

Serious International Crimes, Human Rights and Forced Migration
Symposium

**Co-sponsored by the Nathanson Centre for Transnational Human Rights,
Crime and Security, Osgoode Hall Law School, and McLaughlin College,
Faculty of Liberal Arts & Professional Studies, York University
Thursday, May 30th and Friday, 31st, 2019**

ABSTRACT

**“Violations of Fundamental Human Rights, Serious International Crimes,
and the Prosecution of Those Who Have Been Excluded from Refugee
Protection”**

The relation between violations of fundamental human rights and serious international crimes is obvious, because, at its very core both can be considered to be persecutory. Those who are victims of serious breaches to their most fundamental human rights, that may constitute a serious international crime, and who flee to seek asylum abroad can claim refugee protection on the basis of a well-founded fear of being persecuted on one or more of the five grounds of the *1951 Convention relating to the Status of Refugees*: race, religion, nationality, political opinion and membership in a particular social group. Those who perpetrate such serious international crimes and/or serious breaches to others' most fundamental human rights; that is, those who are responsible for creating refugees – through the persecution of others -- are excluded from receiving refugee protection. Indeed, given the nature of their offence or contribution to serious breaches in others' most fundamental human rights or to serious international crimes, then, they can be subject to prosecution for the commission of these serious violations of others' human rights and/or serious international crimes. This paper will look at a number of cases where individuals have been excluded from refugee protection and, then, prosecuted for their serious international crimes and/or serious breaches to other people's most fundamental human rights and/or human dignity.

As an instrument of justice, both the *1951 Convention* and its system of refugee protection, together with the international criminal justice system, with the International Criminal Court (ICC), now at its head, must work together to ensure that those who are excluded from refugee protection for serious breaches to our most fundamental human rights and/or for the commission of serious international crimes must be brought to justice through their criminal prosecution. This can be done under the principles of territorial jurisdiction, extra-territorial jurisdiction or through international criminal institutions, primarily, the ICC. Hence, there is a direct relationship between those who are responsible for creating refugees, the perpetrators of serious international crimes and breaches to fundamental human rights and human dignity, and their victims, those who are forced to flee their States and who seek asylum abroad, and, those who are responsible for their forced displacement and also seek asylum abroad, but, are then excluded from refugee protection. In the first instance, these people are granted refugee protection and, in the second instance, they ought to be prosecuted for their serious criminality when warranted.