Alternatives and Adjuncts to Domestic Prosecutions

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Abstract
When a country decides to address past human rights violations committed on its territory, it has two options to pursue, namely retributive justice (prosecution) and restorative justice (non-prosecution) mechanisms. However, within the context of so-called "peace versus justice debate", it is settled that whenever both mechanisms are pursued in a given transition, it is important to ensure that both peace and justice are achieved. This chapter focuses mainly on the Kenyan truth commission as one of the restorative justice mechanisms pursued as an integral part of the agreed domestic road map for accountability for the atrocities linked to the post-election violence. The chapter concentrates only on the aspects of the truth commission that have a bearing on criminal accountability for the crimes against humanity allegedly committed during the violence. It reveals that in view of the structure of the commission's legal framework, there are both strong and grey areas with the potential of affecting criminal accountability positively or negatively.