

Rethinking **Expropriation Law**



# **Rethinking Expropriation Law: Compensation for Expropriation**

7-9 DECEMBER 2016

## **COLLOQUIUM PROGRAMME**

## WEDNESDAY 7 DECEMBER 2016

- 18h15 – 18h45 Welcome drinks: The Baxter Restaurant
- 18h45 Welcome: Prof Danie Visser
- 19h15 Dinner

## THURSDAY 8 DECEMBER 2016

- 08h30 – 09h00 Registration
- 09h00 – 09h15 Welcome & Housekeeping
- 09h15 – 10h15 Keynote speaker: **Prof Hanoch Dagan**  
*Eminent Domain and Regulatory Takings: Towards a Unified Theory*

**10h15 – 10h35 TEA**

### **SESSION 1 PROPERTY & POLITICS: IS FAIR COMPENSATION FULL COMPENSATION?**

Chair: Prof Leon Verstappen

This session focuses on the correlation between fair compensation and full compensation. What is considered as 'fair' is to a great extent dependent on the understanding of the concept of property and the political and historical background of each jurisdiction. For example, a liberal view might equate fair compensation to full compensation, whereas a more socialist view would regard less than full compensation as fair. The determination of fair compensation is therefore intertwined with politics and political philosophy. This session endeavours to discuss which (political) factors influence the concept of fair compensation.

- 10h35 – 10h55 Speaker 1: **Dr Antonie Gildenhuis**  
*Full Compensation, Fair Compensation & Politics*
- 10h55 – 11h15 Speaker 2: **Mr Jean du Plessis**  
*A continuum of land rights perspective on compensation for expropriation*
- 11h15 – 11h35 Speaker 3: **Dr Rachael Walsh**  
*Constitutional Silence: A Pathway to 'Democratic Discounting' of Compensation?*
- 11h35 – 11h55 Speaker 4: **Mr Khomotso Moshikaro**  
Topic:
- 11h55 – 12h15 Discussion
- 12h15 – 13h15 LUNCH**

## **SESSION 2            WHO DETERMINES COMPENSATION?**

Chair: Dr Cheri Young

This session focuses on the individuals or institutions that determine the amount of compensation to be paid, be it the administration, the courts, a jury, (a panel of) experts), etc. Many systems provide for experts to play an important role in determining compensation. This session also discusses how these experts should be recruited and what the parameters of their roles should be.

- 13h15 – 13h35      Speaker 1: **Prof Elmien du Plessis**  
*Who determines compensation in South Africa?*
- 13h35 -13h55      Speaker 2: **Prof Yifat Holzman-Gazit**  
*Compensation for Expropriation and the New Function of Quasi-Judicial Appraisers in Israel*
- 13h55 – 14h15      Speaker 3:  
Topic:
- 14h15 – 14h35      Discussion
- 14h35 – 14h55      TEA**

## **SESSION 3            RULES FOR FAIR PROCEDURE**

Chair: Prof Jacques Sluysmans

This session focuses on how regulation can ensure fair procedures in the calculation of compensation. The discussion endeavours to determine how competing interests of property owners, on the one hand, and expropriating authorities, on the other, can be balanced to ensure a level playing field when determining compensation in expropriation cases. The session also investigates possible procedures for appeals against compensation determinations. Furthermore, it focuses on the economic development obligations of companies following an expropriation.

- 14h55 – 15h15      Speaker 1: **Mr Gianluca Crispi**  
*Expropriation as a tool for the acquisition of public space in cities*
- 15h15 – 15h35      Speaker 2: **Dr Liz Alden Wily**  
*Decolonizing Compulsory Acquisition for Modern Agrarian Governance*
- 15h35 – 15h55      Speaker 3: **Mr Marcello De Maria**  
*The Economics of the Fair Compensation in Transnational Land Deals: An Efficiency Analysis*
- 15h55 – 16h15      Discussion
- 19h00                    DINNER : Jonkershuis, Groot Constantia Wine Estate**

## FRIDAY 9 DECEMBER 2016

### SESSION 4            **FACTORS OF COMPENSATION; VALUE OF LAND**

Chair: Dr Meyer van den Berg

This session investigates the various factors influencing the calculation of compensation. Market value is perhaps the most common factor. The discussion attempts to determine what market value is and how it is determined in different legal systems. The session also focuses on other factors influencing the calculation of compensation, including decrease in value of non-expropriated property, loss of income, sentimental value, etc.

- 09h00 – 09h20        Speaker 1: **Dr Shai Stern**  
*Restoring Justice in Expropriation Law*
- 09h20 – 09h40        Speaker 2: **Mr Nicholas Tagliarino**  
*Avoiding the Worst-Case Scenario: Are Indigenous Peoples and Local Communities in Asia and Africa Vulnerable to Expropriation Without Compensation?*
- 09h40 – 10h00        Speaker 3: **Dr Mike McDermott**  
*Market Value where there is no market: Eesh, hawu, what to do?*
- 10h00 – 10h20        Speaker 4: **Mr Simon Ong**  
*Land Acquisition in Singapore: Factors of Compensation*
- 10h20 – 10h40        Discussion
- 10h40 – 11h00        TEA**

### SESSION 5            **COMPENSATION IN THE CONTEXT OF REFORM**

Chair: Mr Björn Hoops

This session discusses how the objectives of land reform impact on compensation issues in expropriation cases. It investigates whether zero compensation is appropriate and justifiable where land is expropriated. The focus is also on how governments can collect the funds required for compensation upon expropriation of land and how the financial structure of such a compensation system works.

- 11h00 – 11h20        Speaker 1: **Prof Heinz Klug**  
*Land Reform, Restitution and the Question of Compensation*
- 11h20 – 11h40        Speaker 2: **Ms Nina Braude**  
*A “Uniform Procedure” for all Expropriations? Customary Property Rights and the 2015 Expropriation Bill*
- 11h40 – 12h00        Speaker 3: **Dr Maartje van Eerd**  
*The process & impact of development-induced displacement: acquisition, expropriation, compensation & resettlement in times of reform*
- 12h00 – 12h20        Discussion

**12h20 – 13h10**      **LUNCH**  
**SESSION 6**            **TRUEPRICE WORKSHOP: TOWARDS A FAIR COMPENSATION**  
                                 **PROTOCOL**

**13h10 – 13h20**      **Report: Towards a fair compensation protocol**  
                                 Prof Leon Verstappen

The progress of a Dutch initiative for developing a fair compensation protocol in a participatory process will be presented. The Dutch Land Governance Multi-Stakeholder Dialogue has initiated the development of a protocol on fair compensation in case of land tenure changes, expropriation in particular. This protocol will serve as guidance to the various actors operating in this field, such as affected people, governments, project developers, financiers, donors and civil society organisation in cases where fair compensation needs to be determined. This session will present the progress of the first phase, a review of existing international guidelines and the findings of a stakeholder consultation on the key challenges from the field that call for additional guidance on compensation.

**13h20 – 14h00**      **First plenary discussion**  
                                 Topic: *Inclusion of purpose and process requirements in a*  
   *compensation protocol*  
                                 Introduction: Dr Ernst Marais

**14h00 – 14h40**      **Second plenary discussion**  
                                 Topic: *Changing and delayed projects*  
                                 Introduction: Prof Hanri Mostert

**14h40 – 15h00**      **TEA**

**15h00 – 15h40**      **Third plenary discussion**  
                                 Topic: *Eligibility of informal rights holders*  
                                 Introduction: Prof Jacques Sluysmans

**15h40 – 16h20**      **Fourth plenary discussion**  
                                 Topic: *Collective tenure rights*  
                                 Introduction: Mr Björn Hoops

In these interactive sessions, participants will be working on some key challenges that were identified during the stakeholder consultation. The goal is to identify the key features of a practical approach to address these complex issues.

**16h20 – 16h35**      **Closing remarks**  
                                 Prof Leon Verstappen

**16h50**                    **Depart directly from conference venue to V&A Waterfront**

**19h00**                    **DINNER: Gibson's Gourmet Burgers & Ribs (for own account)**

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