



CHAPTER I

INTRODUCTION

This project arose when I witnessed the 158 Lao Hmong refugees in Nongkhai, Thailand—along with 4,371 Lao Hmong asylum seekers—being forced by the Royal Thai Army back into Laos on December 28-29, 2009. The 158 Nongkhai refugees had risked their lives to escape across the border and had been determined Persons of Concern (POCs) by the UN High Commissioner for Refugees (UNHCR). They had been extended resettlement offers from third party countries. It was therefore profoundly shocking that their refugee status—based on a well-founded fear of persecution that was verified and recognized by international authorities—did not preempt the Royal Thai Government (RTG)’s decision to push the group back.

The refugees themselves asked me why the international community stood by such a blatant breach of international refugee law without intervening (Refugee 1a, Interview, April 11, 2010). To convince me of their predicament, the refugees would recount their terrifying stories of flight to find hope under the authority of the UNHCR; the only agency that could effectively protect them, they were told (Refugee 1a, Interview, April 11, 2010). To them, it was hard to conceive that the international community could allow such a large scale violation of international law to be announced and carried out with impunity.

I didn’t have a good answer. I wasn’t sure how to convey to them that the current refugee regime and its protection provisions were dictated by the nation-state paradigm. In my mind, they couldn’t possibly understand the complexity of international relations and the fundamental idea behind a realist doctrine and the statist views that would have states’ self-interests determine action or inaction. In this particular understanding of geopolitics, international laws--such those dictating refugee rights--would take the backseat or be interpreted at the convenience of states.

But they deserved an explanation. After we engaged in a long discussion of why their situation had remained static for so many years, my assumption that they

could not grasp the reasons behind their uncertain circumstances was ultimately proven wrong. They understood that what was at stake was beyond the small numbers of their group. Nonetheless, they shook their heads and responded: “That is not right.” (Refugee 2a, Interview, May 29, 2010; Refugee 1a, Interview, April 11, 2010).

When I asked them who was helping them and how, it became evident they were given information about protection mechanisms sparingly. One refugee described advice from a human rights advocate:

“[They] said to do [interviews with journalists], so I did it. But I never know what they do with my words and if it actually helps us or not.”

(Refugee 1a, Interview, April 11, 2010)

Another refugee said of his interaction with the Australian consular officers after a first interview:

“Then they said to wait and that they would call us if they needed to see us. But they haven’t called since 2006. I don’t know if it’s because they don’t want me anymore.”

(Refugee 5, Interview, July 16, 2010)

It was apparent that these refugees were asked to take part in protection mechanisms without fully comprehending the process and the possible ramifications of participating in them. It seemed their protection needs were defined for them, as well as the steps to secure it. The incongruity of this premise was not acceptable but its practice appeared to be very real.

1.1 Statement of Research Problem

The issue of refugee protection is immense and growing. In the US-led war in Afghanistan alone, by January 2002, approximately 200,000 Afghan nationals had crossed into Pakistan and 1.2 million had been internally displaced; a crisis that would require millions of dollars in yearly humanitarian assistance, as projected by UNHCR (Helton, 2002). In 2009, the number of forcibly displaced persons was estimated to have reached 43.3 million, of whom 15.2 million were refugees (UNHCR, 2009). Human displacement, both internal and external, is becoming a global humanitarian crisis, a political liability and a challenge for economic development for the international community at large (Smith, 2005). In this light, the refugee is framed as a nuisance to avoid at all costs or to eliminate as quickly as possible. It is a perception that is curiously empty of any human compassion despite the harsh circumstances surrounding human displacement. It also a perception that dangerously alleviates the urgency of protection responsibilities by the state, the international community and individuals (Stein, 1986). Institutional and political refugee safeguards against these negative perceptions have had spotty success and refugees continue to suffer abuses, threats and negligence even after their flight to safety (Arulanantham, 2001).

Many scholars agree that the refugee regime is outdated; the post-World War II framework and provisions of the main refugee legal documents are inadequate to prescribe solutions to the nature and the scale of current refugee crises (Helton, 2002; Rodger, 2001; Scheinman, 1983). The refugee protection system face enormous challenges; 5.5 million refugees live in protracted situations and four fifths are hosted by developing countries--two scenarios exacerbating the vulnerability of those populations (UNHCR, 2009). Social scientists, field practitioners, and human rights watchdogs alike recognize the urgency of policy reforms to remedy the contextual and legal inadequacy of current policies and institutions regulating refugee affairs. Though reform proposals abound, the debate itself is often dominated by a state-centric paradigm, emphasizing the necessity to appeal to the state's self-interest to address issues of implementation, enforcement and reporting (Arulanantham, 2001; Hathaway, 2006). As a result, there is an increasing securitization of refugee protection arguments at both the national and international level, with the refugee as

the focal point of security concerns (Harris-Rimmer, 2010). Though those statist views rightfully advocate for the creation of pragmatic incentives for states to see protecting refugees as being to their political advantage, such argument risks to eclipse the importance of the moral grounds of refugee protection and its *raison d'être*—the refugee—in policy formulation.

Have the primary instruments of international refugee law been perverted to excuse states of their moral protective duties? Have we simply lost sight of the most important consideration—the refugee—and formed policies of political convenience founded in an outdated framework instead? There is a knowledge gap in translating meaningful evaluation of the refugee experience into serious theoretical and empirical contributions to the refugee protection forum and its reform debate. Often criticized as unrealistic and uninformed, the refugee perspective needs to be documented and placed back in the center stage of finding a new path to refugee protection. These considerations are the impetus for this research project.

1.2 Objectives

Main objectives:

- To provide a detailed and independent case study of empirical protection opportunities and failures in the experience of the Lao Hmong refugees;
- To give recommendations to formulate refugee protection policy based on the lessons extracted from the experience of the Lao Hmong refugees.

Sub-objectives:

- Understanding how the Lao Hmong refugees have experienced refugee protection in Thailand.
- Understanding the factors behind the Lao Hmong refugees' experience and perceptions of protection.

- Understanding the Thai context and uncovering protection failures and opportunities in the current Thai policy framework.
- Outlining possible remedial opportunities to current protection challenges through a theory grounded approach to the experience of the Lao Hmong refugees.
- Establishing the extent to which the perceptions and demands of protection by the Lao Hmong refugees can guide policy formulation.

1.3 Research Questions

- How can the Lao Hmong refugee experience in Thailand inform refugee protection?

Secondary Questions:

- How do the Lao Hmong refugees define protection?
- What do the Lao Hmong refugees demand specifically in terms of protection?
- What opportunities and challenges for protection exist under current Thai law, given that it is not party of the 1951 Convention Relating to the Status of Refugees?
- To what extent can the Lao Hmong's demands of protection influence the formulation of protection policy and best practices?

1.4 Hypothesis

State-focused protection institutions and mechanisms are failing the object of their protection mandate (i.e. the refugee herself) by largely ignoring direct concerns for refugees' views, needs and human dignity. The existing refugee regime is deeply enshrined in the rule of the state and often loses focus of its *raison d'être* to favor state political priorities.

This project contends that those failures can be equally identified in the personal experience and testimonies of refugees. Although they are often discredited for being unrealistic and uninformed, these accounts may serve to formulate not only an empirical critique of state-focused refugee protection, but also recommendations to reform it.

Prominent reform proposals to remedy protection failures perpetuate this paradigm, thus supporting the politicization of a fundamentally humanitarian issue. By letting refugees define “protection”, the debate can regain its humanitarian dimension and reclaim its moral grounds as tactical tools to regulate for best practices of refugee protection.

1.5 Research Methodology

This project intends to explore the theoretical and political significance of the narrative of the refugees themselves in refugee protection reform. In order to truly let the refugee speak for herself and tease out lessons from her experience of protection, this research adopted a grounded theory approach because of its field- and participant-focused emphasis. Therefore, primary data collected was mostly qualitative, though some basic quantitative data was gathered as well (e.g. age, gender, marital status, etc.). Accordingly, the methods used to complete this research study relied mainly on the following approaches:

- *Individual and group guided interviews*: This method served to gather two sets of primary data: (1) personal testimonies of individual experiences of Lao Hmong refugees with and perceptions of protection and (2) evidence and statements of refugee protection agency on behalf of the Lao Hmong refugees.
- *Literature review and documentary research*: This method served to gather secondary data and consisted of literature and media analysis.

The first set of interviews consisted of thirteen in-depth interviews were conducted in person with refugees in the safety of their homes with some

consideration of balance for age groups, gender and social status. Some were group interviews; some were individual interviews. See Appendix A for sample questions. Informal conversations and ethnographic observations were also part of the data collection process.

The selection of refugee participants eventually took place in two distinctive ways. It was initially guided by those relationships already established by a previous work context. Then, some refugees spontaneously expressed interest in participating in the study. This second group reported a significant lack of communication with refugee agencies. They perceived this project as a valuable opportunity to voice their protection concerns directly. This gave some indication of: 1) a need for more regular communications between refugee agencies and refugees; 2) the refugees' desire to share their perspective and participate in their own protection.

The open-ended, semi-structured interviews with refugees all followed a similar, yet natural progression. The first part often consisted of semi-formal answers to a set of questions, with detailed dates and facts. The second half of the interview then became a sort of debrief of the first half, during which the interviewees would go back and contextualize their previous statements with more vivid examples and inhibited statements.

The second set of interviews involved key informants from refugee agencies (both intergovernmental—UN, IOM—and independent—IRC, TBBC, etc.) and foreign embassies (i.e. US). These individuals were approached through direct email and/or phone contact after personal and/or professional referrals. Given the sensitive nature of the issue and of the particular group of refugees studied, referrals ensured a positive response for a personal meeting. Also for the same reasons, it resulted difficult to obtain interviews with some government officials. Three embassies involved in the protection of the Lao Hmong refugees (i.e. Australia, Canada and the Netherlands), the Ministry of Foreign Affairs, the Ministry of Interior, and representatives from UNHCR did not respond to early inquiries.

The final list of these key informants is included in Appendix E. The interviews successfully scheduled took place in their agencies' offices or at coffee shops downtown Bangkok. The purpose of these interviews was to survey not only internal systems and practices of individual agencies in terms of refugee management and protection but, more critically, their broader refugee policy. See Appendix B for sample questions.

Finally, the literature review and documentary research served the main purpose of providing theoretical justification and factual context for this research. On one hand, this secondary data research tested and supported the superiority of a grounded theory approach to fully capture and analyze the refugee voice. On the other hand, it provided a clearer factual understanding to: 1) create an overview of the current refugee regime and protection mechanisms, 2) accurately assess the situation of the Lao Hmong refugees in Thailand, 3) help mitigate the inability to speak directly with officials about local refugee policy and practice.

1.6 Grounded Theory Approach

Despite numerous statist opponents, recognizing that serious protection reform must be derived from the meaningful consideration of the refugee experience and must cater to the refugee's protection needs may be a fairly agreeable proposition for most. The challenge lies largely in the definition of "meaningful consideration." What does that mean? How can we bring the refugee center stage while avoiding tokenism? Finally, often discredited as uninformed subjective perceptions, what validity and value do refugee testimonies hold to contribute significantly to the forum of reform debate and policy formulation?

The meaningful consideration and interpretation of qualitative data—in this case refugee testimonies and perceptions—are a challenge and are often criticized for lacking scientific objectivity and discipline. Developed by Barney Glaser and Anselm Strauss in 1967, the Grounded Theory (GT) emphasizes induction as the main mode

of scientific reason, going against traditional research methods (Glaser and Strauss, 1967). The GT method aims at systematically analyzing qualitative data with no prescribed theoretical framework. The underlying advantage is to allow the experience and the perceptions of the research participants to speak for themselves while identifying and coding core variables to generate an analytical schema or a theory (Brown, Stevens, Trojano, and Schneider, 2002). In the case of refugees defining protection, question that may help structuring and categorizing those variables may include “How do they speak about protection?”, “How do they experience protection?” and “What do they do to protect themselves?” Another advantage of a more constructivist school of GT lies in the flexibility of its structure and its interpretation of primary data, lending itself to remain relevant when new data is introduced or, in the case of refugee protection, when new displacement trends and protection needs arise (Charmaz, 2006).

Some of the main criticisms include the belief that one cannot completely rid himself of external elements in the analysis of any information and the false elevation of the grounded theory results to the status of ‘theory’ (Cohen, 2010; Thomas and James, 2006). Ironically, constructivist grounded theorists do not refute those attacks. On the contrary, they point out that they do not attempt to be objective in their data collection or analysis, but instead seek to problematize and to clarify assumptions and to make those assumptions clear to others (Charmaz, 2006).

For the purpose of this project, the goal is to understand how refugees form a sense of protection grounded in their experience and how the resulting definition can serve as consideration for policy reform. A grounded theory approach provides the perfect tool to extract that information and draw the necessary lessons.

1.7 Scope of Research and Limitations

This research study does not address the determination of refugee status, the technical and political aspects of its actual process, and the protection mechanisms of

the asylum seeker at that stage. Additionally, this project will not consider protection mechanisms once the refugees have been forcibly repatriated to their country of origin. Adding to time and financial constraints, there would be serious concerns of access to primary data sources (i.e. refugees and key informants) and, possibly, of security.

This research only surveyed individuals within the groups living in the cities of Lopburi and Bangkok, Thailand. The selection of these groups for study is based on two main reasons:

- *Definitional:* The groups in Lopburi and Bangkok have been recognized as POCs by the UNHCR who determined founded fear of persecution and merit for protection.
- *Practical:* For time and distance constraints, the study did not include the group known as the “Nongkhai group,” also POCs, who were forcibly returned to Laos. However, given the return of some Nongkhai families, interviews will most likely involve some of the returnees.

One of the main objectives of this research project is to re-direct the focus of refugee protection reform debate on the refugee. This preoccupation has clearly steered the choice of the most appropriate approach and alternatively evaded others. Originally, this project had proposed to use the Rights Based Approach (RBA) as a possible theoretical framework because it recognizes the agency of the moral recipient of any project through the principles of empowerment, meaningful participation, and non-discrimination (Hamm, 2001). While the timeliness and relevance of its principles can still be appreciated, starting with a specific theoretical framework would have biased the testimonies of the refugees. Therefore, as discussed in the previous section, choosing a grounded theory approach was justified as the most valid method to fully capture the refugee experience and let their voices define protection in their own terms.

The presentation and analysis of this study’s findings is admittedly personal. The use of a first person account is intentional to draw out what has been ignored,

censored, and suppressed by dominant voices in the realm of refugee protection policy, i.e. states. Borrowing from feminist methodology, this study seeks to liberate itself from traditional research processes that may be distant and “dispassionately objective” (DeVault, 1996: 34). DeVault stresses that by recognizing a diversity of perspectives, social researchers open possibilities for direct interaction with participants, give significance to what participants value—not researchers—and validity to a constructivist outcome that includes all involved, including researchers themselves. It aims to highlight the pluralism of the collected refugee testimonies and their alternative perspectives for a social and political revolution that is required for truly meaningful reform of protection and mechanisms (Saarinen, 1988).

Finally, this project recognizes that the urban setting where the participants live may largely define their protection needs. Due to practical reasons spelled above, this project therefore neglects to encapsulate the situation of refugees in rural and camp settings and the findings may reflect more accurately the protection needs of urban refugees in the cities of Bangkok and Lopburi. But I maintain that it would be overly dismissive and erroneous to conclude that the research may lose relevance in consequence, which will be discussed more in depth in the following section.

1.8 Significance of Research

Most literature on refugee protection takes the statist perspective of the state, focusing criticism and reform proposals on strategies to alleviate, facilitate and/or enforce state protection obligations. This research study attempts to provide an alternative lens to consider the debate by taking the perspective of the refugees. In this attempt, the significance of the project is multi-fold.

First, it is too often that the refugee protection debate will exclusively study the agents of protection (i.e. the state) and their failures. Consequently, it largely neglects to consider the potential agency of the moral patient of protection—the refugee herself—in order to examine those failures and to identify paths for corrective

actions. Adopting a grounded theory approach will help address that by re-focusing such analysis on the refugee.

Second, if the refugee protection debate seeks to provide better assurance of effective protection to vulnerable refugee groups worldwide, updated and diverse information must be produced and analyzed to educate greater policy reform proposals. The conflict of interest inherent to the UNHCR—main author of such information—puts into question the independent monitoring of refugee situations and poses serious challenges to genuine improvement of refugee protection. This project seeks to present the case study of the Lao Hmong refugee experience as a solid report of protection failures and opportunities to educate policy formulation.

Thirdly, the Lao Hmong refugee situation in Thailand is ongoing with little end in sight. Ironically, there does not exist comprehensive reports of the events and of the advocacy efforts to offer a suitable exit out of the diplomatic deadlock. Without such documentation to educate new strategies, it is difficult to conceptualize innovative approaches to overcome current obstacles.

Finally, refugees in Thailand--and worldwide--live in diverse settings. This project acknowledges that their location of settlement--rural, urban or camp--determines in large part their protection needs. So the exact findings here are not to be taken and generalized to all refugees in Thailand or elsewhere. However, because refugees share very similar core experiences, the relevance of these themes and lessons to their context must serve as a validation of the applicability of these new theoretical guidelines for policy formulation processes