordination of activities under the Agreement the Hyogo Framework for Action (HFA). AADMER enter into force in the end of year 2009.

In relation with implementation regulation on disaster management,

⁷⁶ <http://www.asean.org/PR-AADMER-EIF-End-2009.pdf>, retrieve on 11 October 2011

⁷⁷ Ibid.

⁷⁸ Ibid.

ASEAN have The ASEAN Committee on Disaster Management (ACDM). ACDM is institutional mechanism in the form of expert group. In 2004- 2010 ACDM established an ASEAN Regional Programme on Disaster Management (ARPD) to provide a framework for cooperation.⁷⁹

C. Human Rights Protection to Women in times of Natural Disaster in the frame of ASEAN Regulations

In Article 6 ASEAN Agreement on Disaster Management and Emergency Response is stated that, each Party shall undertake measures to reduce losses from disasters which include:

- 1). developing and implementing legislative and other regulatory measures, as well as policies, plans, programmes and strategies;
- 2). strengthening local and national disaster management capability and co-ordination;
- 3). promoting public awareness and education and strengthening community participation; and
- 4). promoting and utilizing indigenous knowledge and practices.

Based on that explanation, we know that regulation on disaster management in ASEAN is focused on national regulation of member state of ASEAN and every state is hoped to coordination each other. ASEAN Coordinating Centre for Humanitarian Assistance on disaster management (AHA Centre) is established to help coordination disaster management in ASEAN Region. Human Rights protection to women in times natural disaster in ASEAN is operated by AHA Centre based on Hyogo Framework for Action.

Conclusion

Human Rights protection is a basic principal in natural disaster management. In such case, ASEAN need a specific and detail regulation on natural disaster to protect women rights in times of natural disaster.

⁷⁹ <http://www.asean.org/19599.htm>, retrieved on 11 October 2011

Therefore, ASEAN is encouraged to adopt Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance (IDRL Guidelines) 2007.

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