

**THE RIGHT TO MEANINGFUL AND INFORMED PARTICIPATION IN THE
CRIMINAL PROCESS**

by

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I declare that **THE RIGHT TO MEANINGFUL AND INFORMED PARTICIPATION IN THE CRIMINAL PROCESS** is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

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SUMMARY

The composite right to meaningful and informed participation in the criminal process

comprises the right to information, the right to understand, the right to be prepared, the right to be present, the right to confrontation and the right to present one's case. The sub-rights are not of an overarching nature such as the right to legal representation and the right of access to the law. The various rights are grouped together because they show some connection with the ability of the suspect or the accused to participate in the criminal proceedings as a legal subject, and not as an object of the proceedings as in primitive times. These rights ensure that the accused will not participate in the criminal process from an unfavourable position. The heading "meaningful and informed participation" is therefore a collective term for these rights. These sub-rights form part of the comprehensive right to a fair trial.

The thesis examines aspects of the position of the accused in South Africa and in foreign jurisdictions such as the United States of America, Canada, New Zealand, Australia, Germany, the United Kingdom and Islamic systems. International instruments such as the European Convention for the Protection of Human Rights and decisions of the United Nations Human Rights Committee are also considered. The thesis first considers the historical perspective of the accused in primitive times when he was regarded as an object of the criminal proceedings, to the present time when he is regarded as a subject of the proceedings. The study on foreign jurisdictions reveals that for the most part, our law is in line with the law of other countries. The study also demonstrates that the various rights are not absolute. In exceptional circumstances, some diminution of the accused's rights is necessary to protect the interests of society. Nevertheless, the courts should act cautiously and not allow the exceptions to overtake the rule. The judiciary should strive to find a better balance between the constitutional rights of the accused and the interests of society. To this end, the judicial system must be objective yet vigilant.

Key terms: rights of accused; meaningful; informed; participation; fair trial; legal subject; maintaining proper balance; interests of society; role of courts; comparative law

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