



CHAPTER IV

ANALYSIS: How can the Lao Hmong Refugees Experience in Thailand Inform Refugee Protection?

4.1 Refugees Demand Basic Human Rights.

Even with assuming some exaggeration in their individual statements, it is difficult to ignore the recurring themes of their preoccupations with protection. It is evident that what they demand are basic human rights: the right to livelihood, freedom from fear, freedom of movement, the right to education, religious freedom and cultural rights. At the core of their demands is to restore their human dignity through participation and self-sufficiency.

“We are like children waiting for our father and mother to feed us and to protect us because our hands are tied. The international community is like our father and mother but it seems like they have forgotten about us. [...] So we are like small children.”

(Refugee 12, Interview, July 18, 2010)

At this point, it is pertinent to dispel criticism that a refugee discourse that advocates for their basic human rights is not an inherent and intrinsic demand, but rather a learned discourse, modeled after status determination interviews and other external factors. To verify this, let us examine the differences between the discourse of male refugees and that of female refugees. Because males were identified heads of household by human rights advocates and refugee agencies, their discourse would contain themes of human rights in a more pronounced way than that of female refugees.

A first distinction was that most of the male refugees' interviews were highly factual, with exact and quantified information. Some even came to the interviews

with notebooks where facts, events and conversations had been recorded precisely. When asked how and why they remembered everything with such detail, they laughed off the fact that it wasn't the first time they had talked about their security and protection concerns. Some of the male participants admittedly explained having learned to keep precise facts and details after they failed a first status determination interview (Refugee 1b, Interview, July 23, 2010). A second differentiation lied in the fact that male refugees held proofs of their accounts with photographs, letters, videos, etc. It was apparent that they knew the importance of written evidence to successfully navigate current protection systems. They explained that, as head of households, their testimonies to refugee agencies would determine the protection of their families because each family member's story would need to corroborate theirs (Refugee 8, Interview, July 23, 2010).

During the formal interviews with married female refugees, their husbands were often present. On one occasion, one woman was scolded for not describing her hardship well enough. Indeed, female participants' interviews were more descriptive of their feelings of sadness, powerlessness, etc. I did spend significant time alone with the women (i.e. walking to the market, doing laundry, preparing meals, caring for the children). Though it was not intentional, the segregation of labor permitted the women to express their own protection concerns in a more relaxed setting; some even sharing how much their husbands pressured them to tell their stories as they would (Refugee 13, Interview, July 18, 2010). Still, in those candid moments, even without dates or the exact circumstances, the women were concerned by the same things unequivocally: livelihood, fear, movement, health, education, culture, and most importantly, their dignity.

The refugees' gendered discourse would differ in form to match their respective role in securing formal protection (i.e. status determination processes), but the concerns and the experience were essentially the same. Their plea for protection remained inherently grounded in the same principles of human rights, self-empowerment and full participation. On the other hand, we may also infer that current protection systems may be inadequate to identify and thus respond to issues that may

affect women more or transpire more in female accounts such as mental health needs. Consequently, those needs may be overlooked in refugee protection programs.

4.2 Lessons of the Lao Hmong Refugee Experience and Implications for Policy Reform

4.2.1 Theoretical Superiority of a Refugee-Centered Discourse

As stated previously, the refugee participants of this study have clearly defined a new theory for protection around the need to regain their human dignity by:

- (1) *Fulfilling and enjoying their basic rights*: Most outstandingly, they longed for the right to livelihood, freedom from fear, freedom of movement, the right to education, religious freedom and cultural rights.
- (2) *Realizing full participation and self-sufficiency with regards to their protection needs*: Access to information and the regularization of their status in Thailand were key requirements to realize the refugees' desire to decide and meet their own protection needs.
- (3) *Enjoying culturally appropriate programs, with an emphasis on protecting and promoting the rights of those most vulnerable*: Language barriers, xenophobia and cultural norms would seriously hinder protection efforts, affecting doubly those who suffered discrimination within their own community, i.e. women, children, elderly, etc.

Unlike what some believe, the demands of refugees were reasonable. They were enshrined by human rights conventions. As such, they were universal and unalienable, and ought to be protected and delivered by moral agents regardless of legal status, in Thailand and elsewhere.

The most important tenet of their definition of protection may be that of meaningful participation and self-sufficiency. Its fulfillment requires a philosophical, political and programmatic shift that reconsiders the purpose of refugee protection

and the role of refugees in it. As James C. Hathaway (2006) proposes, protection must be as a long term goal, not a temporary solution to the state of being a refugee. He criticizes the latter approach as inevitably driven by the concept that refugees are a problem and therefore susceptible to statist remedial considerations. In his view, protection must instead create conditions that will empower and enable the refugee to freely choose her preferable course of action. It is a theoretical argument that translates into policies that would create the socio-economic conditions favorable to the empowerment of refugees, such as access to employment and other livelihood opportunities, education, etc. (Hathaway, 2006). As the author states:

Refugee protection is [...] fundamentally oriented to creating conditions of independence and dignity which enable refugees themselves to decide how they wish to cope with their predicaments. It is about ensuring autonomy, not about the pursuit of externally conceived “fixes.”

(Hathaway, 2006: 4)

Others lend support to the validity of the study’s findings. For instance, the Rights Based Approach (RBA) has gained prominence in development studies and practice. Embracing all three principles enounced earlier, RBA identifies strategic priorities enshrined in human rights standards to guide the process *and* outcome of any human development project (Hamm, 2001). It establishes a relationship of accountability between the moral commitment of duty bearers (i.e. states, institutions and individuals) and rights holders (i.e. refugees). In practice, RBA focuses not merely on the delivery of human services but that of human rights through building the capacity of right holders to claim and fulfill their human rights themselves. Accordingly, project design and implementation must be governed by the following principles (Sengupta, 2002):

- Reference to and starting from human rights treaties
- Non-discrimination, with a special focus on disadvantaged groups, explicitly women and children
- Participation and empowerment

- Good governance

Applied to refugee protection, RBA therefore recognizes refugees as the principal stakeholders in the design and implementation of their protection and refugee agencies (governmental and non-governmental) as supporters and enforcers.

Though supported by moral obligations and many scholarly views, the principles that make up this new grounded theory may be challenged by the pragmatic conditions that characterize modern refugee situations: host countries are most often developing countries lacking resources and expertise and who may be reluctant to encourage any level local integration of refugees in their economy, society, and culture. The RBA itself is often criticized for the evasive and all-encompassing language of its tenets, which renders its project design unclear and policing impractical (Hamm, 2001; Sengupta, 2002). The real test of this new theory and its theoretical superiority lies in its empirical relevance. For this, let us look at its practical implications.

4.2.2 Empirical Effectiveness and Political Advantage of a Refugee-Centered Policy Reform

The first principle demands the universal realization of the refugees' human rights. It implicitly suggests that states must abide by international conventions and laws that protect those rights. The signature and ratification of those texts would provide a robust legal framework to formulate fair and transparent policies of practice and conduct. The advantages for a state to do so are multi-tiered. On a global scale, the international standing of a law-abiding state versus that of a 'rogue state' buys significant influence when negotiating military alliances, economic trade agreements, and other political collaborations, including international aid. At the national level, having standard and transparent procedures would ensure a thorough and fair refugee protection system. In return, it would alleviate local discretion by law enforcement—and the corruption and abuse associated with it—and reduce significantly possible fraudulent claims by non-refugees. Finally, at the individual level, these policies

being what refugees demand, their buy-in of new structures would be stronger and programs would be more sustainable.

But states are not the only agents to be concerned with the delivery of protection and the realization of refugees' rights. To meet the first principle, other agents (e.g. UNHCR, refugee agencies, advocates, etc.) must continue to promote and protect their rights by lobbying their governments to adopt and abide by international laws. In addition, they need to revisit their own policies and service delivery systems to ensure their programs are not compromising those same rights inadvertently. For instance, the concept of refugee management is pervasive in some agencies and scholarship (Arulanantham, 2000; Beckers, Interview, July 20, 2010). Yet it implies strategies of orderly containment and logistics that may eclipse the human dimension of refugee affairs and, by the same token, their rights.

The second principle prescribes the full participation of refugees in determining and meeting their protection needs. As discussed previously, this involves socio-economic conditions that enable self agency and autonomy. These conditions imply a legal status, access to information, and social integration initiatives (i.e. cultural and vocational training and education). These policies are not just what refugees demand. In the long run, especially in cases of protracted situations, these policies would alleviate administrative burden, produce efficient and sustainable programs and outcomes, and help reduce assistance and protection costs. In addition, they would allow refugee protection programs to be effective and remain relevant as they would be directly informed by refugees and be attuned to changing trends and needs. Beyond policy considerations, this second principle must be a pragmatic priority for refugee agencies and other advocates. Small programmatic steps can be taken to ensure that input from refugees is solicited and incorporated in meaningful ways in designing and implementing the services they receive.

Finally, the last principle sets down the importance of culturally appropriate programs to prevent unintentional and unwanted discrimination. Practically, this recommends language appropriate information and culturally trained staff for

instance. Programs must also have the specific goal to reach, engage and serve most vulnerable groups among the refugees (i.e. women, children, elderly, and disabled) in meaningful ways. In developing countries, when poverty and the lack of livelihood opportunities is a problem, these initiatives must also be designed with careful consideration of local disadvantaged communities to minimize xenophobic and other hostile confrontations. These programmatic considerations would once again ensure effective and relevant responses to protection needs without neglecting or penalizing those most in need in the process.

In conjuncture to the need for policies to embody these three principles, policies must be in place to ensure enforcement and accountability. Grievance procedures and remedial actions must be clearly outlined and protected by the state and any other agent of protection. Programmatic monitoring and evaluation would ensure a formal system of quality control and efficiency of public and private administration. These safeguards would not only promote good governance but they would also ensure that any economic or political gain as previously discussed is not undermined by corruption and malpractice.

In summary, the theory induced from the Lao Hmong refugee experience would promote a state of meaningful participation and self-sufficiency, restoring the human dignity that the refugees aspire to in order to feel protected, without challenging states' interests. Policy reform guided by its core principles is daunting and complex because it requires a revolution of mindset and thought. But it would undoubtedly give states significant political influence in the international sphere, lessen administrative burden and overall costs, and combat local corruption and arbitrary abuse. In addition, the monitoring and regulation of proper status determination would deter fraudulent claims rather than attract an uncontrollable outpouring of real refugees. Responding to moral obligations of refugee protection is therefore the right thing to do and the politically sensible thing to do.

4.3 Opportunities and Challenges in Refugee Protection in Thailand

The findings of this project unequivocally points to the moral obligation to create a protection space that fosters full engagement and empowerment for refugees to realize their rights and meet their own needs. To appreciate the range of its possibilities in Thailand, let us consider the challenges and opportunities that the Thai context offers to implement such considerations.

4.3.1 Challenges in Refugee Protection in Thailand

Since the end of the Second Indochinese, the RTG largely abandoned highly institutionalized and structured efforts funded by international agencies to adopt locally and individually negotiated solutions. The result doubly undermines effective protection with: 1) an inadequate legal framework that unjustly criminalizes refugees and 2) a lack of standardized practices that may lead to abuse, corruption and inconsistencies.

The rationalization of the RTG's position on refugee issues is a systematic negative agenda setting strategy and can be categorized as follows:

- (1) Refusing to problematize the issue and denying the necessity to address the problem with political action: The MoI is denying that there exists a problem with its current legal system at all, arguing that Thailand has practiced a tradition of "humanitarian goodwill" in "adherence to basic protection principles" for over twenty years, even in the absence of actual refugee policy (Chongkittavorn, 2010; Green et al., 2008).
- (2) Fearing the societal consequence of a proposed policy: Grappling with current ethnic division in Southern and Northern provinces, the RTG is defending policy choices that reinforce a national identity while rejecting the otherness of refugees by denying them means to social integration (Grundy-Warr, 2004). Accordingly, the RTG and the general public believe that establishing a

hospitable and humane environment would create a pull factor and worsen the country's refugee situation (Lang, 2002).

- (3) Arguing for a better-suited non-governmental approach to resolve the problem: In some cases since the mid-1990s, the Thai authorities have readily acknowledged their inability to respond and ceded its immediate humanitarian duties to local, international and some ethnic-based NGOs, both local and international, while maintaining control through provincial government and military authorities (Pollard, 2010).

The lack of political will within the RTG is evident. The RTG's resistance to create comprehensive refugee regulations is an indication of its reluctance to admit refugees and its political preference to remain a temporary host country, regardless of the protracted situations that exist in the country.

4.3.2 Opportunities in Refugee Protection in Thailand

On the other hand, diverging forces are demanding to widen the protection space even within an inadequate legal system. Those alternative discourses are built on two set of opportunities: 1) a growing Thai civil society directly challenging the RTG's position on refugee rights and 2) an NGO-led protection delivery program in Thailand. First, with three decades of democratization process, civil society in Thailand has evolved and gained popularity within the general Thai public. Thailand's expanding intellectual base challenges traditional power institutions and has fostered the establishment of alternative media outlets to discuss their views openly (Phongpaichit, 1999). Thai civil society has turned its general focus inward, looking to promote local people's movements onto these new media platforms, and advocating for the rights of the refugee communities (Ibid.; Lang, 2002). For instance, a May 2009 television broadcast of Thailand's *Bhai Nee Mee Kham Top* (This Afternoon We Have the Answer) famously featured a panel with a spiritual leader, a noted economist and a labor activist who presented moral, political and economic arguments for allowing refugees to lawfully join the work force (USCRI,

2009). There still exists a vivid, divisive and unresolved debate on this particular subject, but grievances and aspirations of refugee communities have a larger forum and receptive audience.

Second, ironically, the result of the RTG ceding humanitarian service delivery to the NGO sector has provided an opportunity for civil society groups to report protection failures and to develop innovative services that promote refugee participation and self-sufficiency. Indeed, Médecins Sans Frontières (MSF), the International Organization for Migration (IOM), International Rescue Committee (IRC), the Thailand Burma Border Consortium (TBBC), etc. and other international and local groups have been serving many camps and gained a front row seat to be able to witness, report and advocate against the treatment of refugees by Thai authorities (Pollard, 2010). For instance, MSF formally and publically denounced acts of intimidation perpetrated by the RTA to restrict Lao Hmong refugees from accessing medical services and supplies in Petchabun province (MSF, 2009). The mission eventually ceased its operations in Thailand in protest in the fall of 2009, drawing international attention to the situation.

In contrast, some NGOs have found a compromise with the government to be able to deliver innovative services to refugees and expand protection opportunities. For instance, TBBC subscribes to a more pragmatic approach by working alongside provincial MoI representatives and thereby maintaining critical access to refugee communities. With the permission of the MoI, TBBC emphasizes developing program structures that empower refugees in the camps to self-manage those same humanitarian services they receive (Dunford, Interview, July 20, 2010). In the urban settings of Bangkok and Lopburi, some of the current programs and efforts also promote similar programmatic priorities of empowerment and self-sufficiency in the case of the Lao Hmong:

- *Cash assistance and material support*: UNHCR distributes monthly allowances to be administered by and collected at the BRC proportionate to the family size with a cap of 7,800 Bath per month (Refugee 2b, Interview, July 19, 2010; Refugee 12,

Interview, July 18, 2010). In Lopburi, refugees collect their cash assistance via debit cards, which reduces travel and the security risks involved. Health expenses and primary school fees are fully covered by the BRC and Lao Hmong refugees receive some material support from individual good Samaritans and local churches.

- *Language and skills training:* Free language classes in both English and Thai and basic computer skills training are offered at the BRC (Refugee 11, Interview, July 23, 2010). Limited resources present issues of space and availability. Participation is determined by age and/or merit. Some advanced courses of language on a merit base may be available but require travel to downtown schools (Refugee 9, Interview, July 17, 2010).
- *Cultural appropriateness:* UNHCR has two Hmong speakers (one male, one female) in the Bangkok office to communicate with the refugees. However, they only work part-time and are not always available (Refugee 1b, Interview, July 23, 2010; Refugee 2b, Interview, July 19, 2010). IOM also has a Hmong speaking staff who supports resettlement efforts (Beckers, personal conversation, July 20, 2010). Although the refugees have phone numbers to contact foreign embassies and other refugee agencies in case of emergency, those institutions do not have Hmong language capacity and may rely on Thai interpreters, delaying interventions.
- *Participation and engagement:* The BRC employs some of young adult refugees to run some administrative tasks in the office in exchange for a small stipend. Those few individuals are able to access information and disseminate it accurately and effectively in the community.

Finally, countering the RTG's negative agenda setting discourse, four embassies (i.e. US, Australia, Canada and the Netherlands) have extended resettlement offers to the Lao Hmong POCs and are actively seeking a diplomatic agreement with the MoFA to process and resettle their respective cases

(Zerbinopoulos, Interview, July 19, 2010; Marinovich, Interview, July 22, 2010). These four embassies will also respond to threats to the refugees' security as they are being reported to them (Zerbinopoulos, Interview, July 19, 2010).

4.3.3 Discussion on the Refugee Protection Space in Thailand

The number one challenge to effective refugee protection in Thailand is the lack of political will within the local government to recognize and address a complex and mounting situation. It keeps refugees in an illegal sphere and thus exacerbates their vulnerabilities. With innovation and ingenuity, NGO programs are offering alternative responses to cope with the hostile political climate and promote priorities that are consistent with the findings of this project. First, the cash assistance is a significant help to alleviate the basic cost of living in an urban setting. Second, the hiring of Hmong staff at refugee agencies, as well as their gender balance in the case of UNHCR, mitigates effectively potential language and cultural barriers to access information and protection. Third, the language and computer classes are especially helpful as they equip the refugees to seek some livelihood opportunities, though informal, and participate themselves in the delivery of services (i.e. Hmong staff at the BRC). Finally, access to modern communications media (i.e. email, cellular phone technology) strengthens their ability to reach out to refugee agencies and the international community (including the foreign diplomatic corps in Bangkok and members of the Thai civil society) for protection and support. It became especially critical during the 2009 forced repatriation when refugees were able to send alerts in English to human rights advocates and journalists discreetly using their cellular phones. Maintaining and expanding those programs is essential.

Some programmatic challenges still remain. Most are largely due to the limited capacity of these services, as previously stated. Other obstacles lie within the design of those programs. For instance, the cash assistance scheme in Bangkok poses numerous dangers to its beneficiaries. The first one is that of sustainability related to limited resources. Another dilemma is related to the illegal status of urban refugees and the risks they expose themselves to by travelling to collect their allowances.

Local police are aware of their transit and of the services provided by the BRC, heightening the potential for harassment, extortion, or even arrest. Finally, because the delivery of services and protection is highly centralized in the city, most refugees live in very close proximity of the BRC and of each other. It renders them vulnerable to routine police raids. Alternatively, in Lopburi, the debit card system allows the refugees to collect their allowances in a more anonymous and discreet way. Their homes are more dispersed and only rarely subjected to raids (Refugee 11, Interview, July 23, 2010). There are no apparent reasons that would prevent implementing a similar system in Bangkok where ATMs abound.

Coping with a hostile political environment is however not enough. The moral obligations as a host country and duty bearers must regain preeminence through a systematic counterargument of the RTG's negative agenda setting. In addition, as demonstrated in the previous chapter, carefully considered, the protection demands of the Lao Hmong refugees do not challenge state interests. Economic, political and social gains can be generated for both the state and the refugees. Principles of empowerment, participation and non-discrimination reinforce a systematic and sustainable process because the policies and structures put in place would be reinforced by buy-in and support refugees and the state. The accountability established would prevent the type of implementation and enforcement discretion that leads to protection failures and that is often symptomatic of inadequate legal frameworks as it is the case in Thailand and in many other countries. As established before, these policies would alleviate administrative burden, produce sustainable programs and outcomes, and help reduce assistance and protection costs. But most importantly, good standing within the international community may help expedite resettlement efforts and satisfy Thailand's wish to remain a temporary settlement country.

It is therefore the place of all actors (i.e. with the House of the Representatives, Thai civil society, UNHCR, and the international community) to be active participants in shifting the RTG towards a more favorable view to remedy the lack of refugee policy in Thailand. For instance, UNHCR in particular could be more

aggressive in lobbying for more space to exercise its monitoring and protection mandate. But aside from external influences, there is a growing cry by Thai activists to convince Thai policy makers that its state of stagnancy and denial has damaged the country's international standing and is against local cultural values of altruism and hospitality. As much as international pressure must continue, the power of endogenous arguments and momentum must not be underestimated when attempting to bring political prominence to an issue before a state government. As a result, efforts must also be directed to change the Thai public opinion that often exhibits xenophobic and discriminatory attitudes, to demand respect for refugee rights from their own government.