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978-1-107-06906-0 - Adjudicating Refugee and Asylum Status: The Role of Witness, Expertise, and Testimony

Edited by Benjamin N. Lawrance and Galya Ruffer

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## ADJUDICATING REFUGEE AND ASYLUM STATUS

In this book, an array of legal, biomedical, psychosocial, and social science scholars and practitioners offer the first comparative account of the increasing dependence on expertise in the asylum and refugee status determination process. This volume presents a comprehensive study of the relevance of experts, as mediators of culture, who are called on to corroborate, substantiate credibility, and serve as translators in the face of confusing legal standards that require proof of new forms and reasons for persecution around the globe. The authors draw on their interactions with expertise and the immigration process to provide insights into the evidentiary burdens on asylum seekers and the expanding role of expertise in the forms of country-conditions reports, biomedical and psychiatric evaluations, and the emerging field of forensic linguistic analysis in response to emerging forms of persecution, such as gender-based or sexuality-based persecution. This book is essential reading for both scholars interested in the production of knowledge and clinicians considering the role of experts as mediators of asylum claims.

Benjamin N. Lawrance is the Hon. Barber B. Conable, Jr., Endowed Chair in International Studies in the department of sociology and anthropology at the Rochester Institute of Technology. He has published ten books, most notably *Amistad's Orphans* (2015) and *Trafficking in Slavery's Wake* (2012). Lawrance is a legal consultant and has served as an expert witness for more than 250 West African asylum claims in fifteen countries. His research is situated at the dynamic interdisciplinary intersection of history, anthropology, and sociology and is focused on international mobilities, including migration, smuggling, trafficking, forced marriage, and refugee movements.

Galya Ruffer is Director of International Studies and the founding director of the Center for Forced Migration Studies housed at the Buffett Center for International and Comparative Studies at Northwestern University. Her work centers on refugee rights and protection, regional understandings of the root causes of conflict and refugee crises, and the rule of law and the process of international justice, with a particular focus on the Great Lakes region of Africa. She serves on the executive committee for the International Association for the Study of Forced Migration and is a vice chair of the American Bar Association International Refugee Law Committee. Aside from her academic work, she has worked as an immigration attorney representing political asylum claimants both as a solo practitioner and as a pro bono attorney.

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# Adjudicating Refugee and Asylum Status

THE ROLE OF WITNESS, EXPERTISE,  
AND TESTIMONY

Edited by

**BENJAMIN N. LAWRENCE**

Rochester Institute of Technology

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As is always the case, an edited volume is much more than the sum of its parts. The editors and authors whose chapters appear in this volume are indebted to the colleagues who shared thoughts and ideas during the Second Conable Conference in International Studies, entitled “Refugees, Asylum Law, and Expert Testimony: The Construction of Africa and the Global South in Comparative Perspective,” in Rochester, New York, in April 2011. The authors would also like to thank the reviewers whose insights, we hope, strengthened the text. Thanks also go to John Berger and David Jou at Cambridge; Devasena Vedamurthi at Integra Software Services, who so smoothly guided this project toward completion; and Meridith Murray for the index.

Galya Ruffer appreciates the research support of the Dispute Resolution Research Center at Northwestern University and owes much thanks to her family, Jim, Ari, Jonah, Eli and Sheli, who wait endlessly for her to have a work-free weekend.

Benjamin N. Lawrance would like to thank the several organizations and entities that made the conference possible, namely, the Conable Endowment for International Studies, the Starr Foundation, the Program in International and Global Studies in the Department of Sociology and Anthropology in the College of Liberal Arts at Rochester Institute of Technology, the Weill Cornell Center for Human Rights, and the Department of History at Cornell University. He would also like to thank his family, especially Wilson Silva.

We both thank the various individuals whose contributions ultimately all feature in this final product, including Peter Agree, Penny Andrews, Iris Berger, Judi Byfield, Taryn Clark, Evan Criddle, Susan Dicklitch, Tasha Fain, Paul Finkelman, Barbara Harrell-Bond, Jeffrey Herbst, Tobias Kelly, Christine Kray, Sue Long, Katherine Luongo, Mary Meg McCarthy, Andrea McIntosh, Karen Musalo, Juan Osuna, Tricia Redeker Hepner, Cassandra

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Shellman, Meredith Terretta, Robert Ulin, James Winebrake, and the more than 100 participants in the conference.

When we first began serving as expert witnesses for asylum claims, we had no sense of the unspeakable ordeals people are prepared to endure to survive. Jean-Francois Lyotard described the burden-facing asylum seekers as an “ethical tort,” an extreme form of injustice insofar as the victim is deprived of means to speak about or prove their persecution. With this book, we are a little closer to some sense of understanding, but there is still much work to be done. We hope this book fosters conversations, activism, and critical scholarship. We offer this book as a vehicle to encourage others to embrace what may be an unrecognized capacity and share their expertise. We are in awe of each and every one of the hundreds of lives we have encountered during our expert witnessing.

We dedicate this book to the refugees and asylum seekers who routinely display profound and unfathomable courage as they are asked by adjudicators to present their case and recount the brutalities and torture they have suffered, even as they are judged in languages and idioms they do not understand.

#### NOTE

All possible effort has been made to protect the identity and confidentiality of the individuals whose life stories form part of this book. The authors of chapters employ anonymous or pseudonymous monikers consistent with their respective discipline(s) where appropriate. Details, including but not limited to race, ethnicity, and national origin, have been changed where necessary and appropriate.

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## Foreword

*Adjudicating Refugee and Asylum Status* is an important collection of essays examining how Western countries have come to use experts while evaluating refugee claims. This book, based on work by an enviable array of scholars and practitioners, provides information on both the mechanics of refugee adjudication and how courts and legal forums have moved in a variety of perhaps unpredictable ways to use the work of experts in deciding whether to grant sanctuary to those with refugee claims. Accordingly, it is also an explicit and extended meditation on how knowledge developed and deployed by Western experts is used to evaluate the particular circumstances of people from poor regions of the world whose lives will be fundamentally altered depending on the ultimate decision about their refugee status. In the settings examined by the authors, knowledge is not retained for contemplation by those in the “ivory tower” but is used to make what may often literally be life-or-death decisions.

The essays also hint at some of the paradoxes of globalization. In the twenty-first-century world, knowledge, as well as data, money, and media, flow across national boundaries with unprecedented ease. However, the flow of people across boundaries has perhaps never been more regulated. In sub-Saharan Africa, the continental home of many refugee crises over the centuries, a common response to unhappiness or crises was for individuals or whole communities to move. It was only in the twentieth century – with the creation of national boundaries developed by the colonialists and subsequently ratified by independence leaders and the ensuing development of notions of citizenship tied to politically defined boundaries – that the concept of “refugee” was even possible. There seems to be every indication that the movement of people will continue to be closely regulated by all nations and those, especially in the West, who have some ability to police their borders will continue to try to control population movements through administrative mechanisms.

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At the same time, because knowledge generally flows irrespective of borders, we know, or think that we know, more about the world than ever before. Partially as a result, refugee adjudication relies increasingly on the knowledge that in many cases we have or think that we possess. Yet, reflection, as found in this volume, suggests that the knowledge that we think we have is inevitably complex and sometimes problematic, especially given what is at stake for individuals.

It is likely that the tension between ever-greater regulation of population movements and the desire to adjudicate individual cases through expert knowledge will only increase in the future. There are, as this book makes clear, no easy answers, although there are many important proposals in the individual chapters that should be considered. More generally, a profound understanding of how countries have arrived at their particular reliance on expert knowledge will hopefully allow us to develop in the future systems that are fairer, more transparent, and appropriate, given the consequences of particular decisions. The individual contributions in this book and the intellectual project that the authors collectively contribute to are therefore important and timely and should be appreciated by both other scholars and those practicing in this very difficult area.

Jeffrey Herbst  
*President, Colgate University*