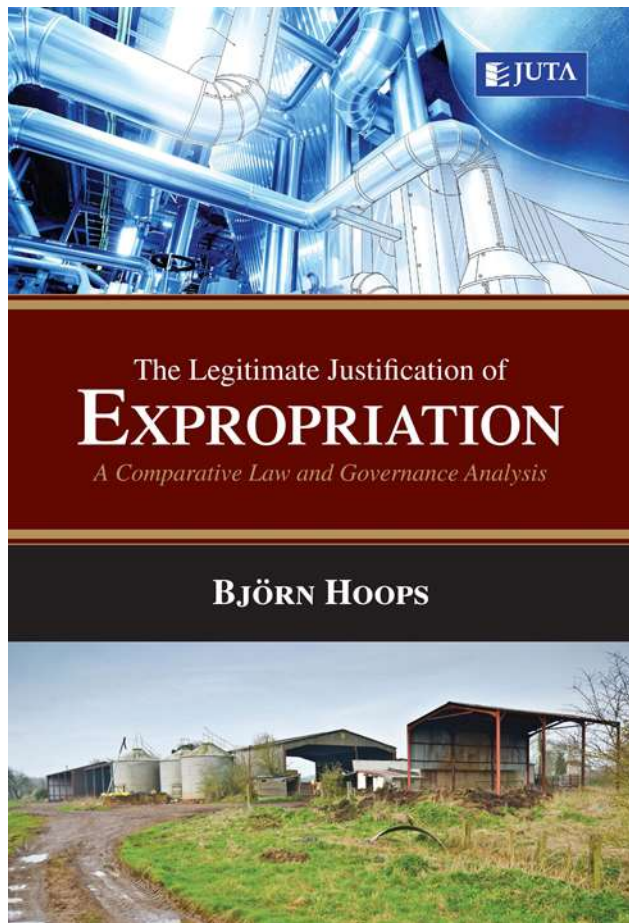


## **Book Review**



### **THE LEGITIMATE JUSTIFICATION OF EXPROPRIATION – A Comparative Law and Governance Analysis**

**By Björn Hoops**

(731 pages)

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***"The good old rule  
Sufficeth them, the simple plan,  
That they should take, who have the power,  
And they should keep who can."***

– William Wordsworth (1770-1850)

Perhaps the most critical issue in South Africa today is that of land. It carries with it a cultural and symbolic significance which cannot be underestimated. Its ownership and control is seen as a source of wealth, status, well-being and belonging. Land is central to every social, economic and political challenge facing the country.

This significant comparative study investigates the institutional, procedural and substantive conditions under which selected different jurisdictions permit third-party transfers of land for economic development. The jurisdictions considered are the Netherlands, Germany, New York State and South Africa.

The author sets the scene:

*"It is the task of the state to improve the well-being of the people who live in it. To fulfil this task, the state carries out projects that benefit the public...For such projects, the state needs access to land. The legal recognition and protection of private property, however, prevents the state's automatic access to privately owned land. If the owner is not willing to sell and transfer their right to the state, the implementation of a project that benefits the public may fail if there is no other suitable land available... Expropriation is one of the legal means that the state has at its disposal to obtain access to land needed for a project."*

Property is constitutionally protected around the world. Expropriations are lawful only if they can be legitimately justified. In the past few decades, there has been an increasing number of expropriations in favour of private business projects. Governments hope that these projects will create jobs and economic growth, but the justification of such transfers for economic development is controversial. The public benefits of such expropriations are disputed, since they directly benefit private parties, and frequently do not produce the desired outcome.

The author drills down in each of the jurisdictions examined to investigate the purpose and justification of expropriations, the administrative or political reasons for a particular expropriation, the practical needs for expropriation, and the economic, environmental and social context in which it takes place. Compensation is not viewed as part of the legitimate justification for expropriation, but rather as a consequence.

Against the backdrop of international good governance standards, this work assesses in detail whether the laws in each jurisdiction are adequate, and recommends legal reforms to ensure compliance.

The author, Björn Hoops LLB LLM (Bremen/Oldenburg) LLM (Groningen), Assistant Professor of Law at the University of Groningen, has produced a magisterial evaluation of every aspect of expropriation in the four jurisdictions. His exploration of differences and similarities and the contexts in which these occur, is expertly underpinned by the legislation and case law that shapes these expropriation regimes.

An extensive bibliography, explanatory tables, schedules and diagrams, relevant cases, legislation, footnotes, and a comprehensive subject index provides all the authority and references necessary for further serious investigation and study.

At its 54<sup>th</sup> National Conference in December 2017, the ruling African National Congress party adopted a motion to amend Section 25 of the Constitution to allow the state to expropriate land in South Africa without compensation, but did not set a deadline for when this should be achieved. This has, quite understandably, given rise to much commentary and reaction which will no doubt continue as this contentious issue is debated. This book should be the first port of call for all who wish to seriously address this curate's egg.

*Review by Louis Rood BA LLB (UCT), Consultant at Fairbridges Wertheim Becker Attorneys.*