



# TAKINGS FOR CLIMATE JUSTICE AND RESILIENCE

GRONINGEN (NL) & ONLINE, 29-30 SEPTEMBER 2022

## CALL FOR PAPERS

PLEASE SEND YOUR ABSTRACT TO [b.hoops@rug.nl](mailto:b.hoops@rug.nl) BY FEBRUARY 28<sup>th</sup>, 2022.

Dear colleague,

The Expropriation Expert Group, founded in 2013 as a collaborative effort of the universities of Cape Town, Groningen, and Nijmegen, is inviting original and innovative contributions to our sixth international conference and the fourth part of our *Rethinking Expropriation Law* series. We are returning to our roots, Groningen in the Netherlands, the place of our first conference, to continue the stimulating intellectual exchange on expropriation law at our previous conferences. In Groningen, we would like to take up the challenge to illuminate what the implications are of expropriation law for the fight against the climate crisis, which expresses itself in phenomena such as global warming, increases in natural disasters and extreme weather events.

The recent [Intergovernmental Panel on Climate Change Sixth Assessment Report](#) makes it very clear that human activity creates the kind of emissions that have caused an unprecedented increase in the earth's surface temperature, especially over the past one-and-a-half centuries. From such activity, it is especially the emission of greenhouse gases (GHG) that has induced weather and climate extremes in every region across the globe. The imperative to move away from fossil fuels as primary energy sources is a main component of addressing the impending climate change disaster. At the international law level, this intention is expressed in the [1992 United Nations Framework Convention on Climate](#)

[Change \(UNFCCC\)](#). The [Kyoto Protocol](#) and the 2015 [Paris Agreement](#) commitment of states to the overall imperative, and the [United Nations' Sustainable Development Goals \(SDGs\)](#) provided the framework for operationalising the stated intention. At the national level, a host of different strategies is being developed and implemented. These strategies are bound to impact the existing legal and economic status quo. It is in anticipation of such shifts that we wish to examine the role of expropriation as a legal tool to mould social and economic change.

Expropriation is taken in its widest sense (takings) to include both formal expropriations (condemnations) and excessive regulation and other restrictions of property (regulatory takings, constructive expropriations, etc.). In light of increasing global warming the world is certain to see more takings for climate protection. The less effective incentives to climate-proof homes and businesses – such as subsidies – become, the more governments will have to force people to reduce greenhouse gas emissions. However, the boundaries in takings law to such government action for climate protection are mostly unexplored and therefore uncertain. Instead of each jurisdiction having to reinvent the wheel, we would like to explore the boundaries to the use of the government's regulatory police power (to restrict property rights) and its power of eminent domain (to expropriate property) for climate protection at an international conference.

As we were brainstorming, a few interesting scenarios came to mind:

1. The government expropriates a farmer's land to give the land to an energy company for a wind power plant or a solar farm.
2. The government expropriates a private nature reserve to allow for the construction of private or public CCS (Carbon Capture and Storage)-facilities.
3. Farming activities lead to the emission of a dangerous amount of ammonia and methane. The government expropriates the farmer's property without a plan for the land's future use.
4. The government expropriates ownership or registers an easement (servitude) against the owner's will for a public or private company that wants to create a district heating system or an infrastructure for charging electric cars.
5. The government revokes or cancels permits for mining activities or expropriates the ownership of minerals.
6. The government phases out coal-/gas-fired power plants.
7. The government compels owners of existing buildings to make the buildings climate-neutral or specifically to install insulation, heat pumps, and/or solar panels.

8. The government introduces requirements for owners of existing or new buildings to connect their building to a district heating system.
9. The government obliges owners of existing or new buildings to install a charging station for electric cars, also for public use.
10. The government expropriates property below sea level to protect the inhabitants from flooding and to add additional embankments.

These scenarios raise various questions around broad themes in expropriation, environmental, and planning law:

1. Is suitable authorising legislation in place for these scenarios?
2. What are the requirements for a valid expropriation and, in particular, third-party transfers for climate protection? Does climate change qualify as an emergency that lowers the bar for expropriations?
3. Can the state expropriate property for climate protection without establishing a specific future use?
4. Can owners prevent an expropriation by establishing that they are able and willing to implement the government project?
5. Where do jurisdictions draw the line between formal expropriation (eminent domain) and uncompensated regulation/restrictions (police power)? Do the scenarios give rise to an expropriation or a regulation/restriction?
6. Under what conditions can the state impose positive obligations upon owners? Are subsidies and other measures equally suitable, less invasive means?
7. Under what conditions can permits be revoked for climate protection?
8. Under what conditions does the state have to pay compensation for regulation of property and other restrictions, in other words: when does this type of state action turn into compensated excessive regulation/restriction (regulatory takings, inverse condemnation, indirect expropriation, or constructive expropriation)? What role do environmental law, energy law, planning law, and international law (e.g., the Energy Charter Treaty) play in this regard?
9. How is compensation for takings for climate protection calculated?
10. What standards do resettlement programmes after expropriations for adaptation have to meet?

Your contributions may discuss these topics or any other topic related to takings for climate justice and resilience. Please send us your abstract (of no more than 300 words) at [b.hoops@rug.nl](mailto:b.hoops@rug.nl) by **February 28<sup>th</sup>, 2022**. *We also welcome contributions that will be presented online remotely*. We aim to inform you whether your abstract has been accepted by **March 31<sup>th</sup>, 2022**. Your draft paper for *Rethinking Expropriation Law IV* (Boom Eleven International Publishing, The Hague) of at least 5,000 words, including footnotes, must be submitted by **July 1<sup>st</sup>, 2022**. We will provide lunches and the gala dinner at the conference, and speakers will receive complimentary accommodation. All attendants, including speakers, will have to cover their own expenses for transport.

We are looking forward to hearing from you!

Prof. Magdalena Habdas, Katowice

Prof. Björn Hoops, Groningen

Dr Ernst Marais, Johannesburg

Prof. Hanri Mostert, Cape Town

Prof. Jacques Sluysmans, Nijmegen/The Hague

Prof. Leon Verstappen, Groningen



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