# TABLE OF CONTENTS

Acknowledgments vii
List of Abbreviations xvii

## INTRODUCTION

### Chapter 1

**Introduction** 3

1.1 Victims and Criminal Justice 3
1.2 International Criminal Trials 9
1.3 Core Themes: The Link between Human Rights, International Criminal Justice and Victims' Rights 12
   1.3.1 Fair Trial Standards 13
   1.3.2 Victims' Procedural Rights 18
1.4 Central Research Question 21
1.5 Structure 25
1.6 Aim and Methodology 27
1.7 Conclusion 30

## PART I ORIGINS AND INFLUENCE

### Chapter 2

**Victims and Theories of Criminal Justice** 33

2.1 Introduction 33
2.2 Distinctions between Civil Litigation and Criminal Law 34
2.3 Traditional Theories of Criminal Justice: Where Do Victims Fit In? 36
   2.3.1 Retributivism 37
   2.3.2 Utilitarianism 41
2.4 Reforming Criminal Justice Institutions 44
2.5 Victims' Interests: What Do Victims Want? 47
2.6 Restorativism 51
2.7 Mixed Theories of Criminal Justice 57
2.8 Criminal Justice Theories, Victims and International Criminal Justice 59
   2.8.1 Traditional Theories at the International Level 60
# Table of Contents

2.8.2 Restorativism at the International Level 61
2.9 Conclusion 63

## Chapter 3
**Domestic Criminal Justice and Victim Participation Models** 65

3.1 Introduction 65
3.2 Comparing Traditions, Systems and Approaches 67
3.3 Civil Law and Common Law Traditions 70
3.4 The Inquisitorial Procedural Approach 71
3.5 The Adversarial Procedural Approach 74
3.6 Conceptualizing Participation 76
3.7 Models of Victim Participation at the Domestic Level 78
  3.7.1 Complainant 78
  3.7.2 Victim-Witness 79
  3.7.3 Civil Party / Civil Complainant 79
  3.7.4 Private / Subsidiary / Auxiliary Prosecutor 81
  3.7.5 Impact Statement Provider 84
  3.7.6 Restorative Practices 86
3.8 Reflections on Victim Participation: A Fundamental Divide Concerning the Role and Rights of Parties, Participants and Courts 89
3.9 Conclusion 91

## Chapter 4
**International Developments and Victims of Crime** 93

4.1 Introduction 93
4.2 UN General Assembly Declarations 94
  4.2.1 Victims’ Declaration 95
  4.2.2 Basic Principles 98
4.3 Human Rights Bodies and Victims’ Rights 104
  4.3.1 Human Rights Committee 105
  4.3.2 European Court of Human Rights 106
  4.3.3 Inter-American Court of Human Rights 111
  4.3.4 Inter-American Commission on Human Rights 115
  4.3.5 African Court of Human and Peoples’ Rights 116
  4.3.6 African Commission on Human and Peoples’ Rights 117
4.4 Other International Developments and Initiatives 119
  4.4.1 International Treaties, Resolutions and Principles 119
  4.4.2 European Initiatives 120
  4.4.3 A Victims’ Convention? 125
4.5 A Shift in Emphasis? 126
4.6 Conclusion 128
PART II  EXPERIMENTING LABORATORIES

Chapter 5
International Criminal Courts: A Wide Range of Practices 133

5.1 Introduction 133
5.2 Nuremberg and Tokyo Military Tribunals 135
5.3 The Ad Hoc Tribunals 137
   5.3.1 Participation as Witnesses 140
   5.3.2 Participation as Amici Curiae 141
   5.3.3 Participation in the Form of Victim Impact Statements 143
   5.3.4 Calls for Greater Participation in Relation to Reparations 145
5.4. Hybrid Courts 148
   5.4.1 Special Court for Sierra Leone 148
   5.4.2 East Timor: Special Panels for Serious Crimes 151
   5.4.3 UNMIK / EULEX War Crimes Panels in Kosovo 156
   5.4.4 Special Tribunal for Lebanon 159
5.5 Conclusion 163

Chapter 6
Victim Participation and the Extraordinary Chambers in the Courts of Cambodia 167

6.1 Introduction 167
6.2 Negotiating History and Framework of the ECCC 168
6.3 Victims and the ECCC 173
   6.3.1 Participation 173
   6.3.2 Reparation 177
   6.3.3 Protection 178
6.4 Participation in Practice 179
   6.4.1 Application Process 179
   6.4.2 Pre-Trial Proceedings: Case 001 and 002 185
   6.4.3 Trial Stage: Case 001, The Duch Trial 192
   6.4.4 Appeals 203
6.5 Procedural Issues Arising Out of Participation 204
   6.5.1 Disclosure Issues 205
   6.5.2 Evidentiary Issues 205
      6.5.2.1 Witnesses, Civil Parties and Dual Status 206
      6.5.2.2 Familiarization and Proofing 207
      6.5.2.3 Proposing Witnesses 207
      6.5.2.4 Questioning of Witnesses and Accused 208
      6.5.2.5 Civil Party Testimony 212
6.6 Victim Assistance 216
Chapter 7
Victim Participation at the International Criminal Court

7.1 Introduction

7.2 Negotiating History and Framework of the ICC

7.3 Victims and the ICC
    7.3.1 Participation
    7.3.2 Reparation
    7.3.3 Protection

7.4 Participation in Practice
    7.4.1 Application Process
    7.4.2 Article 68(3) Requirements
    7.4.3 Pre-Trial Stage
        7.4.3.1 Preliminary Examination Phase
        7.4.3.2 Investigation Phase
        7.4.3.3 Confirmation of Charges Phase
    7.4.4 Trial Stage
    7.4.5 Appeals

7.5 Procedural Issues Arising Out of Participation
    7.5.1 Disclosure Issues
    7.5.2 Evidentiary Issues
        7.5.2.1 Witnesses, Civil Parties and Dual Status
        7.5.2.2 Familiarization and Proofing
        7.5.2.3 Proposing Witnesses
        7.5.2.4 Questioning Witnesses
        7.5.2.5 Victim Testimony

7.6 Victim Assistance

7.7 Legal Representation

7.8 Legal Aid

7.9 Civil Society Groups and Intermediaries

7.10 Conclusions
**Table of Contents**

## CONCLUSION

### Chapter 8

**Conclusions and Recommendations** 339

8.1 Introduction 339
8.2 Participation as a Human Rights Standard? 339
8.3 Victim Participation in International Criminal Proceedings 341
   8.3.1 Uneasy Transplantation 342
   8.3.2 Areas of Concern Arising Out of Increased Participation: Fair Trial Rights of Accused 346
8.4 What is the Proper Scope and Content of Victim Participation in International Criminal Proceedings? 357
   8.4.1 Give Sufficient Regard for the Core Objectives of the Criminal Process 357
   8.4.2 Reject the Balancing Consciousness and Recognize the Primacy of the Rights of Accused 360
   8.4.3 Focus on Services for Victims 362
   8.4.4 Embrace Pluralism 363
8.5 Final Observations 364

Samenvatting (Summary in Dutch) 367
Bibliography 385
Table of Cases 409
Index 439
Curriculum Vitae 447