

Participatory Approach in Land Governance with special reference to Land Acquisition

Sumbul Fatima

Ph.D, Faculty of Law, Jamia Millia Islamia, New Delhi, India

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ABSTRACT

The Right to Fair Compensation in Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' (RFCT in LARR, 2013) is a first national/central law that represents a significant milestone in the development of systematic participatory approach to address land acquisition, rehabilitation and resettlement collectively in India. Establishing of a completely new Act, which was due from a long time, is a pioneering step taken by the Government of India in providing a humane, participative, informed and transparent process for permanent/temporary land acquisition in the public interest. The legislation aimed at balancing equity and efficiency considerations in land acquisition. This paper focus on participatory approach in RTFC in LARR Act, 2013 and participation at each level and stages of the procedure and of all the stakeholders and how this participation make the process transparent and corruption free in in the process of land acquisition in India.

1. Introduction Of Land and Land Governance

1.1. Land:

It seems to be the decisive order of the God and the Almighty that the word **LAND** itself describes as: "**Land Acquisition Notification and Displacement**" (LAND)¹. Land is the major source of earth's natural resources. Human being has evolved themselves to harness these resources very effectively². It tops the list of natural resources that our country needs the most for national development³. Land is the most important component of the life support system and it is a finite source. It is crucial for all developmental activities, for natural resources, ecosystem services and for agriculture. India being the seventh largest country in the world, land resource management is becoming very important as India has over 17% of world's population living on 2.4% of the world's geographical area⁴. Land as an asset always remain important not only an economic resources and source of rural livelihoods⁵, but also control to community identity, culture & social status & disputes over land acquisition affects all

¹ Dr. Nehal A. Farooquee., Brij Mohan Krishan Shorey., "*Judicial Intervention to revamp the development phase of India in analyzing the core impact of Social Impact Assessment*", XVII Annual International Seminar Proceedings; January, 2016

² Yajnaseni Palchoudhuri; Partha Sarathi Roy; Vijay K. Srivastava, "A New Socio-economic Index for Modelling Land Use and Land Cover Change: A Case Study in Narmada River Basin", India, Journal of Land and Rural Studies 3(1) 1–28, 2015 Centre for Rural Studies, LBSNAA SAGE Publications sagepub.in/home.nav DOI: 10.1177/2321024914534051 http://lrs.sagepub.com

³ Varsha Bhagat-Ganguly, "*Tracing Journey of Legislative Processes for Land Acquisition and Resettlement in India from Right's Perspective*", Journal of Land and Rural Studies, 4(1) 36–48, 2016 Centre for Rural Studies, LBSNAA SAGE Publications sagepub.in/home.nav DOI: 10.1177/2321024915616671 http://lrs.sagepub.com

⁴ Preamble, Draft National Land Utilisation Policy, http://dolr.nic.in/dolr/downloads/PDFs/Draft%20National%20Land%20Utilisation%20Policy%20(July%202013).pdf

⁵ Sukhpal Singh., "*Land Acquisition in India: An Examination of the 2013 Act and Options*", Journal of Land and Rural Studies 4(1) 66–78, 2016 Centre for Rural Studies, LBSNAA SAGE Publications sagepub.in/home.nav DOI: 10.1177/2321024915616673 http://lrs.sagepub.com

dimensions⁶. Therefore, efficient & equitable acquisition of land by the state for development projects, including infrastructure & industry, lies at the heart of these challenges⁷.

Land policies are of fundamental importance to sustainable growth, good governance & the well-being of and the economic opportunities particularly for poor people because it provides a foundation for economic activity⁸. Therefore, Participatory approach of Project Affected Population (PAP) in land governance with special reference to Land Acquisition in RTFCLARR Act 2013 is very important. At the international level, the strongest guidance on consultation & consent is the principle of Free, Prior Informed Consent (FPIC) and FPIC is formalized through **Article 32 of the 2007 UN Declaration on Rights of Indigenous peoples**. The basic principle of FPIC is that indigenous people have the right to say "Yes" or "NO" to proposed developments on their lands. The consent needs to respect people's cultures etc. also, governments are responsible for making sure that effective system for grievances redress are in place (Colchester & Ferrari, 2007)⁹.

As the below figure suggests that there are so much conflicting interest in Land like: the development conflict is related to the environmental protection issues, the resource conflict is related to the economic growth & efficiency issues and lastly the property conflict is related to the Social Justice issues. Therefore, Consultation, Consent & Participation of PAP is the most important area of concern while dealing interest in Land and Land Acquisition processes.

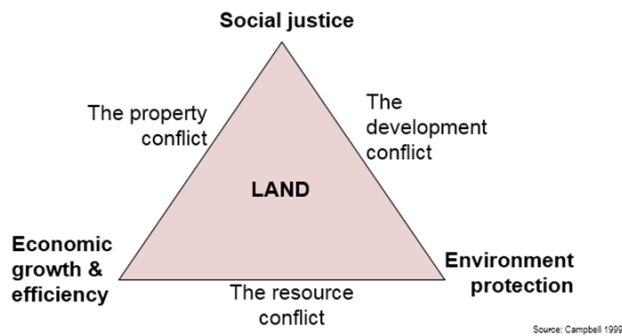
⁶ Wahi, N., Bhatia, A., Gandhi, D., Jain, S., Shukla, P., and Chauhan, U. "*Land Acquisition in India: A Review of Supreme Court Cases from 1950 to 2016*", Centre for Policy Research, New Delhi, 2017

⁷ ibid

⁸ Cotula, L., Vermeulen, S., Leonard, R. and Keeley, J., 2009, "*Land grab or development opportunity? Agricultural investment & international land deals in Africa*", IIED/FAO/IFAD, London/Rome. ISBN: 978-1-84369-741-1

⁹ Van Kooten, G.C. (Gerrit C.), "*Land resource economics & sustainable development : economic policies & the common good*", UBC Press, ISBN : 0-7748-0445-9

CONFLICTING INTEREST IN LAND



2. Land Acquisition and Participatory Approach in Land Governance.

2.1. Land Acquisition:

Land acquisition as a process by the state is contested for years on the ground of “public purpose” and “eminent domain” for private industries.¹⁰ As we know that India is basically agriculture based society, land is not only an asset or tops the list of natural resources used for food production or is a basic source of rural livelihoods but also it is a symbol of social identity, status, power & wealth. Due to various development projects in different parts of India there is a loss of land because of land acquisition & it became a matter of dispute & contention especially the displaced and project affected population since the early 1980’s. Demand for effective Rehabilitation & Resettlement became louder only in 1990’s and was promoted as effective pre-requisite of land acquisition. Government of India through legislation process that is Right to Fair Compensation & Transparency in Land Acquisition Rehabilitation & Resettlement Act 2013 recognized land acquisition and R & R as two sides of one coin. This Act was enacted in order to rationalize Land Acquisition, minimize displacement and develop R&R packages that restore lives of the PAP. In this way, RTFCLARR Act 2013 redressing the imbalance attempting a just law. The LARR Act made many changes to the contentious provisions of the land acquisition Act which are as follows:

First, the LARR Act define and gives a detailed listing of “Public Purpose”¹¹ ostensibly to curb government discretion in pursuing acquisition for illegitimate public purposes.

Second, by defining “Persons Interested”¹² as those having an interest in the land, including tenancy & easement rights, as opposed to actual title, & “Affected Family”¹³ as those dependent on the land for their primary source of livelihood, the law broadened the group of people to be compensated from title holders to livelihood losers.

Third, the LARR Act introduced provisions for consent of persons interested in the land before land acquisition may be done, 70% for acquisition made directly by the govt. and 80% for PAP. The LARR Act contains detailed provisions for Social Impact Assessment (SIA) of projects before land is acquired,

which seeks to ensure greater public participation in Acquisition Proceedings. The Act also provides for appraisal of the **SIA Report**¹⁴ by an independent expert group, composed of social science experts and representatives of Gram Panchayats or Village Assemblies. This independent expert group has the capacity to make recommendations but such recommendations are not binding on the committee that undertakes the SIA, which committee is composed solely of bureaucrats. Acquisitions made under the **Urgency Clause**¹⁵ were exempt from such assessments.

There were several reasons for which SIA was brought in, which included ensuring that both positive and adverse impacts of the proposed project could be investigated and documented to establish the overall utility of the project to the people while taking a decision on acquisition of land; examining whether the activities to be undertaken by the project qualified for being called ‘Public Purpose’; ascertaining whether the extent of land proposed to be acquired was necessary and, if so, was the barest minimum needed for the project and, whether it could be met from the unutilized land already available with the government or an alternative land so as to avoid acquisition of land and consequent displacement of people; introducing a paradigm shift in the process of land acquisition making it participatory of the people likely to be affected; ensuring R&R in order to minimize conflict between government/project authority and the affected persons to smoothen the process of acquisition and identifying the extent of displacement likely to be caused of those dependent on agricultural land proposed to be acquired, especially of tenants and agricultural labourers (Saxena, 2015).¹⁶

Fourth, the LARR Act sought to curb the misuse of the urgency clause by limiting the invocation of the urgency clause to situations involving India’s defence, national security or for emergencies due to natural calamities, and any other emergency with the approval of Parliament.

Fifth, the LARR Act prescribed a formula of enhanced compensation for the acquisition of land that came to twice the value of the average of registered sale deeds in rural areas, and four times the value of the average of registered sale deeds in the urban areas. This amount includes the **Solatum** amount that was paid on top of the market value under the Land Acquisition Act, which was increased from 30% to 100% of the market value. Moreover, the LARR Act also provides for rehabilitation and resettlement awards. These awards include the provision of a constructed house in place of the house lost through acquisition of land. It also provides in certain cases but not all for the grant of land in place of the land acquired.

Finally, Section 24 of the LARR Act also retrospectively applied the provisions of that Act to pending acquisitions under the Land Acquisition Act, provided certain conditions were met. The fundamental underlying premises of the LARR Act were two fold. The *first* was that legislation can redress the imbalance of power between the state and the individual. *Second*, the state could best mediate between individual land losers and private industry. Research shows that the first is

¹⁰ Varsha Bhagat-Ganguly and Sridhar C. *Managing Editor and Editor*, Special Issue on “Land Acquisition, Rehabilitation and Resettlement in India”, Journal of Land and Rural Studies 4(1) 1–2, 2016 Centre for Rural Studies, LBSNAA SAGE Publications sagepub.in/home.nav DOI: 10.1177/2321024915616668 <http://lrs.sagepub.com>

¹¹ Under section 3(za) of the RTFCLARR Act 2013

¹² Under section 3(x) of the RTFCLARR Act 2013

¹³ Under section 3(c) of the RTFCLARR Act 2013

¹⁴ Under section 7(1) of the RTFCLARR Act 2013

¹⁵ Under section 40(1) of the RTFCLARR Act 2013

¹⁶ Sukhpal Singh., “Land Acquisition in India: An Examination of the 2013 Act and Options”, Journal of Land and Rural Studies 4(1) 66–78, 2016 Centre for Rural Studies, LBSNAA SAGE Publications sagepub.in/home.nav DOI: 10.1177/2321024915616673 <http://lrs.sagepub.com>

only partially true and casts considerable scepticism on the second position.

It is witnessed that the farmers has always been accused of not willing to sell his land and becomes hurdles in the process of development and this is because of the unrest that the process of acquisition has elicited, especially in the post-liberalization period and the impression being created that the farmer is unfair in withholding his land. But it was found by the many researchers and journalists that farmers are willing to sell their land if the price-compensation package is fair, transparent and acceptable.¹⁷

2.2. Participatory Approach in Land Governance

The term "Land Administration" revolves around three key attributes: Firstly, "Land Use" which encompass 'regulatory purpose for planning'. Secondly, "Land Value", which inherent 'fiscal purpose for valuation and taxation' and thirdly, "Land Ownership" which involves 'juridical purpose for land registration' (Dale and Maclaughlin, 1999). In this way, the term Land Administration is basically the very decision as to how and for what purpose land resources are used by man¹⁸. That's why land is always recognized as an important Governance issue about which we had already discussed in detail earlier. Computer technology was introduced and has always been used in land governance by the government in order to ensure accuracy, transparency, speditious, dispute resolution and make it more participatory approach and citizen-centered. Some examples of introduction and use of computer technologies¹⁹ are e.g., The scheme of Computerization of Land Records (CLR)²⁰, Digital India Land Records Modernization Programme²¹ (DILRMP), GPS etc.

It is aptly true that to make any system or governance a participatory one and citizen-centered, the first & the foremost element is to assure transparency and repose the trust of the citizen's involved in it or related with it and pass with this '*Litmus-Test*' then only an efficient & smooth functioning of

¹⁷ Dhanmanjiri Sathe., "Land Acquisition Need for a Shift in Discourse?", DECEMBER 17, 2016 vol II no 52 51 Economic & Political Weekly

¹⁸ Yajnaseni Palchoudhuri; Partha Sarathi Roy; Vijay K. Srivastava, "A New Socio-economic Index for Modelling Land Use and Land Cover Change: A Case Study in Narmada River Basin", India, Journal of Land and Rural Studies 3(1) 1–28, 2015 Centre for Rural Studies, LBSNAA SAGE Publications sagepub.in/home.nav DOI: 10.1177/2321024914534051 <http://lrs.sagepub.com>

¹⁹ http://dolr.nic.in/comp_land_records.htm (last accessed on 15th May, 2017)

²⁰ The scheme of Computerization of Land Records (CLR) was started in 1989. This is a 100 per cent grant in aid scheme executed by the State Govts. The ultimate objective of the scheme is 'online management' of land records in the country. Under the scheme, 100% financial assistance is provided to States for completion of data entry work, setting up computer centers at the tehsil or Taluk or block and sub-divisional levels and monitoring cell at the State level. Funds are also provided under the scheme for imparting training on computer awareness and applications software to revenue officials for regular updation of records of rights and smooth operation of computer centers.

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Governance is possible. Say for example, in order to make land governance a citizen-centered and enhance public participation in it, Govt. has evolved a lot of things for example, "Land-Titling" i.e, keeping a public record of titles on immovable properties which may be conclusive or presumptive that the entries in that record are always correct & true²². Because for farmers losing land means losing an entire way of life to which they are strongly attached to their land for all purposes as they have a complex relationship with their land. Therefore, what farmers want is a share in the future appreciation of land²³. There is, thus, a strong case for generation of "formal" employment to enter the main body of RFCTLARR Act 2013 as part of section defining the public purpose of land acquisition because presently providing an employment of any kind has been left as an optional item among the list of R & R activities in the Second Schedule. Therefore, now it is high time to take "formal" employment generation out of the boot of the land acquisition special purpose vehicle and place it strategically behind the steering wheel²⁴. Because the question of property in land and land as property in India has always been a subject matter of history, economics, and politics involving divergent and contradictory opinions regarding the nature of ownership, land acquisition by the state, compensation, Resettlement & Rehabilitation etc. inherent in these different opinions relating to land acquisition are competing social, political & legal contexts²⁵.

The RFCT in LARR Act 2013 is a first national or central law of India that represents a significant milestone in the development of systematic participatory approach to address land acquisition, Rehabilitation and Resettlement collectively in India. To ensure transparency in the Land Acquisition process, this RFCT in LARR Act 2013²⁶ made an important provision to consult the concerned local bodies e.g., Panchayat, Municipality, or Municipal Corporation, as the case may be at village level or ward level, in the affected area. The procedure of land acquisition begins from chapter four with the issuance of preliminary notification, as envisaged under Section 11 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Further this act made provisions for various preliminary surveys of land like social impact assessment (SIA), Rehabilitation and resettlement plan in the local language to the Panchayat, Municipality or Municipal Corporation, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil. These are to be published in the affected areas and uploaded on the website of the government.

²² There are three principles which form the basis of conclusive titling system i.e. Curtain, Mirror and Single Agency

²³ Dhanmanjiri Sathe., "Land Acquisition and Beyond The Farmers' Perspective", Economic & Political Weekly April 1, 2017 vol lll no 13

²⁴ Rita Sinha., "The Importance of Including 'Formal' Employment Generation in the Definition of 'Public Purpose' under the RFCTLARR 2013", Journal of Land and Rural Studies 4(1) 49–65, 2016 Centre for Rural Studies, LBSNAA SAGE Publications sagepub.in/home.nav DOI: 10.1177/2321024915616672 <http://lrs.sagepub.com>

²⁵ Gitika De, "Whose Land Is It Anyway? Property, Law and Rights in the Land Acquisition Question in India", Journal of Land and Rural Studies, 4(1) 23–35, 2016 Centre for Rural Studies, LBSNAA SAGE Publications sagepub.in/home.nav DOI: 10.1177/2321024915616670 <http://lrs.sagepub.com>

²⁶ Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation & Resettlement Act 2013.

The Government shall ensure that the SIA Report is evaluated by an independent multi-disciplinary expert group²⁷. The recommendations of the expert group shall be made available in the local language to the local bodies and the affected areas. The government after examining the report of the collector and expert group on the SIA study, recommends the project which would ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected. The decision of the government shall be made available in the local language to the local bodies and other government offices and affected areas. While recommending the project, the government has to ensure that all procedures are followed in the process of acquisition. After the preliminary notification²⁸, preliminary survey of land²⁹, lapses of social impact assessment report³⁰ and hearing of objections that shall³¹ be made to the Collector in writing. The decision of the appropriate government on the objections made shall be final³². On completion of public hearing, the administrator has to submit the draft scheme³³ to the collector. The collector shall review³⁴ the draft scheme with the rehabilitation and resettlement committee at the project level, and with his suggestions, submit it to the commissioner rehabilitation and resettlement for approval³⁵. After the approval, the commissioner, rehabilitation and resettlement scheme is to be made available in public³⁶ and thereafter, it has to be published in the affected areas, and uploaded on the website of the appropriate government³⁷. After considering the report, if the government is satisfied that any particular land is needed for a public purpose, a declaration shall be made along with a resettlement area for the purposes of rehabilitation and resettlement of the affected families, under the hand and seal of a secretary to such government or of any other officer duly authorized to certify its orders³⁸. The collector shall publish a summary of the rehabilitation and resettlement scheme along with the draft declaration³⁹. The collector shall make an award within a period of 12 months from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

Every person required to make or deliver a statement to the Collector shall be deemed to be legally bound to do so within the meaning of Section 175 (Omission to produce document to public servant by person legally bound to produce it) and Section 176 (Omission to give notice or information to public servant by person legally bound to give it) of the Indian Penal Code 1860.

²⁷ Independent multi-disciplinary expert group consists of (a) two non-official social scientists; (b) two representatives of Panchayat, gram Sabha, municipality or Municipal Corporation, as the case may be (c) two experts on rehabilitation; and (d) a technical expert in the subject relating to the project.

²⁸ Section 11 of the LAR Act 2013

²⁹ Section 12 of the LAR Act 2013

³⁰ Section 14 of the LARR Act 2013

³¹ Section 15 of the LARR Act 2013

³² Section 15(3) of the LARR Act 2013

³³ Section 16 of the LARR Act 2013

³⁴ Section 17 of the LARR Act 2013

³⁵ Section 17(2) of the LARR Act 2013

³⁶ Section 18 of the LARR Act 2013

³⁷ ibid

³⁸ Section 19 of the LARR Act 2013

³⁹ Section 19 (2) of the LARR Act 2013

Some Examples of Participatory Approach in LARR, Act 2013 are described below.

- i. **Preliminary Investigations/Preparation of SIA/SIMP:** It is mandatory under the Act to conduct a time bound Social Impact Assessment (SIA) and prepare Social Impact Management Plan (SIMP)⁴⁰. No land acquisition shall be initiated unless SIA/SIMP is approved by the Expert Group. SIA shall also be conducted in a participatory manner and with all necessary public hearings, dissemination etc. duly followed.
- ii. **Preliminary Notification, Objections and Hearing:** Under the Act, Preliminary Notification⁴¹ shall be issued only after the approval of SIA and within 12 months from the date of SIA approval, failing which a fresh SIA/SIMP will be prepared. Preliminary Notification shall allow appropriate Government to undertake various surveys and update records, which needs to be compulsorily completed within two months. Within this period (60 days), all affected landowners/families shall be given right to raise objections in writing to the District Collector (DC) and shall get a chance to be heard in person.
- iii. **Preparation of Rehabilitation and Resettlement Scheme and its Declaration.** Following Preliminary Notification, Administrator appointed for rehabilitation and resettlement shall conduct a survey, census of the affected families and prepare a draft Rehabilitation and Resettlement Scheme (RRS)⁴².
- iv. **Public Notice and Award:** Following Declaration and Requiring Body deposits amount towards the cost of land acquisition; the DC shall issue a public notice and hear objections (if any) within six months from the date of its issue. The DC shall make an award within a period of twelve months from the date of publication of the Declaration and if award is not made within that period, the entire proceedings of the acquisition of the land shall lapse.

3. Conclusion and recommendations

⁴⁰ SIA shall confirm: (i) the proposed acquisition is for the public purpose and extent of land proposed is the absolute bare minimum extent needed for the project; (ii) number of affected families, displaced families; details of extent of loss and other associated social impacts; and (iii) costing for addressing estimated losses and social impacts. The SIMP shall form a part of SIA and include each component wise ameliorative measures to address land acquisition and social impacts. SIA/SIMP shall be evaluated by independent multi-disciplinary Expert Group who reserves the right to approve it.

⁴¹ The preliminary notification shall include: (i) statement on project/public purpose; (ii) reasons necessitating the land acquisition; (iii) summary of SIA; and (iv) particulars of the Administrator appointed for the purpose of rehabilitations and resettlement

⁴² Draft RSS shall include: (i) particulars of land and immovable property to be acquired of each affected family; (ii) livelihood losses of landowners as well as dependent landless families; (iii) list of government/public buildings and details of utilities and/or infrastructure facilities where resettlement of affected families is involved; (iv) details of common property resources being acquired; and (v) particulars of the rehabilitation and resettlement entitlements of each affected landowner and landless family and list/details of government buildings, utilities, infrastructure facilities to be provided in the area. The Administrator shall also set implementation timeline in draft RSS.

Citizens of India and even the Project Affected Persons (PAPs) have limited or even no knowledge about land acquisition processes, policies, schemes, meaning of public purpose and award of compensation facts et. al.,. Instead of dialogues and promises like paraclete, a conversation is needed to balance the socio economic status and rights of the food provider. Undoubtedly, Land acquisition for imminent purposes have always an impact over economy and infrastructure in developing countries cannot be denied. Other side its impact on the rural livelihoods and their profession cannot be overlooked. There is no doubt that after the acquisition of land, arable land is shrinking, agrarian society is getting alarmed and their lives getting in full challenging mode is a miserable state of earning a livelihood for survival⁴³.

Therefore, The Governments should be legally obligated to survey, inform, and consult affected populations in an open and participatory manner prior of land acquisition process. By surveying affected populations, governments can determine who is entitled to compensation and understand the impact of the land acquisition on livelihoods. Providing information on land acquisition plans to these populations can be an effective first step toward ensuring that these populations are able to participate meaningfully in land acquisition decision making and other processes (e.g., Compensation, Rehabilitation & Resettlement etc)⁴⁴.

In order to establish transparent and participatory processes for land acquisition various types of assessments— **Social, Economic and Environmental**— prior to LA need to be strived; such assessments are seen as strengthening democratic process as well as participatory and transparent governance⁴⁵. Therefore, legal reform is necessary in order to ensure equity and efficiency within the land acquisition processes. In the absence of administrative and bureaucratic reforms, the introduction of the LARR Act will not succeed in eliminating inequities and inefficiencies embedded within the implementation of existing land acquisition procedures. Procedural requirements under the LARR Act implies an even greater need for securing executive compliance with the Rule of Law, in order to translate the equities intended by additional procedures into reality for land losers.

As it is aptly remarked that newer or more legislation is not the only solution rather what is needed is greater and more effective transparency and accountability within the administrative apparatus and make the land acquisition procedure more citizen-centered and participatory.

⁴³ Ibid

⁴⁴ Tagliarino, N. 2016. *Encroaching on Land and Livelihoods: How National Expropriation Laws Measure Up Against International Standards.* Working Paper. Washington, DC: World Resources Institute. Available online at <http://www.wri.org/publication/encroaching-on-land-and-livelihoods>.

⁴⁵ Van Kooten, G.C. (Gerrit C.), *Land resource economics & sustainable development : economic policies & the common good*, UBC Press, ISBN : 0-7748-0445-9