

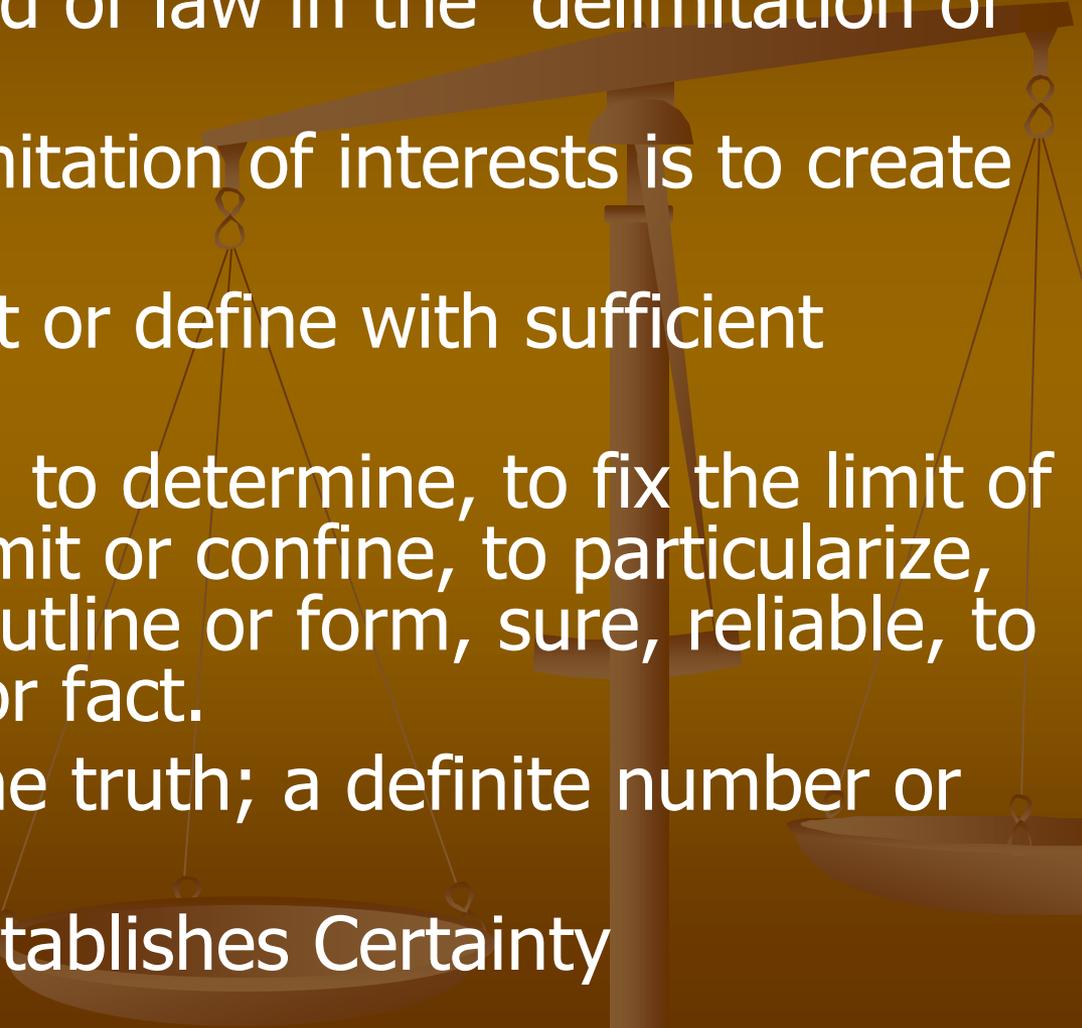
# **The Impact of Land Adjudication delays on Crime, Economic and Social Development**

A Presentation to the 20<sup>th</sup> Annual Judges'  
Conference made on 25/1/2018 by:

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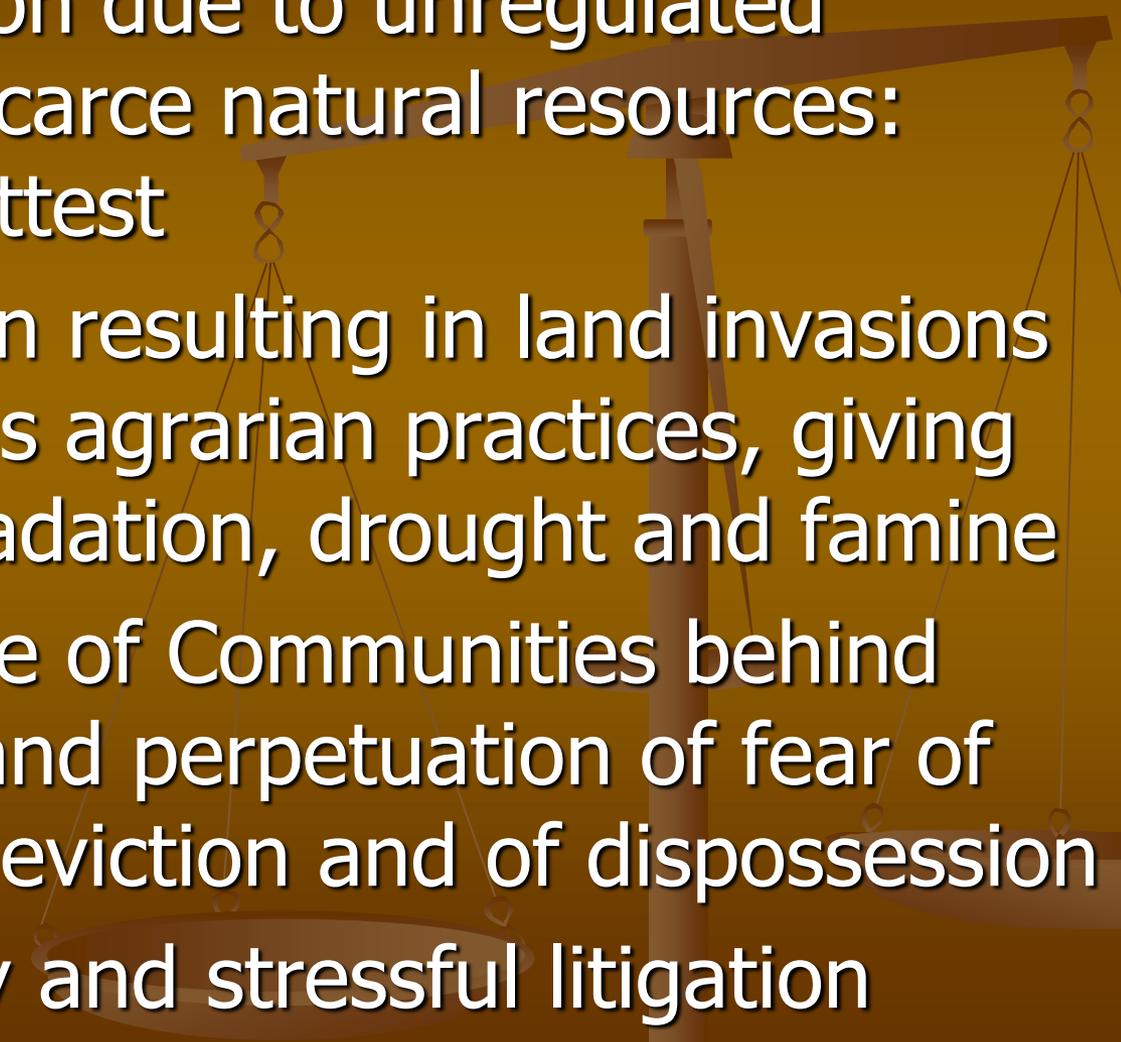
# The Purpose of Land Adjudication

- *Ithering* found the end of law in the “delimitation of interests”.
  - The purpose of delimitation of interests is to create certainty.
  - Certainty is to delimit or define with sufficient exactitude.
  - It is to make certain: to determine, to fix the limit of or boundary of, to limit or confine, to particularize, to make definite in outline or form, sure, reliable, to establish as a truth or fact.
  - Certainty is a fact, the truth; a definite number or quantity.
  - Land Adjudication establishes Certainty
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# The Meaning of Land Adjudication

- It is the process by which the Area Land Committee finally and authoritatively ascertains and delimits all existing interests in a particular piece of land as the basis of proving of ownership of land by application of customary law, and the resolution of any disputes over the ownership, boundaries through mediation by ALC and conflicting land use through use planning (s. 5, 6, 45 & 64(7)&(8) of LA & Reg. 21 of LR)

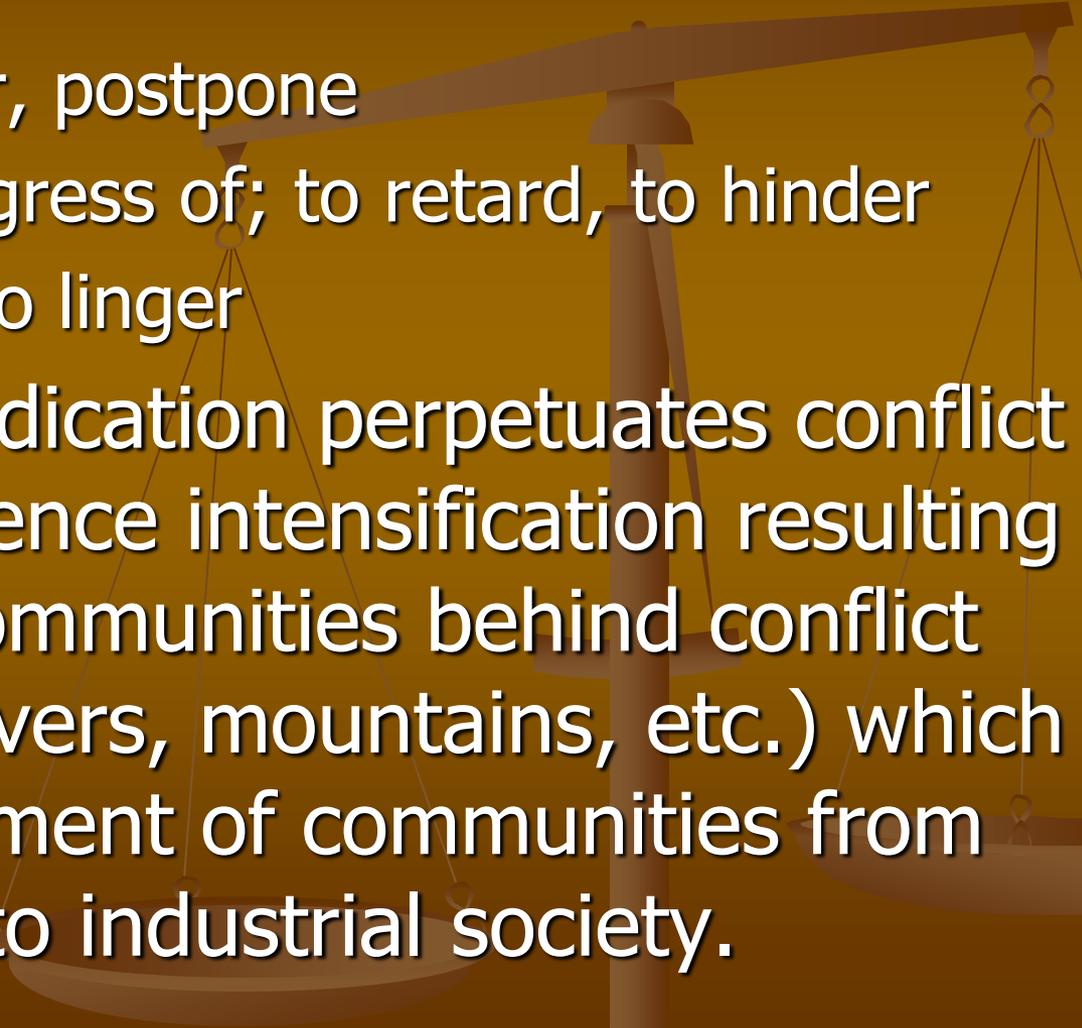
# The Consequences Lack of Land Adjudication

- Conflicts escalation due to unregulated competition for scarce natural resources: survival for the fittest
  - Forceful migration resulting in land invasions due to deleterious agrarian practices, giving rise to land degradation, drought and famine
  - Feuds and closure of Communities behind conflict barriers and perpetuation of fear of the unknown, of eviction and of dispossession
  - Protracted, costly and stressful litigation
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# Lack of Land Adjudication, Violence and Crime

- Uncertainties due to lack of land adjudication perpetuates conflicts, which escalate into disputes if not managed; disputes escalate into violence and crime if not resolved in time.
- Violence is the intentional use of physical force or power, threatened or actual, against a person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation.

# The Impact of Delay in Land Adjudication

- Delay means:
    - To put off; to defer, postpone
    - To impede the progress of; to retard, to hinder
    - To put off action; to linger
  - Delay in Land Adjudication perpetuates conflict escalation and violence intensification resulting in the closure of communities behind conflict barriers (forests, rivers, mountains, etc.) which impedes the movement of communities from traditional society to industrial society.
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# Traditional society

- Refers to a society characterized by an orientation to the past, not the future, with a predominant role for custom and habit. Such societies are marked by a lack of distinction between family and business, with the division of labour influenced primarily by age, gender, and status.
  - TS is undifferentiated characterized by hostility and instability, *res nullius*, immobility, monotony, consumptive, wastefulness, poverty, facelessness, informality and litigious.

# Closed Communities : No Access, No Opportunities, Immobility, and Underdevelopment

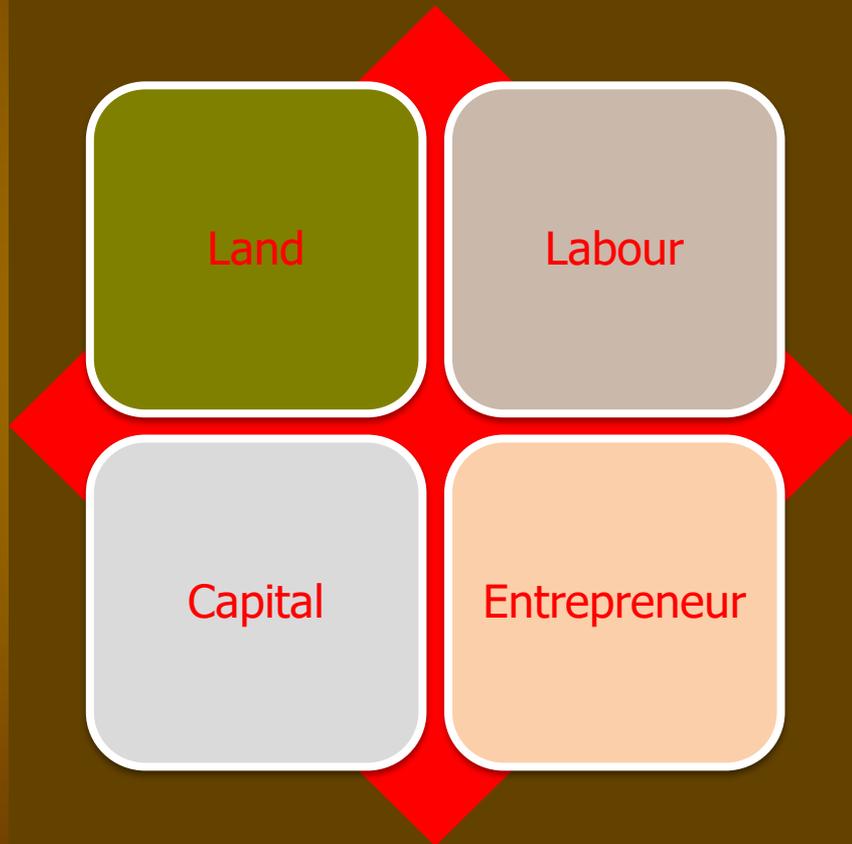
**Self-sufficiency and Calcification of Needs**



**Barriers to Access to Ownership and Investment**

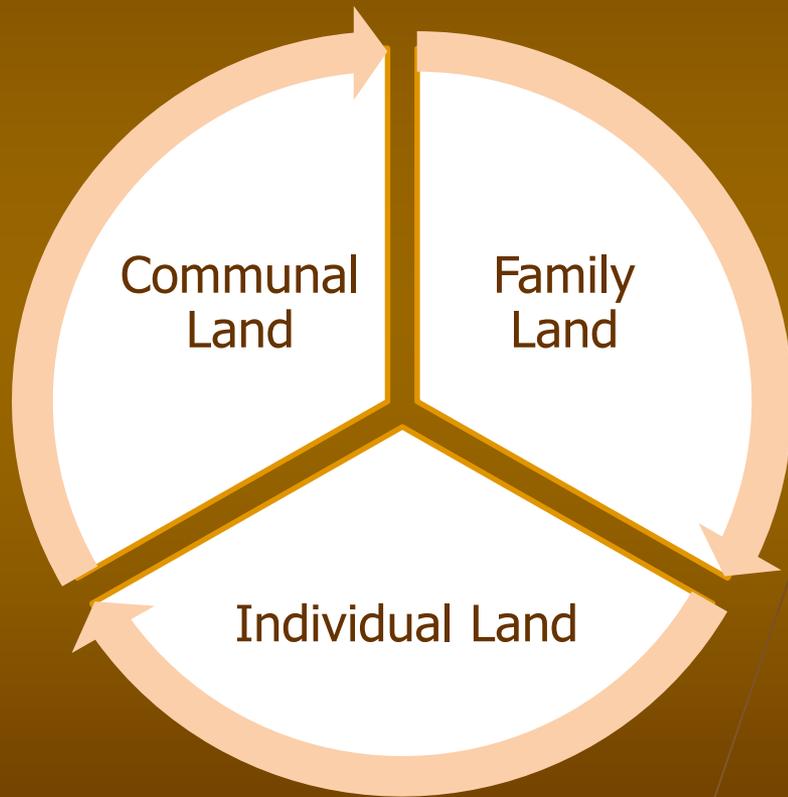


# Immobility of Factors of Production due to Conflict



- Conflict creates barriers to mobility of factors of production (land, Labour, Entrepreneurship and Capital) towards each other and between communities and towards the most productive uses, inhibiting production.

# Gender Structure under Traditional Societies



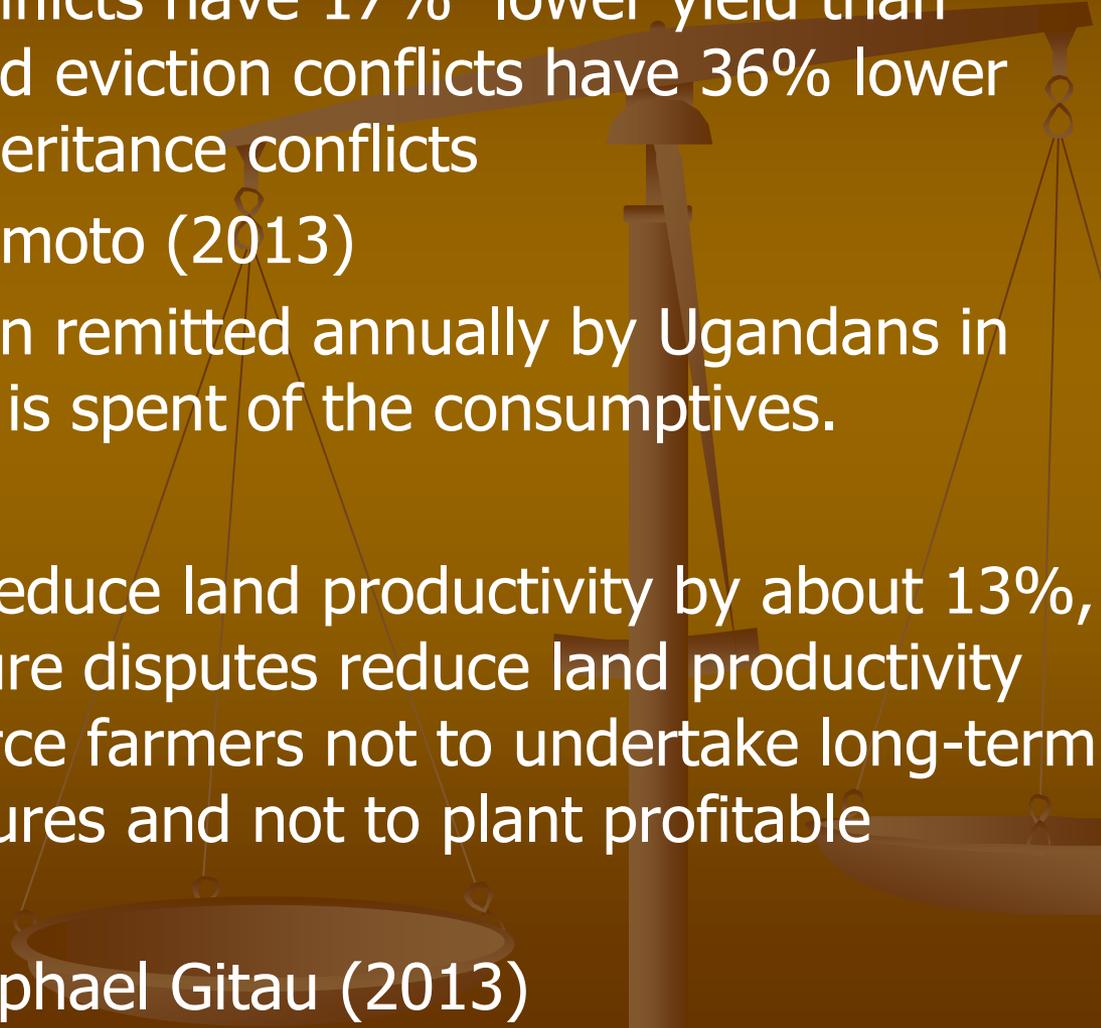
- **Communal Land** (grazing, hunting, fishing, **fighting forces**):  $\geq 65\%$  - male domains
- **Family Land** (horticulture, homesteads, etc.):  $\geq 30\%$  - Female Domain
- **Individual land** (residential/commercial):  $\geq 5\%$  male/female or both)

# Productivity in Traditional Societies

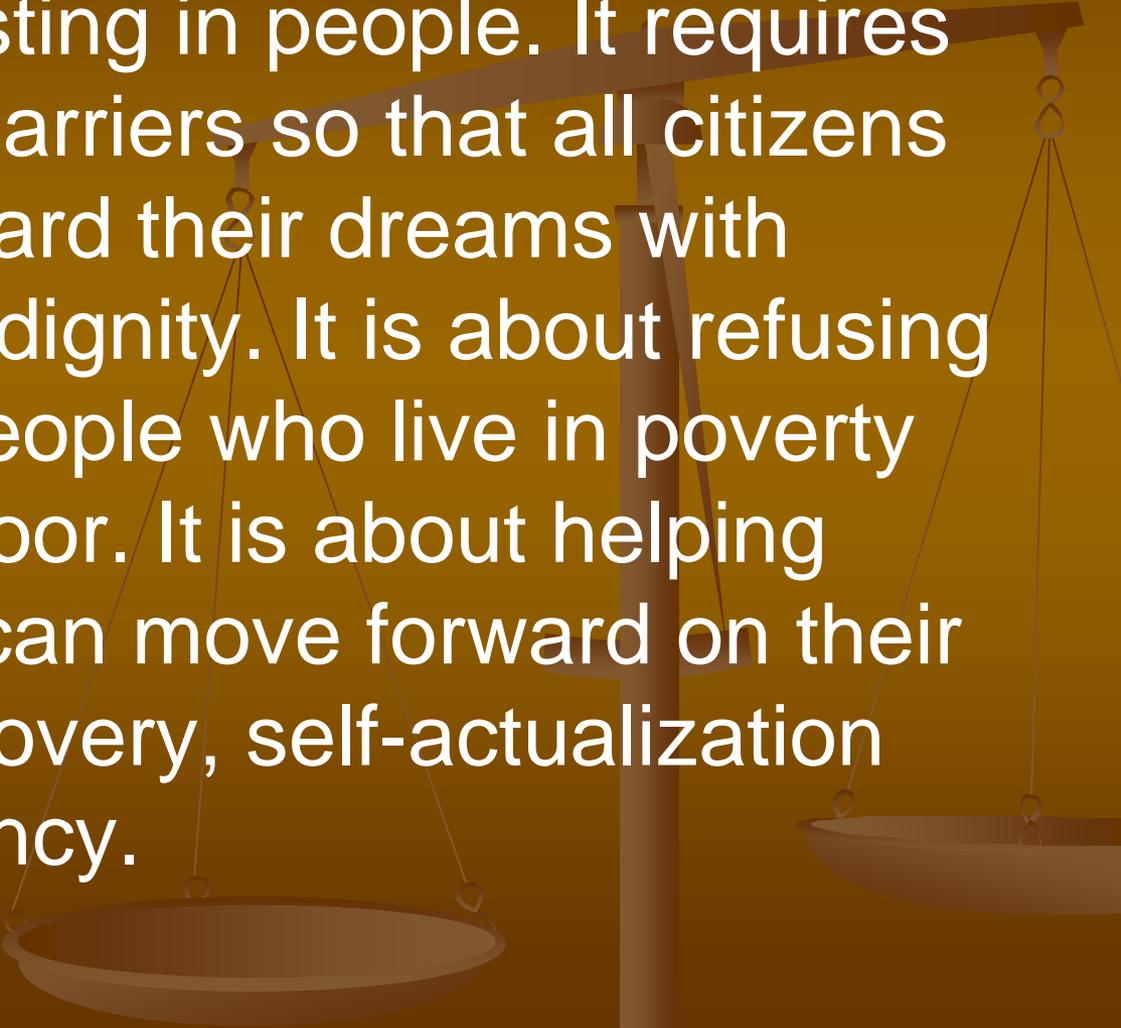


- Only the lowest segment is productive, where an estimated 65% of peasants 80% of who are women contribute 22% of GDP from subsistence farming on 24% of arable land
- Tax ratios (tax revenue relative to GDP) under 15%

# The Effect of Delays and the Fear of Eviction on Productivity

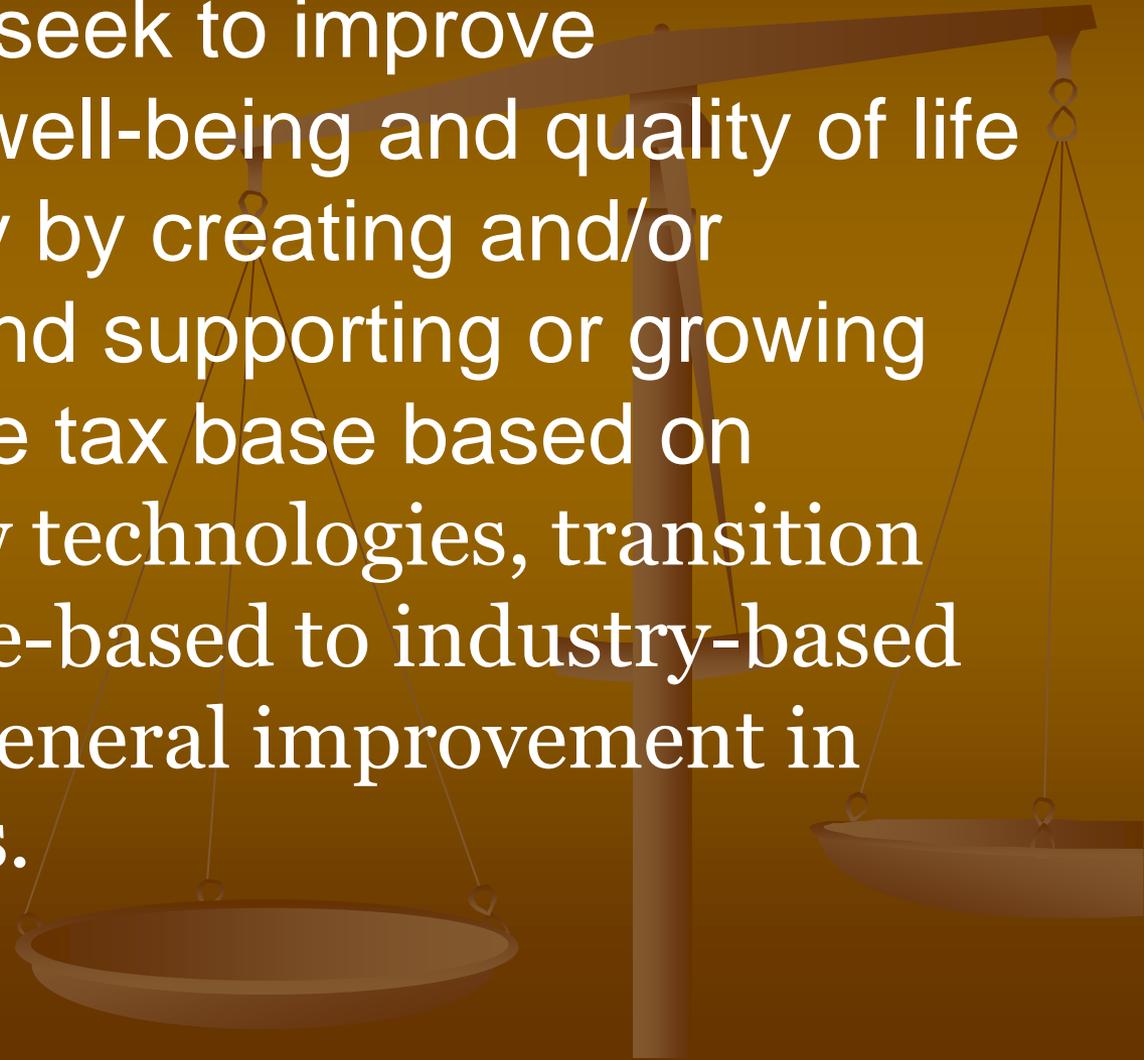
- In Uganda plots with conflicts have 17% lower yield than those without conflict and eviction conflicts have 36% lower yield than those with inheritance conflicts
    - (Mwesigye and Masumoto (2013))
  - Out of about US \$1 billion remitted annually by Ugandans in the diaspora about 80% is spent on the consumptives.
    - (UBOS/BOU).
  - In Kenya land disputes reduce land productivity by about 13%, while concern about future disputes reduce land productivity by 9%; land disputes force farmers not to undertake long-term land improvement measures and not to plant profitable perennial crops.
    - Milo Muyango and Raphael Gitau (2013)
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# The meaning of Social Development

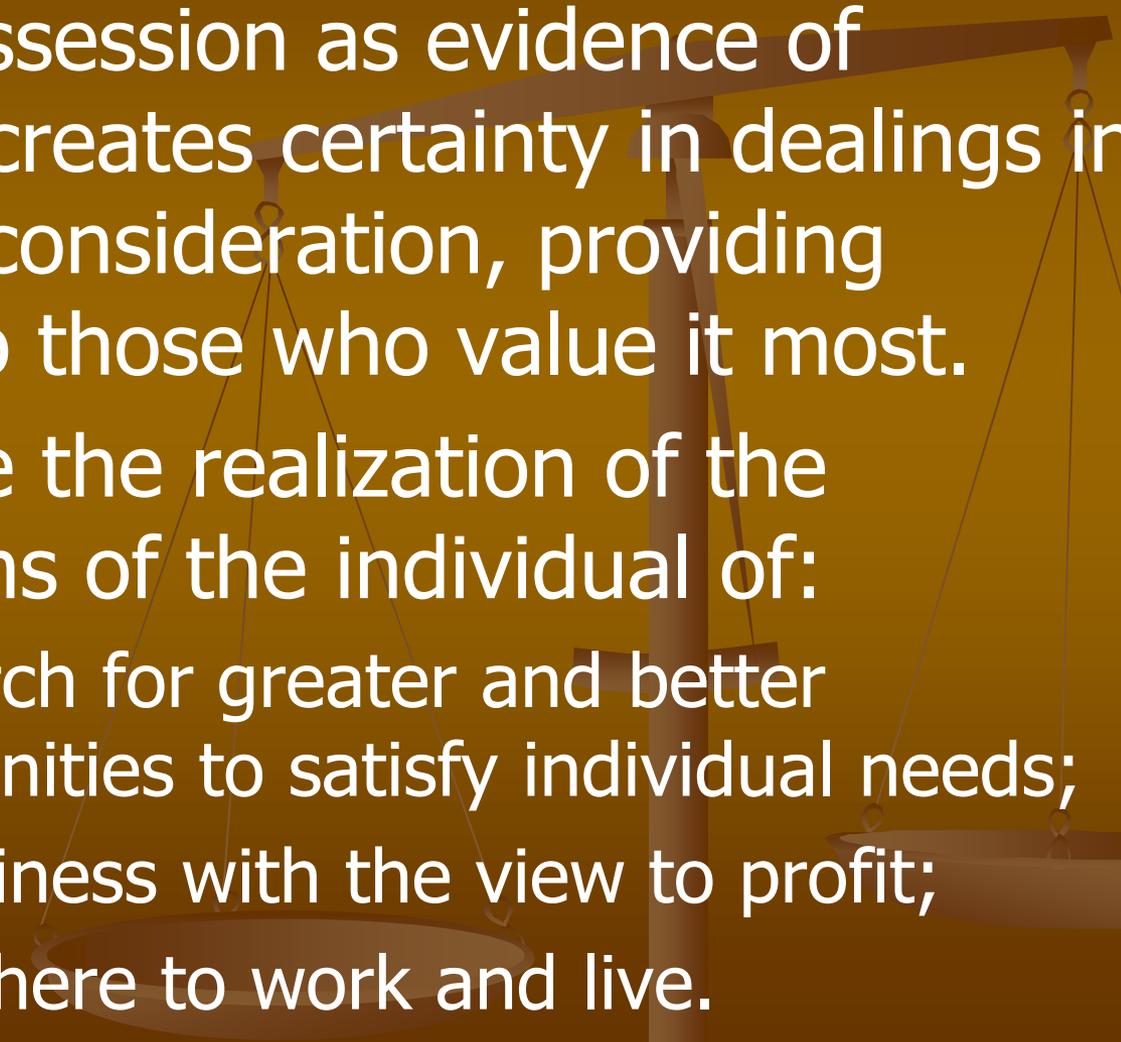
- SD means investing in people. It requires the removal of barriers so that all citizens can journey toward their dreams with confidence and dignity. It is about refusing to accept that people who live in poverty will always be poor. It is about helping people so they can move forward on their path to self-discovery, self-actualization and self-sufficiency.
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# The Meaning of Economic Development

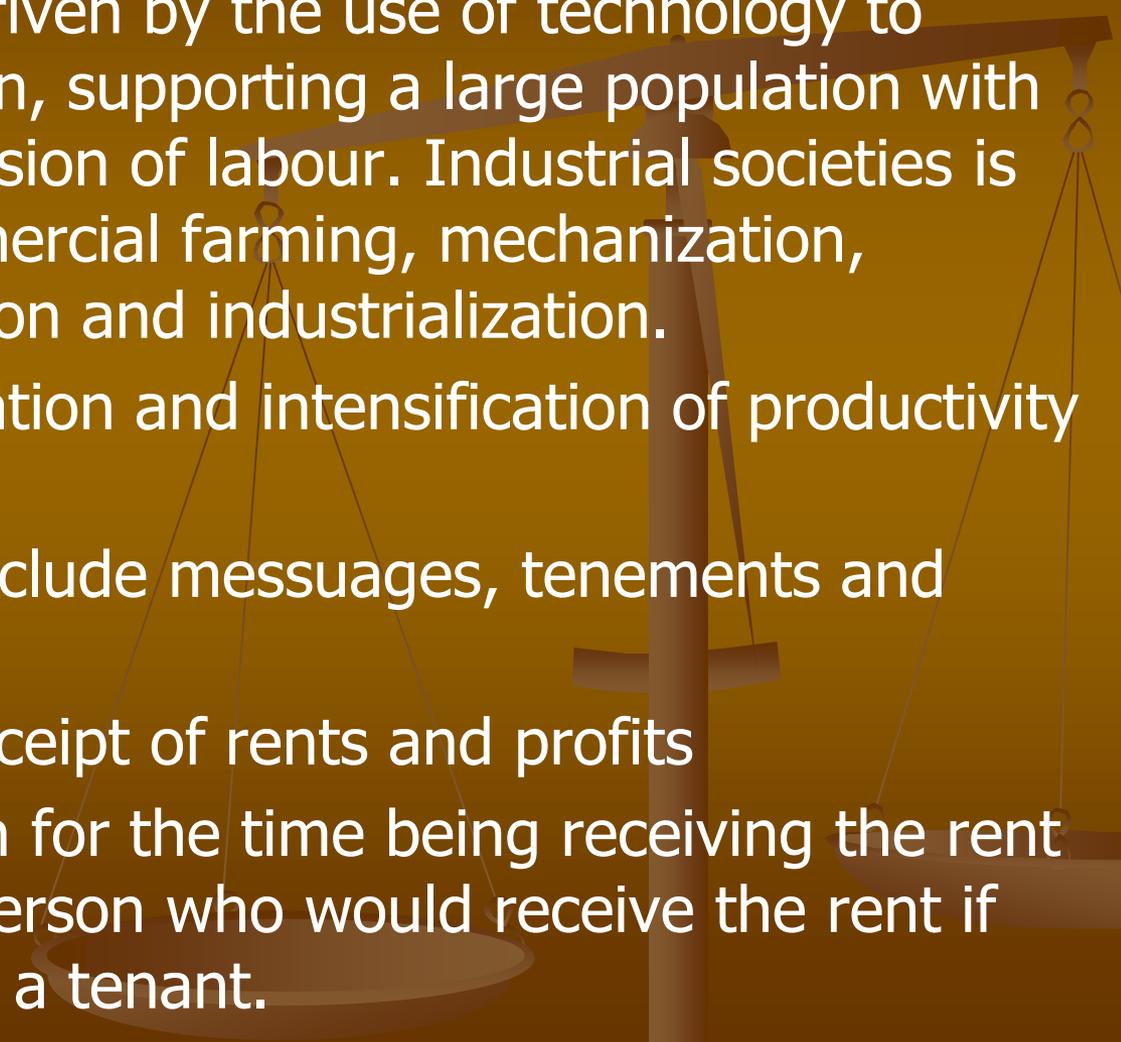
- Are efforts that seek to improve the **economic** well-being and quality of life for a community by creating and/or retaining jobs and supporting or growing incomes and the tax base based on adoption of new technologies, transition from agriculture-based to industry-based economy, and general improvement in living standards.



# Land Adjudication as the basis of Industrial Society

- LA establishes possession as evidence of ownership which creates certainty in dealings in land for valuable consideration, providing ACCESS to land to those who value it most.
  - LA makes possible the realization of the economic freedoms of the individual of:
    - movement in search for greater and better economic opportunities to satisfy individual needs;
    - association in business with the view to profit;
    - choice of work, where to work and live.
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# The Meaning of Industrial Society

- It refers to a society driven by the use of technology to enable mass production, supporting a large population with a high capacity for division of labour. Industrial societies is characterized by commercial farming, mechanization, automation, urbanization and industrialization.
  - It is based on densification and intensification of productivity on land, where,
    - land is defined to include messuages, tenements and hereditaments
    - Possession is the receipt of rents and profits
    - Owner is the person for the time being receiving the rent of the land or the person who would receive the rent if the land were let to a tenant.
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# Delimitation for Densification and Intensification of Productivity: $\geq 50 - \geq 500\%$ (+)

**Businessmen in Lawful Occupation (s. 64(2) of RTA)**

Licenseses, Invitees, Lodgers, etc.

**Mortgagee in Possession (s. 24 of MA2009)**

Rents and Profits

**Sublessee: in Possession (s. 109 of RTA)**

Rents and Profits

**Lessee: in Possession (s. 101 of RTA)**

Rents and Profits

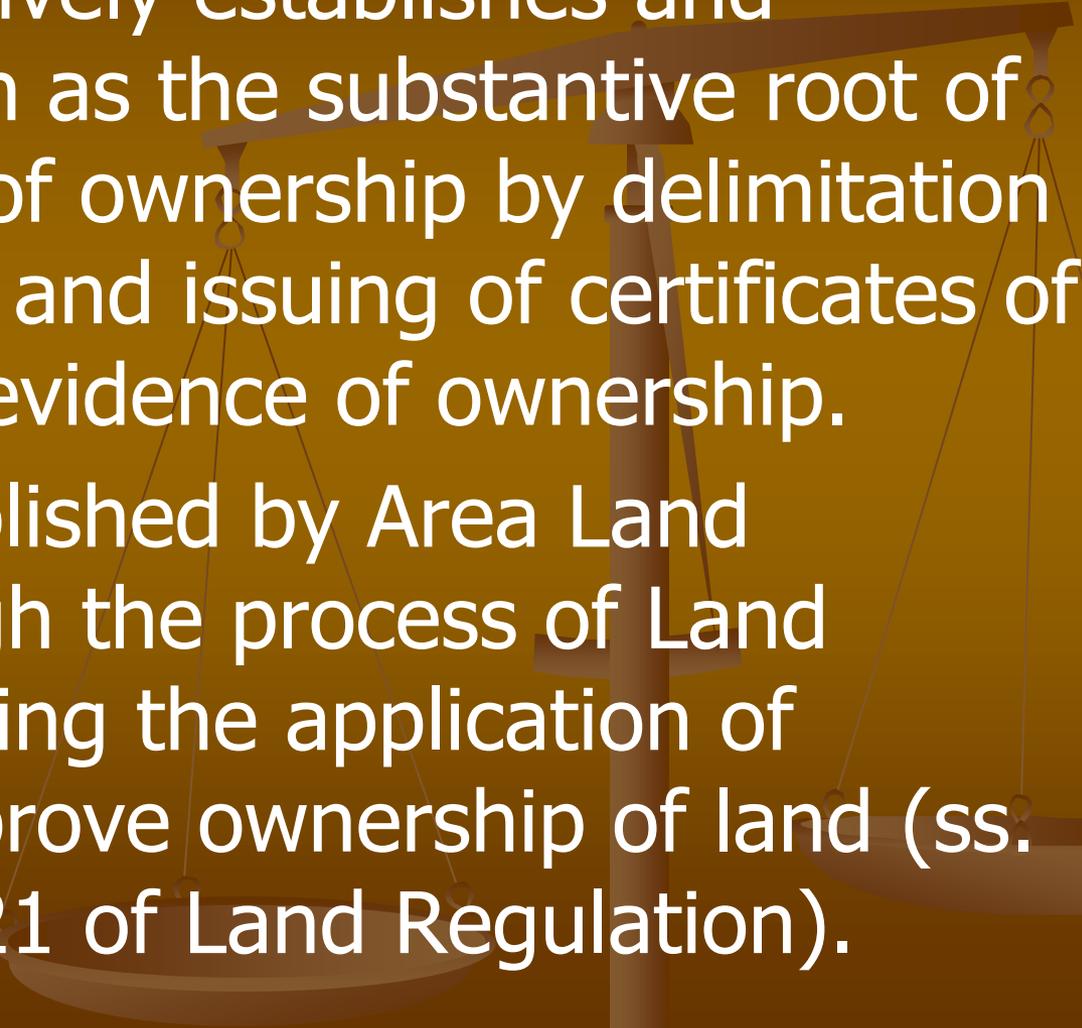
**Freeholder in Possession (s. 66 of RTA)**

Profit

# Densification and Intensification of Tax Base: Widens-upwards



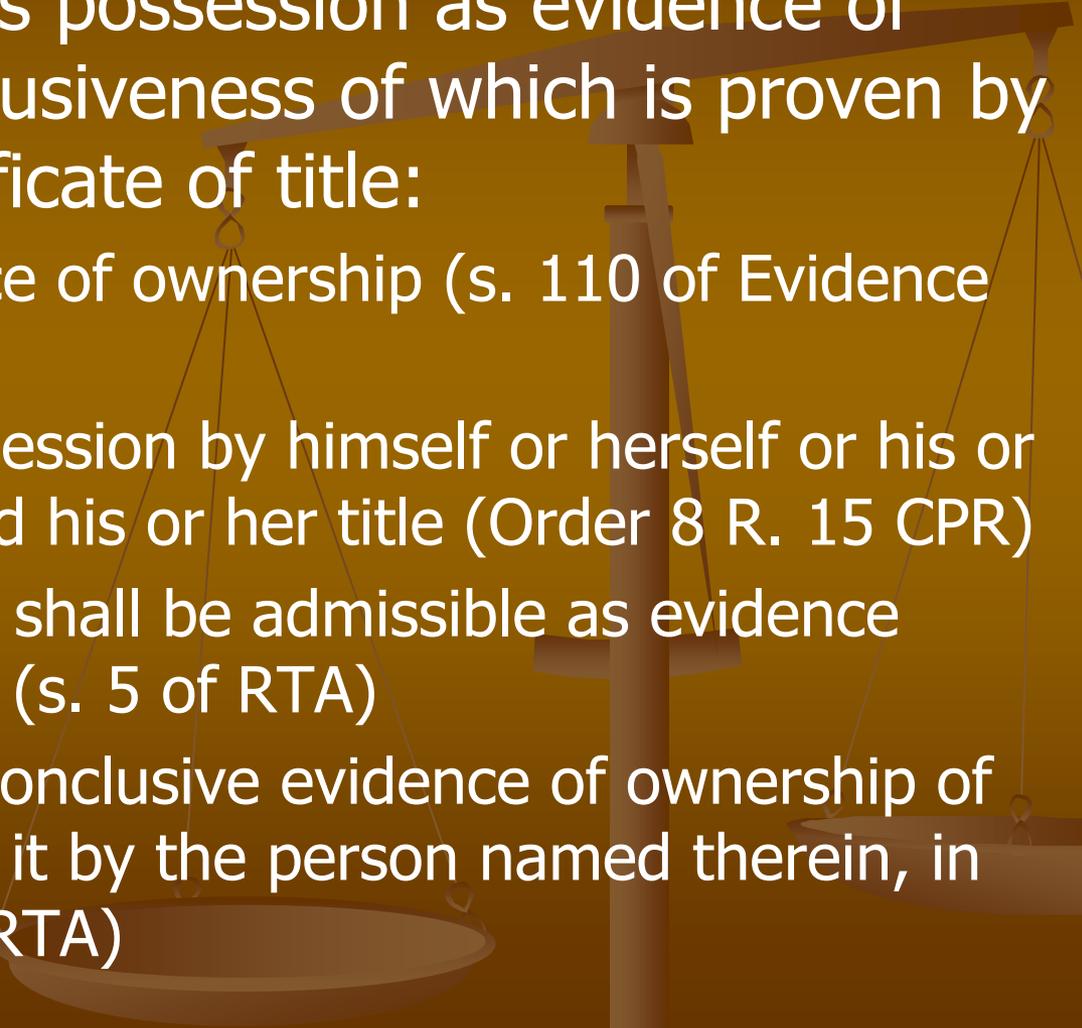
# The Role of MLHUD in Land Adjudication

- **MLHUD** authoritatively establishes and protects possession as the substantive root of title and evidence of ownership by delimitation of interests in land and issuing of certificates of title as conclusive evidence of ownership.
  - Possession is established by Area Land Committees through the process of Land Adjudication involving the application of customary law to prove ownership of land (ss. 5 and 6 and Reg. 21 of Land Regulation).
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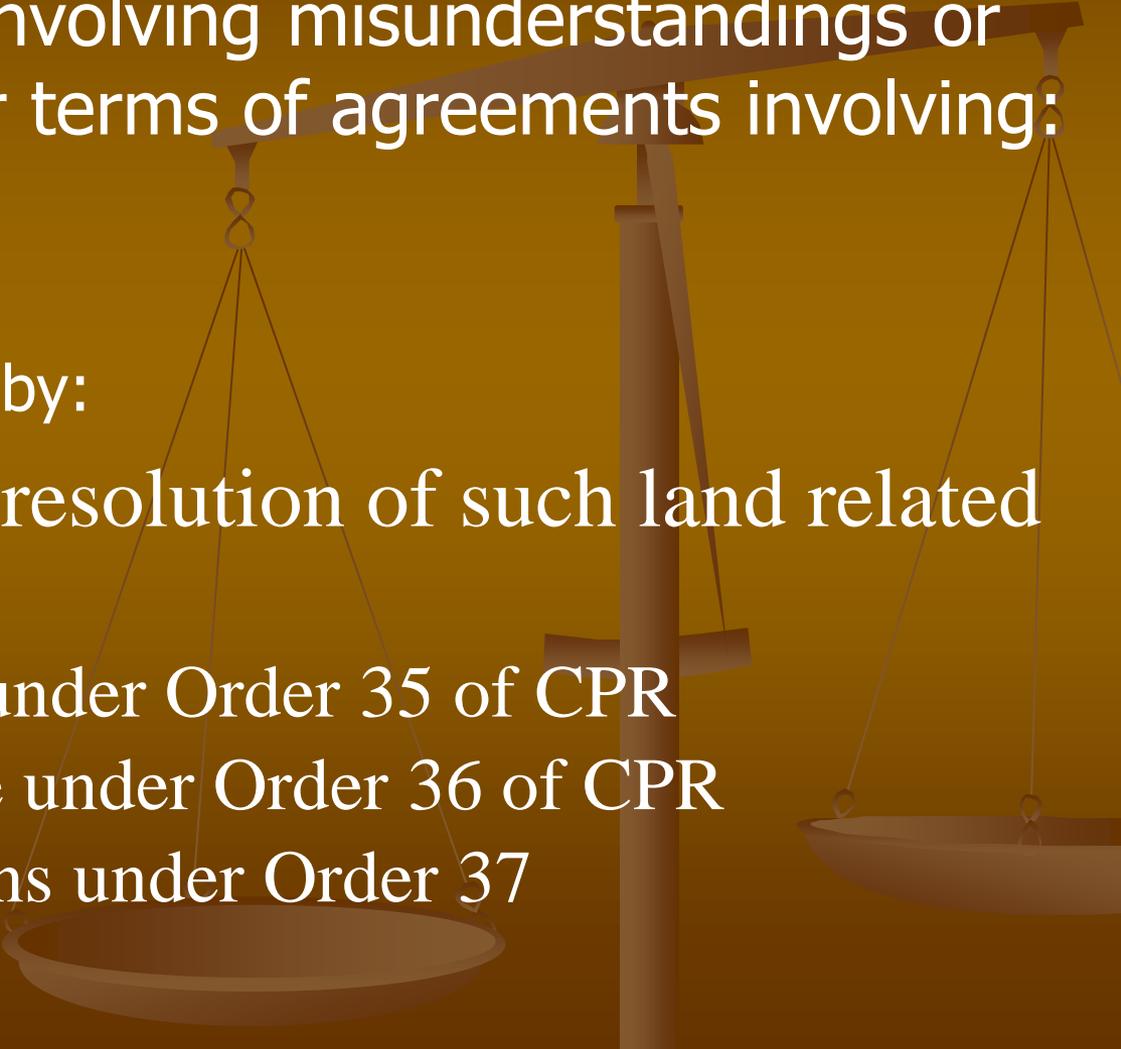
# Land Adjudication establishes Conclusiveness of Evidence of Title

- A CCO is conclusive evidence of the customary rights and interests in the land which **shall continue to be occupied**, used and regulated by customary law and shall be evidence of title (s. 8(1)&(7) of LA);
- A certificate of title is conclusive evidence that the person named in it as proprietor is seized or **in possession** of the land (s. 59 of the RTA);

# The Role of the Judiciary in Upholding Land Adjudication

- The Judiciary upholds possession as evidence of ownership, the conclusiveness of which is proven by production of a certificate of title:
    - Possession is evidence of ownership (s. 110 of Evidence Act)
    - No defendant in possession by himself or herself or his or her tenant need plead his or her title (Order 8 R. 15 CPR)
    - All certificates of title shall be admissible as evidence without further proof (s. 5 of RTA)
    - Certificate of title is conclusive evidence of ownership of the land described in it by the person named therein, in possession (s. 59 of RTA)
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# Court Procedure for Resolution of Land Related Disputes



- Manages disputes involving misunderstandings or disagreements over terms of agreements involving:
  - sales of land,
  - leasing of land
  - mortgaging of land by:
- The Procedure for resolution of such land related disputes are:
  - Suit by Agreement under Order 35 of CPR
  - Summary Procedure under Order 36 of CPR
  - Originating Summons under Order 37

# Conclusion: Trinity of the Torrens Land Justice System for Social and Economic Development

