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 Gildenhuys

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

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, financers, donors and civil society organisations 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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