The Kenya Situation before the ICC

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Abstract
As part of the road map for criminal accountability for the post-election violence in Kenya, parties which were involved in the violence agreed categorically that the ICC's intervention would be invoked if the agreed domestic judicial mechanisms failed. This agreement would appear to be evidence of a strong determination to break the "culture of impunity" which had become entrenched in Kenya as far as gross violations of human rights are concerned. However, when the domestic mechanisms actually failed and the ICC intervened, both legal and political "battles" ensued. This chapter addresses the legal issues relating to or arising from the Kenya situation before the ICC, covering four main areas. Firstly, it clarifies and examines the trigger mechanism employed; jurisdictional issues and the scope of the charges and ICC investigations. Secondly, it identifies and analyses contentious legal issues arising in relation to the definition of crimes against humanity and the principle of complementarity. Thirdly, it evaluates Kenya's legal responses as well as political and diplomatic strategies and reactions to the ICC's intervention. Fourthly, it examines the future of the ICC process in Kenya in light of Kenya's 2013 presidential election results and other specific developments at domestic level.