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A refugee-centered perspective on refugee protection mechanisms: The case of the Lao Hmong refugees in Thailand*

My Lo and Vira Somboon

Abstract

Refugees are people seeking for stability and security in their life which the government of their own country failed to provide them. In many countries refugees are still treated as illegal migrants and are not granted the protection that they need to pursue a secure life with dignity. Failing to protect asylum seekers is a threat to human security and this problem should be addressed in the public sphere. Thailand has adopted many waves of refugees from neighboring countries but refugees who seek asylum in Thailand have never had the protection they deserve from the Thai authorities. The case of the Lao Hmong is a very good example of this issue. This article addresses this problem from the perspective of the refugees themselves.

Introduction

This paper arose after one of the authors witnessed 158 Lao Hmong refugees—along with 4,371 Lao Hmong asylum seekers—being forced by the Royal Thai Army back from Nong Khai, Thailand into Laos on 28–29 December 2009. The 158 refugees had risked their lives to escape across the border to seek the protection of the UN High Commissioner for Refugees (UNHCR), had been designated as Persons of Concern (POCs), and 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

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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 were left with the question of "why does the international community stand back from such a blatant breach of international refugee law without intervening?" The answer is very simple. The state’s interest is the main focus in foreign policy making especially from the view of fundamentalist, statist, and realist approaches. In this particular understanding of geopolitics, international laws, such as those dictating refugee rights, will take a backseat or be interpreted at the convenience of states to serve their national interest.

These refugees were asked to take part in protection mechanisms without fully comprehending the process and the possible ramifications of participating in them. The refugees understood that 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 very real.

Statement of the 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. This crisis would subsequently require millions of dollars in yearly humanitarian assistance, as projected by UNHCR. In 2009, the number of forcibly displaced persons worldwide was estimated to have reached 43.3 million, of whom 15.2 million were refugees. Human displacement, both internal and external, is becoming a global humanitarian crisis, a political liability, and a challenge to economic development for the international community at large. In this light, the refugee issue is framed as a nuisance to avoid at all costs or to eliminate as quickly as possible. This perception is curiously empty of any human compassion despite the harsh circumstances surrounding human displacement. This perception also dangerously underestimates the urgency for the state, the international community, and individuals to assume the responsibility of protection. Institutional and political attempts to counter these negative perceptions have had limited success and refugees continue to suffer
abuses, threats, and neglect even after their flight to safety.  

Many scholars agree that the refugee regime originating in the post-World War II period is inadequate to prescribe solutions to the nature and the scale of current refugee crises. The refugee protection system face enormous challenges. Some 5.5 million refugees live in protracted situations and four-fifths are hosted by developing countries—both factors that increase the vulnerability of refugee populations. Though consensus over the urgent need for policy reform is widespread, 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. As a result, there is an increasing emphasis on security at both the national and international level, with the refugee as the focal point of security concerns. Though these statist views rightfully advocate the creation of pragmatic incentives for states to see protecting refugees as their political advantage, such argument risks eclipsing the importance of the moral grounds for refugee protection and its raison d’être—the refugee—in policy formulation.

Using the case study of the Lao Hmong refugees in Thailand, this paper contends that protection failures and guidelines for reform can be readily identified in the personal experience and testimonies of refugees. Although they are often discredited for being unrealistic and uninformed, these personal accounts may serve to formulate not only an empirical critique of state-focused refugee protection, but also its implications and then recommendations to reform it. By letting refugees define “protection” themselves, the debate can regain its humanitarian dimension and reclaim its moral ground as tactical weapons to fight for best practices of refugee protection.

Methodology and scope of research

This paper explores the theoretical and political significance of the refugees’ narrative about refugee protection reform. This research adopted a grounded theory approach with an emphasis on fieldwork and participants. Developed by Barney Glaser and Anselm Strauss in 1967, grounded theory aims at systematically analyzing qualitative data with no prescribed—or traditional—theoretical framework. The aim is to allow the experience and perceptions of the participants
to speak for themselves while identifying and coding core variables to
generate an analytical schema or theory.\textsuperscript{12} A constructivist version of
grounded theory has a flexible structure of the primary data which
means that it remains robust when new data are introduced or, in the
case of this study of refugee protection, when new displacement trends
and protection needs arise.\textsuperscript{13}

The approach has been criticized on grounds that the analysis of
any information cannot be free of some external elements and that it is
false to elevate this approach to the status of "theory."\textsuperscript{14} Constructivist
grounded theorists do not refute those attacks, but 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.\textsuperscript{15}

Mostly qualitative primary data was collected through in-depth
interviews with four key informants, thirteen semi-structured,
in-depth interviews, and some ethnographic observations of study
participants (i.e., Lao Hmong refugees). The participants were selected
either because of existing work relationships or through self-identifica-
tion. All participants came from refugee groups living in the cities of
Lopburi and Bangkok, for two reasons: these groups have been recog-
nized as POCs by UNHCR, indicating that they have a justified fear
of persecution and merit protection; and time, distance and security
constraints dictated the choice.

One of the main objectives of this research is to redirect the focus
of debate on refugee protection reform towards the refugee. This
preoccupation dictated the choice of approach and analytical mode.
First-person accounts highlight what has been ignored, censored,
and suppressed by states that are the dominant voices in the realm
of refugee protection policy. Borrowing from feminist methodology,
the analysis in the second part of this paper seeks to avoid traditional
research processes that may be distant and "dispassionately objec-
tive."\textsuperscript{16} DeVault stressed that by recognizing a diversity of perspectives,

social researchers open possibilities for direct interaction with partici-
pants, give significance to what participants value—not researchers—
and validity to a constructivist outcome that includes all involved,
including researchers themselves. This approach aims to highlight
the variety of the selected refugee testimonies and their alternative
perspectives for a social and political revolution that is required for
truly meaningful reform of protection and mechanisms.\textsuperscript{17}

Finally, this paper recognizes that the urban setting where the participants live may largely define their protection needs. For practical reasons, this project does not cover the situation of refugees in rural and camp settings. The findings thus may reflect the protection needs of urban refugees in the cities of Bangkok and Lopburi. Though the lessons presented here will need to be contextualized to other situations to strengthen their application, it would be overly dismissive and erroneous to conclude that the research may lose relevance in consequence.

\textbf{The prominence of state-centric views in the refugee protection regime}

The current refugee regime still finds its founding principles in the 1951 Convention Relating to the Status of Refugees and its subsequent 1967 Protocol. These two texts define refugees, their rights, and the obligations of moral agents (state, international community, individual) to protect refugees and their rights. However, the effectiveness of these laws has been undermined by changes in the historical context and by states' concerns over sovereignty. First, the 1951 Convention was arguably designed to provide a legal framework for dealing with displaced persons after the World War II.\textsuperscript{18} The situation was clear: European nationals had been forced outside of the borders of their country of nationality by Nazi Germany and its sympathizers.\textsuperscript{19} Today, wars and repressive regimes result in human displacements that are often internal by nature, overwhelming in terms of the sheer numbers of people, and located mostly in areas of the poor Global South that do not have the resources or mechanisms to provide protection.\textsuperscript{20} The old legal arrangements are inadequate for dealing with these new trends as they do not address internal displacements, non-state threats, failed states and weak economies, and stateless individuals.\textsuperscript{21} The definitions and processes that were designed for another time and another place cannot cope with current reality.

Secondly, states that were concerned about potential infringement on their sovereign rule welcomed the inclusion of a second paragraph to follow Article 33 of the 1951 Convention on non-refoulement, as stated below:
The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

This clause opened the door for states to deploy a powerful argument in order to avoid fulfilling their protection responsibilities—that of national security. States thus portray refugees as competing for scarce resources and thereby undermining the integrity of the state (peace, order, identity, etc.).\textsuperscript{22} The security discourse allows states to excuse any reluctance to fulfill their moral and legal obligations to provide protection and undermines fundamental principles of the refugee law, such as non-refoulement. Though originally drafted to protect the refugee in the face of great vulnerabilities, these legal instruments have been widely interpreted to serve state's political convenience and have become unfit to respond to modern displacement crises.

UNHCR plays a very important role in refugee protection. The agency has a uniquely apolitical mandate that consists in the enforcement and oversight of the 1951 UN Convention Relating to the Status of Refugees.\textsuperscript{23} Over the last few decades, UNHCR has shown institutional flexibility by adapting to crises of human displacement and expanding its mandate to assume an increasingly important role in the delivery of refugee relief, intervening unilaterally where states have failed using its humanitarian command. Ironically, in doing so, UNHCR has seen its protective responsibilities somewhat eclipsed by urgent priorities to provide humanitarian aid.\textsuperscript{24} In addition, UNHCR faces a conflict of interests that is two-fold. First, the agency is both the \textit{de facto} and \textit{de jure} authority to deliver refugee rights and the authority to police proper enforcement. Second, the fact that the UNHCR is an organization of member states hinders objective implementation, enforcement and reporting.\textsuperscript{25}

Finally, despite empirical evidence of an alarming trend of the erosion of refugee protection law, careful study shows that no state will admit to breaching such principles as that of non-refoulement. Jessica Rodger (2001) uses the examples of Rwandan, Liberian, and Kosovar refugees to demonstrate that states will go to great lengths to legally justify their denial of protection. Similarly, the Royal Thai
Government argued that the forced repatriation of Lao Hmong in December 2009 was largely voluntary. Though the accuracy and validity of these excuses may be challenged, when states simply claim to be acting lawfully, the moral grounding of refugee law as a powerful and strategic tool to promote ethical behavior is severely eroded. Reaffirming the refugee as a moral recipient, rather than a political and/or economic liability, and her experience as the starting point of protection policy reform and best practices, constitutes a convincing argument from which states cannot easily turn away.

The state of refugee policy in Thailand: Legal inadequacy

Currently not a party to the 1951 Convention, Thailand has nonetheless a long history of hosting waves of refugees from neighboring countries and obeys its own national laws in dealing with refugees. Motivated by the desire to build strong foreign relations with the West and the necessity to address the overwhelming logistical and economic needs of asylum seekers, the Royal Thai Government (RTG) aligned itself with the US and the Western block to preserve Thai borders, participating in a highly institutionalized and well-funded program in the decade following the second Indochina war to host over 400,000 refugees, most in flight from the communist Pathet Lao and Khmer Rouge, and later from the Vietnamese invasion of Cambodia.

The RTG officially requested the assistance of the UNHCR in 1975, leading to a formal agreement and the creation of the Operations Center for Displaced Persons (OCDP) and provincial authorities under the Ministry of the Interior (MOI). However, the current Thai legal framework remains largely inadequate to deal with refugees. All individuals who enter Thai territory without proper consular documentation are classified as "illegal immigrants," regardless of the causes of their uprooting. The MOI defines a "displaced person" as someone "who escapes from dangers due to an uprising, fighting, or war, and enters in breach of the [1979] Immigration Act" and thereby is prima facie an illegal immigrant. This law deprives a refugee of any legal protection and criminalizes an already vulnerable individual, which is inconsistent with the 1951 Convention's definitions and legal obligations.

The result is the exercise of considerable flexibility in applying inappropriate immigration laws to refugees and asylum seekers in Thai-
land. Over the last 30 years or so, initiatives for dealing with refugees have evolved from highly institutionalized and structured efforts by international agencies to providing solutions locally and individually through negotiation with provincial governments. The room for local discretion has in some instances resulted in the exercise of humanitarian compassion, and, in others, military ruthlessness. It is clear that RTG has a statist view of refugee affairs—motivated by concerns over political alliances and economic advancement and justified by arguments of national security and sovereignty.

The Lao Hmong refugee experience: The erosion of protection rights

The Hmong were among the first waves of Indochinese populations seeking refuge in Thailand after Laos fell to the Lao People's Revolutionary Army in 1975. Having been recruited by the CIA to fight alongside the Western-backed royalist forces, thousands of Hmong fled in fear of reprisals by the Pathet Lao. Many stayed behind to surrender to communist political control and ideological indoctrination or “seminars,” while other Hmong ex-combatants retreated into the mountainous jungle of northern Thailand and have allegedly led a low-intensity insurgent movement across the border.

The original camps housing Lao Hmong refugees that opened in Thailand were gradually closed. The last one—Huay Nam Khao camp in Phetchabun province—gave shelter to Lao Hmong asylum seekers with a variety of backgrounds. Some families were spillovers from previously closed camps; some were villagers who were forced off their land by the Lao authorities to make ways for new development projects; some had fled due to increased Lao military operations to repress Chao Fa remnants; and others were economic migrants. One group was designated as POC by the UNHCR in early 2006 after escaping from the camp to Bangkok while the rest were later screened by Thai authorities who classified approximately 800 as meriting protection. After three years of small-scale repatriation efforts and political deadlock, 4,371 Lao Hmong asylum seekers from Huay Nam Khao camp and 158 Lao Hmong UN-recognized POCs from the Nong Khai Immigration Detention Center were pushed back to Laos on 28–29 December 2009. Small groups of displaced persons remain in the
cities of Bangkok and Lopburi.

It became evident that the Lao Hmong had become undesirable political liabilities for Thai foreign relations.\(^{38}\) Third-party countries—namely the US, Australia, the Netherlands, and Canada—had extended resettlement offers and had started resettlement procedures, thereby lending support to the legitimacy of the Lao Hmong's claims of persecution.\(^{39}\) In the meantime, Thailand was allegedly receiving pressing requests from Vientiane to repatriate the group—requests which, if left unfulfilled, could jeopardize regional relations.\(^{40}\)

In addition, the urgency of their situation had vanished from the public sphere; it had been eroded by humanitarian fatigue over successive waves of refugees coming out of Laos since 1975, and by a long-standing national campaign to reassert "Thai-ness" while systematically "othering" displaced populations.\(^{41}\) In addition, the inadequacy of Thai laws to properly define a refugee combined with friction between locals and refugees were further undermining refugee protection efforts and weathering away the perception of protective responsibilities. Their rights were eclipsed by political priorities, unsympathetic public opinion, and humanitarian fatigue.

**How do the Lao Hmong define refugee protection?**

It is important to get a glimpse of the circumstances of the Lao Hmong's flight from Laos to Thailand. A married woman, mother of six children, shared her experience:

_We ran every day. We could not stay in one place. Once we stayed too long, the men would tell us to move. One would lead the group of women to another man ahead and he would lead us to the next man.... Like that from one man to another, we never knew whose husband we were going to see next. I would go for days without seeing my husband. You hear guns firing or you hear an explosion one day and you didn't know if you would see your husband again. And without your husband, you could not eat because when you dig for tubers, you need one person to dig and one person to keep watch for Vietnamese soldiers. So first, he would dig and give me his rifle. He'd show me how to hold the rifle and how to fire it. I would hold it so tight in my hands and I would shake so loudly, he..._
would tell me to stop making the leaves shake. [She laughs, covering her teeth with her hand.] Then, once he was tired, we would switch and I would dig and he would stand guard. Like that, until we had enough to eat. Our children didn’t know how to eat rice until we arrived in Thailand. The French [Doctors Without Borders/MSF] would give them rice and they didn’t know how to eat it. They would give them potatoes and they would take them and eat them....

[W]e could not bury our dead. We did not dare going back to the place where the attack was or people just would not return and we would keep moving. We would find dead bodies days or weeks later and leave them because maybe the Vietnamese were looking. We didn’t know how to be human anymore.... It was especially difficult to live as a woman. We [the women] lost all sense of shame. We didn’t have anything so we would just crouch down, bloody [during our menstrual cycles]. We would not even bother covering ourselves up. Even if you wanted to, you didn’t have anything to cover yourself with.... That is why it is so disheartening to be here now. We ran because we thought our children would not have a good future ahead living in those conditions. Now we are in the hands of the world [international community] and we still don’t know if our children will have a future. I don’t know how to be human.43

The facts related in her account are not particular to this participant. They convey poignantly the protection situation experienced by the urban Lao Hmong refugees. Yet, despite having left terrifying circumstances behind, they continue to experience desperation and uncertainty as refugees in Thailand: “we still don’t know if our children will have a future.”44 Her comment “I don’t know how to be human” is a common, yet complex Hmong idiom that translates someone’s hopelessness to have a life with a regained sense of human dignity compared to an existence that was devoid of human value and meaning, similar to that she endured while hiding in the jungle of Laos.45 It would be repeatedly spoken to me by every interviewee during this research.

Certain themes recurred as the refugees spoke of protection and expressed their concerns and needs: livelihood, fear, movement, education, and religion/culture. The other themes included interaction with refugee agencies and the Thai government, dealings with Thai
Hmong, communications, and repatriation. Let us study how the Lao Hmong refugees expressed their protection needs in each theme to understand better why these individuals who escaped serious security threats remained uncertain about their safety and future.

Livelihood

While conducting the interviews, significant time was spent at the refugees' homes around meal times. Observing the host family's actions and listening to their conversations during those times offered insight into their means of livelihood. For instance, a refugee from Bangkok confided that he would trade the comfort of his "freedom" to live in the Immigration Detention Center in Nong Khai because all basic expenses and services were delivered and paid for.\(^46\) Between the costs of rent and rice, his family of eight lived on less than a 100 baht per day to cover other foods, medicine, and school fees. During another meal, two teenage sisters were sent downstairs to purchase food from local street vendors because "they speak Thai like the Thais"\(^47\) and were more likely to come back without any trouble from law enforcement officers or Thai neighbors. Finally, after an extravagant birthday celebration for their son, a couple traveled to Lopburi where it is easier to find menial work without raising any suspicion with the local police. The birthday had put significant stress on their household budget and they had left for a week to earn the funds to cover the month's expenses.\(^48\)

The observations from these three episodes can be generalized to describe the kind of hardship that affected the livelihood of these refugees. Being a refugee in an urban setting presented its own set of insecurity concerns, both in terms of safety and material comfort. Though to a lesser extent in Lopburi than in Bangkok, significant obstacles existed to securing a job, including language barriers, xenophobia, discrimination and, again, security issues. The demands on refugee youth to fulfill livelihood responsibilities rendered them especially vulnerable to all sorts of abuse, and stripped parents of their role as caregivers, further hindering their feelings of dignity. The result was a state of emotional desperation, financial uncertainty, and a tendency to risky behavior that dangerously undermined the security of the youth and that of the overall family. But as shown below, Thai law criminalizing refugees had consequences going beyond the impedi-
ments to livelihood opportunities resulting from xenophobic sentiments and higher risks of being arrested or exploited.

**Fear**

As mentioned above, refugees are doubly vulnerable in Thailand because of their status as *prima facie* illegal immigrants under Thai law. Every interviewee had had one or more persons in their household arrested or detained by the police, including themselves. Sometimes they were apprehended while working illegally, such as a case where a refugee, her husband, and her sister were hired to clean condominiums in downtown Bangkok. Others were apprehended on the streets by police officer who extorted small bribes. One 20-year old male related a violent encounter with two police officers during which he was taken into a vehicle, beaten, and later taken to a mobile phone store, where he was forced to sell his phone and give the proceeds to the officers. They later bought him a beer and gave him 50 baht for his transportation home.

Whether or not they were taken into custody seemed to depend largely on the police station where they were being taken and whether Burma Relief Centre (BRC) workers or UNHCR officials could be alerted quickly enough to intervene. For instance, if the police officers were from the Suthisan station which is located near the BRC, they would most likely be aware of the Lao Hmong refugees, ask for a bribe, and release them. Police officers from other stations would be harsher and take them to the Immigration Detention Center at Suan Phlu. Arbitrary arrests and other abuses by law enforcement forces were especially difficult on youth. The young participants in the survey expressed their powerlessness and helplessness to seek for help when apprehended by the Thai police. They often played a difficult role as providers for their families but could not evade the feeling of also being a cause of stress for their parents while away from their homes.

When seeking for help, the interviewees had mixed feelings about the power that UNHCR could exercise to protect them in instances of abusive police practices. A woman expressed her frustration at UNHCR after the police raided her apartment and they produced UNHCR-issued refugee documentation.
When my husband showed the police his refugee identification document, they used it to slap him on the head. They told him, how dare he use those papers in Thailand.... What is UNHCR worth in Thailand then? UNHCR is simply an insult to the Thai authorities.57

These interviews showed that the interviewees were cognizant of UNHRC’s protection mandate, but also of the agency’s limited jurisdiction and protection authority in Thailand. They had a basic understanding of state sovereignty and the role it played in creating the situation of insecurity and uncertainty they lived in. They were also aware of the ramifications of living in such a state of constant fear of Thai law enforcement bodies, especially in terms of livelihood opportunities, as discussed before, and of movement.

Movement

I will not go anywhere. I am too scared.58

This statement described succinctly, but profoundly, the inhibition and the paralysis that the current Thai laws instill in this refugee population. In all my interactions with this particular woman over seven months, she only ventured down to the street one time. It was on the day of my departure and she came down to wave goodbye.

As prima facie illegal immigrants, refugees are not allowed to freely circulate in Thailand outside of designated areas or camps.59 The real and perceived threats of navigating an urban setting described previously were therefore further aggravated by a legal framework unable to protect them in the case of abusive law enforcement. In the refugees’ own words, these direct and indirect restrictions on the refugees’ movement undermined their security and their ability to provide for their family, negatively affected the health of their families, and fundamentally challenged their most basic human dignity.60 Among the individuals interviewed, financial distress and security concerns were constant conflicting forces, leaving the refugees in a desperate dilemma.

A mother explained that restrictions on movement not only restricted opportunities for livelihood but also prevented her from
seeking medical attention for herself and her children. The risk of being arrested induced her to wait for many illnesses to pass.\(^61\) Another refugee reported constant pain and swelling in his legs from the daily inactivity of being confined in his studio.\(^62\) Medical expenses were fully covered, so were transportation costs; the services rendered at the medical facilities were reportedly good.\(^63\) But beyond being forced to contemplate jeopardizing one's health and that of one's family, many confessed that it was the state of disempowerment as a parent to care for her children that troubled them the most.\(^64\)

Finally, most refugees interviewed expressed their frustration at being “encaged like animals.”\(^65\) The social and emotional isolation was harder to understand for teenagers who longed for friends and networking opportunities.\(^66\) The inhibition and paralysis felt by the Lao Hmong refugees reduced them to a state of helplessness that was unworthy and subhuman in their eyes. Unable to fulfill their responsibilities as bread earners and caregivers, parents perceived restrictions on their movement as an assault on their most basic human dignity. Youth felt their isolation was an obstacle to their socio-economic development, leaving them helpless to meet their personal, educational and professional aspirations.

**Education, religion, and culture**

Participants from all demographic segments (i.e. youth, adult, elderly, female, and male) expressed their anguish at the lack of opportunities to pursue an education, as well as the inability to practice religious and cultural preferences. In Bangkok, refugee children could access primary education in neighboring schools, and uniforms and school fees were paid for by the BRC.\(^67\) The BRC also offered daily English and Thai classes for teenagers and would pay for more advanced courses at private language institutions on a merit basis.\(^68\) But for those who did not meet testing standards or had reached the age limit, there were few options.

Parents regretted that escaping to Thailand had not necessarily mean a brighter future for their children.\(^69\) The sense of helplessness with regards to their parenting abilities, especially in terms of education, was a recurring theme in our conversations. Parents were fully aware that they were ill-equipped to prepare their children for the world they lived in and the countries they hoped to be resettled to, and
that the system was failing to provide those services in a meaningful way, directly undermining their protection.\textsuperscript{70} Besides formal education, they lamented their inability to keep their families safe and to transmit their religious and cultural beliefs to their children.\textsuperscript{71}

The Hmong normally live a very spiritual existence that requires complex and frequent rituals throughout the year in order to maintain harmony and health.\textsuperscript{72} These parents felt that their failure to maintain these rituals would bring illness and misfortune upon the household.\textsuperscript{73} In order to avoid drawing unnecessary attention to their homes, they were faced with a predicament that limited their ability to provide spiritual protection to their families.

In their own words, the participants of this study proposed a definition of refugee protection that is all-encompassing. They underlined the fundamental ways in which the lack of effective protection affected their livelihood opportunities, their sense of security, their ability to move, and their desire to cultivate and express a common identity. Regardless of the themes evoked, there was a common thread: the distinct perception that their most basic human dignity was eroding. They were condemned to a state of illegality that aggravated their vulnerabilities, regardless of their place and role in the family. Parents endured the infantilizing and dehumanizing effects of a highly dependent situation. Youth were desperate to build their social and educational skills for a better future. In all cases, their lived everyday experience presented fundamental challenges to their desire for meaningful participation and self-sufficiency that would help alleviate their protection concerns.

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

Even 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. Their core demand is to restore their human dignity through participation and self-sufficiency.

At this point, it is pertinent to dispel the criticism that a refugee's
discourse that advocates basic human rights is not an inherent and intrinsic demand, but rather a learned discourse, modeled as a result of the interviews undergone to determine their status and other external factors. In the discourse of refugee protection, there were differences by gender. Male refugees were highly factual during interview, providing exact and quantified information with often written evidence of facts, events, and conversations. It was apparent that they knew the importance of written evidence to successfully navigate current protection systems. Female participants were more descriptive of their feelings of sadness and powerlessness. Interviews with married women were often conducted in the presence of their husbands. During more candid moments caring for the children, going to the market, or tending to the house, the women expressed their own protection concerns without dates or the exact circumstances, but with the same concerns: livelihood, fear, movement, health, education, culture, and most importantly, their dignity. The refugees' discourse differed by gender, matching their respective roles in securing formal protection (i.e., status determination processes), but their plea for protection remained inherently grounded in the same principles of human rights, self-empowerment, and full participation. We may also infer that current protection systems are inadequate to identify and thus respond to issues that affect women more, such as mental health needs. Consequently, those needs may be overlooked in refugee protection programs.

**Lessons of the Lao Hmong refugee experience and implications for policy reform**

The refugee participants of this study clearly defined their protection needs around regaining their human dignity by: fulfilling and enjoying their basic rights; realizing full participation and self-sufficiency with regards to their protection needs; enjoying culturally appropriate programs, with an emphasis on protecting and promoting the rights of those most vulnerable.

Unlike what some believe, the demands of refugees were reasonable. They were enshrined in human rights conventions. As such, they were universal and inalienable, and ought to be delivered by moral agents 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 proposes, protection must be seen 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 that requires statist solutions. In his view, protection must instead create conditions that will empower 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, education, and other livelihood opportunities.

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. 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 also the upholding of human rights through building the capacity of right holders to claim and fulfill their human rights themselves. Applied to refugee protection, RBA recognizes refugees as the principal stakeholders in the design and implementation of their protection, and redefines 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 pragmatic arguments. Today, host countries are most often developing countries which lack resources and expertise and which may be reluctant to encourage any local level integration of refugees in their economy, society, and culture. The real test of this new theory and its theoretical superiority depends on its empirical relevance. For this, let us look at the practical implications of its principles. The first principle demands the universal realization of the refugees’ human rights. It implicitly suggests that states must abide by international conven-
tions and laws that protect those rights. The signature and ratification of those texts should provide a robust legal framework to ensure good governance and should position such a state favorably to negotiate military alliances, economic trade agreements, and other political collaborations, including international aid. But states are not the only agents concerned with the delivery of protection and the realization of refugees' rights. To meet the first principle, other agents (UNHCR, refugee agencies, advocates) must campaign to ensure international laws are followed and refugee rights are protected. In addition, they need to revisit their own policies and service delivery systems to ensure their programs are not inadvertently compromising those same rights. For instance, the concept of refugee management is pervasive in some agencies and scholarship. 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 own protection needs. 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). In the long run, especially in cases of protracted situations, these policies would alleviate the 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.

Finally, the last principle sets down the importance of culturally appropriate programs to prevent unintentional and unwanted discrimination. Practically, this recommends, for example, provision of information in an appropriate language by culturally trained staff. Programs must also have the specific goal to reach, engage and serve the most vulnerable groups among the refugees (women, children, elderly, and disabled) in meaningful ways. In developing countries beset by poverty and a lack of livelihood opportunities, these initiatives must also be designed with careful consideration for local disadvantaged communities to minimize xenophobic and other hostile confrontations. These programmatic considerations should once again ensure effective and relevant responses to protection needs without neglecting
or penalizing those most in need in the process.

In addition, policies must be in place to ensure enforcement and accountability. Grievance procedures and remedial actions must be clearly designed and implemented by the state and any other agent of protection. Programmatic monitoring and evaluation will ensure a formal system of quality control and efficiency of public and private administration. These safeguards will not only promote good governance but also ensure that any economic or political gain is not undermined by corruption and malpractice.

In summary, the theory derived 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, without challenging states’ interests. Policy reform guided by these core principles is daunting and complex because it requires a revolution of thought and practice. But it would undoubtedly give states significant political influence in the international sphere, lessen the administrative burden and overall costs, and combat local corruption and arbitrary abuse. In addition, proper procedures are needed for determining refugee status in order to deter fraudulent claims and prevent an uncontrollable outpouring of refugees. Responding to the moral obligations of refugee protection is therefore the right thing to do and the politically sensible thing to do.

**The challenges of implementation in Thailand**

The findings of this paper unequivocally point 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. Let us consider the challenges and opportunities that the Thai context offers to implement such considerations.

The challenges are multiple since the RTG largely abandoned highly institutionalized and structured efforts funded by international agencies, instead adopting locally and individually negotiated solutions at the end of the Second Indochinese War. The result doubly undermines effective protection with an inadequate legal framework that unjustly criminalizes refugees, and a lack of standardized practices that may lead to abuse, corruption, and inconsistencies. To justify its position, the RTG resorts to a systematic strategy, as follows.
(1) The RTG refuses to problematize the issue and denies the necessity to address the problem with political action, 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.  

(2) The RTG leads the general public to believe that establishing a hospitable and humane environment would create a pull factor and worsen the country’s refugee situation.

(3) The RTG argues for a non-governmental approach to resolve the problem. In some cases since the mid-1990s, the Thai authorities have ceded their immediate humanitarian duties to NGOs of all sizes, while maintaining control through provincial government and military authorities.

The lack of political will within the RTG is evident. The RTG’s resistance to creating comprehensive refugee regulations is an indication of its reluctance to admit refugees and its political preference to remain a temporary host country, ignoring the fact that many refugees are long stayers.

Yet there are countervailing forces: a growing Thai civil society directly challenging the RTG’s position on refugee rights; an NGO-led protection delivery program in Thailand; and strong and active foreign diplomatic missions in Bangkok.

First, after three decades of democratization, civil society in Thailand has evolved, gained popularity within the general Thai public, and established alternative media outlets to discuss views openly. For instance, a May 2009 television broadcast of Bai ni mi 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 workforce. 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, by ceding humanitarian service delivery to the NGO sector the RTG has provided an opportunity for civil society groups
to report protection failures and to develop innovative services that promote refugee participation and self-sufficiency. For instance, MSF formally and publicly denounced acts of intimidation perpetrated by the Royal Thai Army (RTA) to restrict Lao Hmong refugees from accessing medical services and supplies in Phetchabun province. The MSF eventually ceased its operations in Thailand in protest in the fall of 2009, drawing international attention to the situation. At the same time, some NGOs have developed a working compromise with the government to be able to deliver innovative services to refugees and expand protection opportunities. For instance, the Thailand Burma Border Consortium (TBBC) works alongside provincial MOI representatives and thereby maintains 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 the humanitarian services they receive. In the urban settings of Bangkok and Lopburi, some current programs promote empowerment and self-sufficiency in the case of the Lao Hmong. Examples of the most outstanding programs are the cash assistance provided by UNHCR to urban refugees that allow them some financial flexibility, some limited language and skills training, and the hiring of Hmong staff by refugee agencies to disseminate information and implement some protection projects.

Finally, countering the RTG’s negative discourse, four embassies (US, Australia, Canada, and the Netherlands) have extended resettlement offers to the Lao Hmong POCs and continue to seek agreement from the MOFA to allow them to process and resettle their respective cases. These four embassies also respond to threats to the refugees’ security which are reported to them.

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. The RTG confines refugees within 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 paper. Some challenges still remain. Most are largely about the limited capacity of these services, as previously stated. Other obstacles lie within the design of the programs themselves. 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 concern is related to the illegal status of urban refugees and the centralized distribution of monthly allowances and services by the BRC. Local police are aware of their transit and of the services provided by the BRC, heightening the potential for harassment, extortion, or even arrest. Additionally, 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.89 There are no apparent reasons why a similar system should not be introduced in Bangkok where ATMs abound.

Coping with a hostile political environment is, however, not enough. The moral obligations as a host country and duty bearer must regain preeminence through a systematic countering of the RTG's negative approach. In addition, 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 by implementing and protecting principles of empowerment, participation, and non-discrimination. Thus all actors (the opposition in the House of Representatives, Thai civil society, UNHCR, and the international community) must help force the RTG to remedy the lack of refugee policy in Thailand. Thai activists are trying to convince Thai policy makers that their current stance 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 indigenous arguments 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 Thai public opinion, which often exhibits xenophobic and discriminatory attitudes, to demand respect for refugee rights from their own government.

**Conclusion**

The goal of this paper is to understand how refugees define their need for protection grounded in their experience, and how the resulting definition can inform policy reform. In contrasting their wishes with
their actual contact with local law enforcement, refugee agencies, and other actors, the Lao Hmong refugees define a protection that is all-encompassing and founded in the desire to restore their human dignity. A grounded theory approach allows their vivid testimonies to depict their disempowerment, full of uncertainty, insecurity, and infantilizing dependence. In their own words, the Lao Hmong long for effective refugee protection in which they fully participate to realize their basic human rights and to meet their aspirations.

Challenges to effective refugee protection in Thailand are overwhelmingly political in nature, as is the case in other countries. Statists argue that international laws on refugee protection, unless perceived as politically advantageous to states, are nearly irrelevant. This paper concedes that any policy reform debate must allow space for serious consideration of states’ interests, but it also argues that the moral obligations of protection and the refugee experience must regain preeminence in debates on reform. This study shows that lessons extracted from the Lao Hmong refugee experience provide important considerations for reform, based on three principles: enabling refugees to enjoy their basic rights; realizing full participation and self-sufficiency with regards to their protection needs; and providing culturally appropriate programs, with an emphasis on protecting and promoting the rights of those most vulnerable.

Applying these principles will improve protection, fulfill moral obligations, and deliver other political and economic advantages. But there is a need for caution here: emphasizing economic and political gains may underplay the moral obligations involved in refugee protection. This route may obscure the realities of being a refugee and revert to a statist framework. This concern is one impetus for this study. But with creativity, campaigns can appeal to the interests of the various agents of protection without compromising the fundamental rights and demands of refugees. Stressing the agency of refugees themselves in their own protection may be one way to accomplish that dual goal.

While arguing for the superiority of a refugee-centered policy reform of protection, this paper also uncovered gaps in research on current protection mechanisms and their impact on especially disadvantaged groups, such as women and children. Understanding how to best reach those populations may offer additional guidelines to developing truly fair and effective refugee protection.
A refugee-centered perspective on refugee protection mechanisms

Notes

1 Refugee 1a, interview, 11 April 2010.


8 UNHCR, *2009 Global Trends*.

9 Arulanantham, "Restructured safe havens"; James C. Hathaway, "Refugee solutions or solutions to refugeehood?," lecture conducted at the Center for the Study of Human Rights, London School of Economics (UK) (October 2006).


15 Charmaz, *Constructing Grounded Theory*.


18 Helton, "Rescuing the refugees," pp. 71–82; Rodger, “International law.”

19 Helton, "Rescuing the refugees," pp. 71–82; Rodger, “International law.”

20 Helton, "Rescuing the refugees," pp. 71–82.


22 Harris-Rimmer, “Refugees, internally displaced persons.”

23 Harris-Rimmer, “Refugees, internally displaced persons.”


29 Lang, *Fear and Sanctuary*.


31 Lang, *Fear and Sanctuary*, p. 93.

32 Lang, *Fear and Sanctuary*.


35 Refugee 1; Arnold, *Still a Secret War*.

36 Arnold, *Still a Secret War*.

37 Kavi, “Thailand searches for new paradigms.”

38 Arnold, *Still a Secret War*; Kavi, “Thailand searches for new paradigms.”

39 Refugee 1.

40 Arnold, *Still a Secret War*.

41 Lang, *Fear and Sanctuary*.

42 Lao Hmong refugees reported that attacks targeting them in the jungle of Pou Bia are carried out by both Lao and Vietnamese soldiers, based on conversations they overheard in both Lao and Vietnamese. They suspect that the Vietnamese are continuing to provide Laos with military training, arms and troops.

43 Refugee 3, interview, 16 July 2010.

44 Refugee 3.

45 Anne Fadiman, *When the Spirit Catches You and You Fall Down: A Hmong Child, Her American Doctors, and the Collision of Two Cultures* (New York, NY: Farrar, Straus
and Giroux, 1997).
46 Refugee 2b, interviews, 19 July 2010.
47 Refugee 3.
48 Refugee 4, interview, 6 June 2010.
49 Lang, Fear and Sanctuary.
50 Refugee 7, interview, 17 July 2010.
51 Refugee 9, interview, 17 July 2010.
52 Refugee 7, interview, 17 July 2010; Refugee 2b, interview, 19 July 2010
53 Refugee 7; Refugee 2b; Refugee 9.
54 Refugee 9.
55 Refugee 7.
56 Refugee 5.
57 Refugee 3.
58 Refugee 3.
59 Lang, Fear and Sanctuary.
60 Refugee 2b; Refugee 7; Refugee 9.
61 Refugee 5.
62 Refugee 1b, interview, 23 July 2010.
63 Refugee 1b; Refugee 5.
64 Refugee 1b, Refugee 5.
65 Refugee 10, interview, 23 July 2010.
66 Refugee 6, interview, 17 July 2010.
67 Refugee 9; Refugee 6.
68 Refugee 6.
69 Refugee 3; Refugee 2a, interview, 29 May 2010.
70 Refugee 3; Refugee 2a.
71 Refugee 2b; Refugee 8, interview, 23 July 2010.
72 Fadiman, When the Spirit Catches You.
73 Fadiman, When the Spirit Catches You; Refugee 8.
74 Hathaway, “Refugee solutions or solutions to refugeehood?”
75 Hathaway, “Refugee solutions or solutions to refugeehood?”
80 Lang, Fear and Sanctuary.
82 Pasuk Phongpaichit, Civilizing the State: State, Civil Society And Politics in


85 Jack Dunford, director, Thailand Burma Border Consortium, interview, July 20, 2010).

86 Beckers, interview; Refugee 2b; Refugee 12, interview, 18 July 2010; Refugee 11, interview, 23 July 2010.

87 Adam Zerbinopoulos, Deputy Refugee Coordinator, Embassy of the United States Bangkok, interview, 19 July 2010; Miro Marinovich, Director of Operations, The International Rescue Committee – Overseas Processing Entity, interview, 22 July 2010.

88 Zerbinopoulos, interview.

89 Refugee 11.