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**CHAPTER 1: The Meaning and Effects of the Presumption of Innocence under Article 66 of the Rome Statute**

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Abstract

Historically, persons suspected or accused of the gravest crimes against the whole of humanity have a high profile. They are held to be already guilty by public officials, and systematically detained pending trial. For instance, the accused that appeared before the Nuremberg and Tokyo Military Tribunals were not presumed innocent; neither were suspects who came before the ICTY and ICTR, inasmuch as the presumption of innocence was confined to trial as an evidentiary rule.

Article 66 of the ICC’s Statute, however, highlights the presumption of innocence as a right, and, as a corollary, a rule of proof.

It is therefore argued that the presumption of innocence means the right of persons to be treated as innocent until proven guilty by the Prosecutor, who solely bears the burden of proof. Consequently, unless it is applied and interpreted as such, it is most unlikely that the ICC will secure a fair trial for the accused. As a result, this work examines whether the presumption of innocence as the right of everyone to be treated as innocent has been applied, interpreted and protected by the Court, and if so, to what extent, so as to give full effect to the reach of this doctrine.

In order to consider this in depth, the work first discusses the meaning and effects of the presumption of innocence, and subsequently considers its interpretation and application by the Court, in four key respects:

1. Standards of proof;
2. Statements of public officials and media reports;
3. Pre-conviction detention;

4. Rights of Victims.

The work constitutes a doctrinal legal study, which is the most appropriate means of research for the presumption of innocence. In effect, under article 21 (3) of the Statute, the application and interpretation of statutory provisions must be assessed consistent with internationally recognized human rights.
Acknowledgements

In order to protect and maintain international public order, security and peace, the perpetrators of crimes that threaten the international community’s well-being must be brought to justice and punished. Before, however, a person has been found guilty of a crime; when a person is suspected or accused; they have an absolute right to the guarantee of a fair trial. They should, therefore, not be deemed to be guilty, until the conviction has been made and all appeal proceedings exhausted.

The right to a fair trial does not, however, only protect and benefit the individual accused; it is in the interest of the whole of society that the true perpetrator is punished and the innocent protected. For that very reason, a person must be presumed innocent until proven otherwise.

Originally, the right to be presumed innocent was not an evidentiary rule but was seen as a safeguard of a persons’ innocence up until the end of a trial. This view, however, is not shared by all legal systems and was not present in the Statutes of both the Nuremberg and Tokyo international military tribunals.

It appears a priori, however, that article 66 of the Rome Statute of the International Criminal Court has established the presumption of innocence as both a right of persons to be treated as innocent before and during the trial (article 66 (1)) and a rule of proof (article 66 (2) and (3)).

This work deals with the presumption of innocence in its fundamental role as a right of persons to be treated as innocent before conviction and, consequently as a rule of proof, and determines how it should be applied and interpreted by the International Criminal Court so as to present it as a template of human rights in international criminal proceedings.
The right to a fair trial, founded on the right to be presumed innocent, has always been an interest of mine in my work as both a professional and academic lawyer in the Democratic Republic of the Congo, my motherland.

I never thought that I would be living so far from the Country and people I love and cherish. God, however, has made this so. I glorify and honour His great Name in the Name of His Son Jesus-Christ our Saviour. He has been with me through all the times in which I have experienced suffering and humiliation since I was forced to remain in England (Romans 8:28).

In 2007, I came to the UK for a short visit in my capacity as an MP, and had not returned since. Before the end of my planned stay, I discovered that once again the Congolese government wanted to unlawfully arrest me because of my views. Eventually, my house, my lawyer’s office and the church of which I am the pastor, 'l'Eglise de la Gombe', were all burnt down. Unable to leave England and return home, I became a political refugee and begun to rebuild my life in an unfamiliar country. The first struggle was and still is the learning of language, of which this thesis has been the ultimate test.

This work would not have been possible without the help of so many people. I would like to thank:

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I express my deepest appreciation to the support of all my beloved in Christ at ‘Eglise de la Gombe’, in Kinshasa, in the DRC, especially to Brigitte Mwalukie, Judith Motuke, Theophile Bikuma and Daddy Monga. ‘Only hold on to what you have’ until we meet again and He comes back and takes us to be with Him (John 14:1; Revelation 2:25).
List of Abbreviations

ACHR: American Convention on Human Rights
AJCL: American Journal of Comparative law
AJIL: American Journal of International Law
ALR: Albany Law Review
AC: Appeal Chamber
AMLR: Ave Maria Law Review
CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAR: Central African Republic
CLF: Criminal Law Forum
CLM: The Criminal Law Magazine
CLMR: Criminal Law Magazine and Reporter
CMR: Criminal Magazine and Reporter
Crim, L.Q: Criminal Law Quarterly
CSLR: Cleveland State Law Review
BLR: Baylor Law Review
DRC: Democratic Republic of the Congo
ECHRRFF: European Convention on Human Rights and Fundamental Freedoms Shortly known as the ECHR
ECHR: European Convention on Human Rights
ECTHR: European Court on Human Rights
HLR: The Harvard Law Review
HRC: UN Human Rights Committee
IACtHR: Inter-American Court on Human rights
ICC: International Criminal Court also referred to as the Court
ICCPR: International Covenant on Civil and Political Rights
ICTR: International Criminal Tribunal for Rwanda
ICTY: International Criminal Tribunal for the former Yugoslavia
IMTFE: International Military Tribunal for the Far East commonly known as the Tokyo Tribunal
IMT: International Military Tribunal at Nuremberg commonly known as Nuremberg Tribunal.
ILC: International Law Commission
JCLC: Journal of Criminal law and Criminology
JCLIL: Journal of Comparative legislation and International law
LHR: Law and History Review
LJIL: Leiden Journal of International Law
MLJ: Macquarie Law Journal
MLR: Manitoba Law Review
NILQ: Northern Ireland Legal Quarterly
NGO: Non Governmental Organization
NILQ: Northern Ireland Legal Quarterly
OTP: office of the Prosecutor or the Prosecutor
OSLJ: Ohio State Law Journal
PTC: Pre-Trial Chamber
Regulation: A regulation of the Regulations of the Court
Rule: A rule of the Rules of Procedures and Evidence
SAJC: South African Journal of Criminal Justice
SAJHR: South African Journal on Human Rights
SCLR: South Carolina Law Review
SPTL: Society of Public Teachers of Law
SLULJ: Saint Louis University Law Journal
SPTL: Society of Public Teachers of Law
TALJ: The American Journal of International Law
TC: Trial Chamber
TCLR: Trinity College Law Review
TMLR: The Modern Law Review
The Statute: The Rome Statute of the International Criminal Court
The Regulations: The Regulations of the Court
The Rules: The Rules of Procedures and Evidence
TIER: The Irish Ecclesiastical Record
UDHR: Universal Declaration of Human Rights
VLR: Virginia Law Review
W and Lee LR: Washington and Lee Law Review
Wis. Int'l L. J.: Wisconsin International Law Journal
WLLR: Washington and Lee Law Review
Wis. L. Rev.: Wisconsin Law Review
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