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LAND CLAIMS ON LAND WHERE SAFCOL OPERATES

**PRESENTATION TO THE SELECT COMMITTEE ON COMMUNICATIONS AND
PUBLIC ENTERPRISES**

17 JUNE 2015

PRESENTATION OUTLINE

- Overview of the Restitution Programme
- Progress on the Settlement of Land Claims
- Rural Economy Transformation Model
- Settlement framework for claims on Commercial Forestry Land
- Progress report on settlement of claims on claims on land where SAFCOL operates
- Challenges And Remedial Action
- Way Forward

OVERVIEW OF THE RESTITUTION PROGRAMME

- The mandate for restitution emanates from s25(7) of the Constitution.
- Land restitution is one of the four elements of land reform, the others being land redistribution, land tenure reform, and development.
- The Restitution of Land Rights Act, 1994 regulates the restitution process. It provides for the establishment of the Commission (to solicit, investigate and attempt to resolve claims through mediation and negotiation) and the Land Claims Court (which adjudicates disputes arising from the process).

OVERVIEW OF THE RESTITUTION PROGRAMME

- A person, direct descendant of a person, estate, or community is entitled to restitution or equitable redress if it was dispossessed of a right in land, after 19 June 1913, as a result of past racially discriminatory laws or practices, and where a claim for such restitution was lodged within the prescribed timeline. Those who received compensation that is just and equitable at the time of dispossession do not qualify.
- Restitution occurs in the following forms
 - Restoration of a right in land
 - Provision of alternative land
 - Payment of financial compensation
 - Development, or
 - A combination of the above



OVERVIEW OF THE RESTITUTION PROGRAMME

- The processing of claims takes place through the following processes:
 - Lodgment – a process where claims are lodged with the Commission
 - Screening - a process to determine location and nature of claims where the nature of the claims
 - Research – a process that involves the investigation of a claim by the Commission, its acceptance or dismissal, publication of the claim in the government gazette,
 - Negotiations - a process where the Commission attempts to resolve the claim through negotiation and mediation
 - Settlement / Court- a process where the Commission refers the claim to the Minister for approval of the settlement of claims or to Court for adjudication
 - Implementation - a process where the award made by the court is implemented (acquisition and transfer of land, or payment of financial compensation)



PROGRESS ON SETTLEMENT OF CLAIMS

- Three targets were set for the restitution programme in the White Paper on South African Land Policy (1997) –
 - A 3 year period for lodgment of claims;
 - A 5 year period for the settlement of claims;
 - A 10 year period for the implementation of settlement awards and other post settlement support.
- The target for the settlement of claims was initially 2000, extended to 2005, and further extended to 2008.
- Between 1995 and 2006 the Commission focused on the settlement of urban claims.
- Rural claims have proved to be more complex. They are on vast tracks of land, are often competing, have a large number of households and beneficiaries.

PROGRESS ON SETTLEMENT OF CLAIMS

CLAIMS SETTLED AS AT 31 JAN 2015

PROVINCE	CLAIMS	HHS	BEN	FHHS	PERSONS WITH	HECTARES	LAND COST	FIN COMP	TOTAL AWARD
ECAPE	16533	68910	266147	26278	0	137701	35 602 393.29	2 119 121 322.48	2 679 199 085.53
FSTATE	2688	7626	49115	2724	1	54692	45 730 398.95	298 926 283.34	387 438 762.90
GAUTENG	13332	14470	66257	5572	5	13176	101 993 552.57	732 311 319.31	910 996 418.26
KZN	15178	86051	502926	26853	259	789834	5 947 258 964.94	1 925 337 027.72	9 193 242 561.51
LIMPOPO	3690	52791	265996	19819	0	666672	3 938 854 482.49	503 155 739.55	5 246 181 728.48
MPLANGA	2862	54232	260114	18547	50	474043	5 496 015 992.67	503 505 366.37	6 373 019 214.42
NCAPE	3731	23735	125377	9648	89	596311	515 100 298.50	938 677 047.64	1 658 930 836.33
NWEST	3741	42585	210510	19975	12	427676	2 027 557 519.36	377 394 726.64	2 895 745 789.38
WCAPE	16076	29597	134606	12848	376	6597	88 818 436.59	1 104 874 330.01	1 529 309 594.52
TOTAL	77831	379997	1881048	142264	792	3166702	18 196 932 039.36	8 503 303 163.06	30 874 063 991.33



COMMISSION ON RESTITUTION OF LAND RIGHTS

PROGRESS ON SETTLEMENT OF CLAIMS

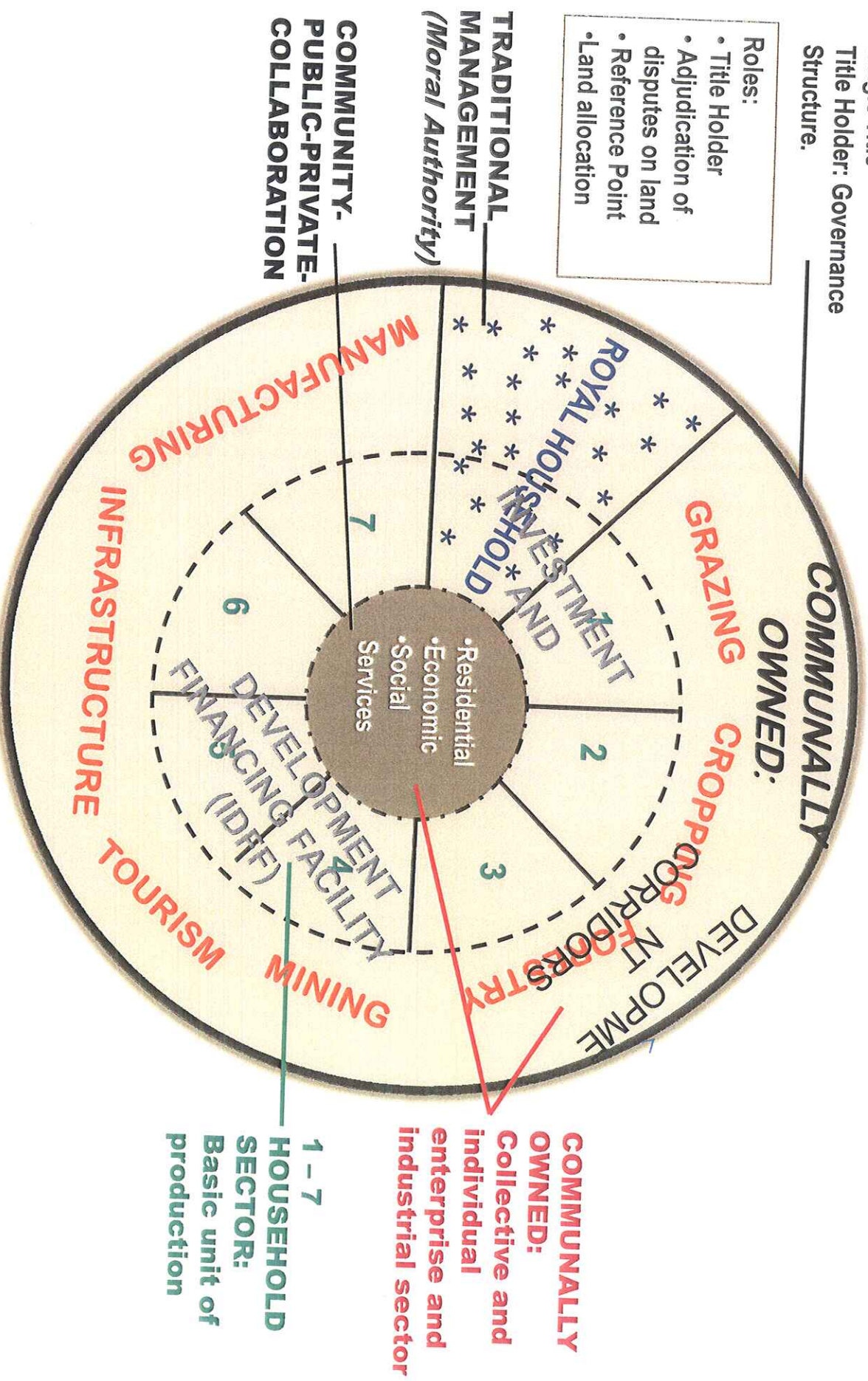
OUTSTANDING LAND CLAIMS

Province	Phase One	Phase Two	Phase Three	Phase Four	Total outstanding
	Lodgement & Registration	Screening and Categorisation	Determination in terms of Section 2 of the Restitution Act	Negotiations	
Eastern Cape	-	545	0	363	908
Free State	-	0	0	7	7
Gauteng	-	192	4	61	257
KwaZulu Natal	-	1134	141	784	2059
Limpopo	-	254	55	410	719
Mpumalanga	-	1976	150	514	2640
Northern Cape	-	40	0	83	123
North West	-	5	0	72	77
Western Cape	-	1034	0	211	1245
Total		5152	350	2533	8035

RURAL ECONOMY TRANSFORMATION MODEL

- In pursuit of the objects of the National Development Plan the DRDLR adopted the Rural Economy Transformation Model (RETM).
- Key to the RETM is the separation of governance from development.
- A Wagon Wheel, which is part of the RETM, provides for a land use plan as well as security of tenure for households, particularly vulnerable ones – female and child headed ones, as depicted in Figures 2 (a) and (b) below.
- The Wagon Wheel is also enhanced by a clearly delineated administrative and developmental institutions, each with a defined role; and how each institution relates to the others, as indicated in Figure 2 (c) below.

Figure 2 (a): RURAL ECONOMY TRANSFORMATION: COMMUNAL TENURE MODEL



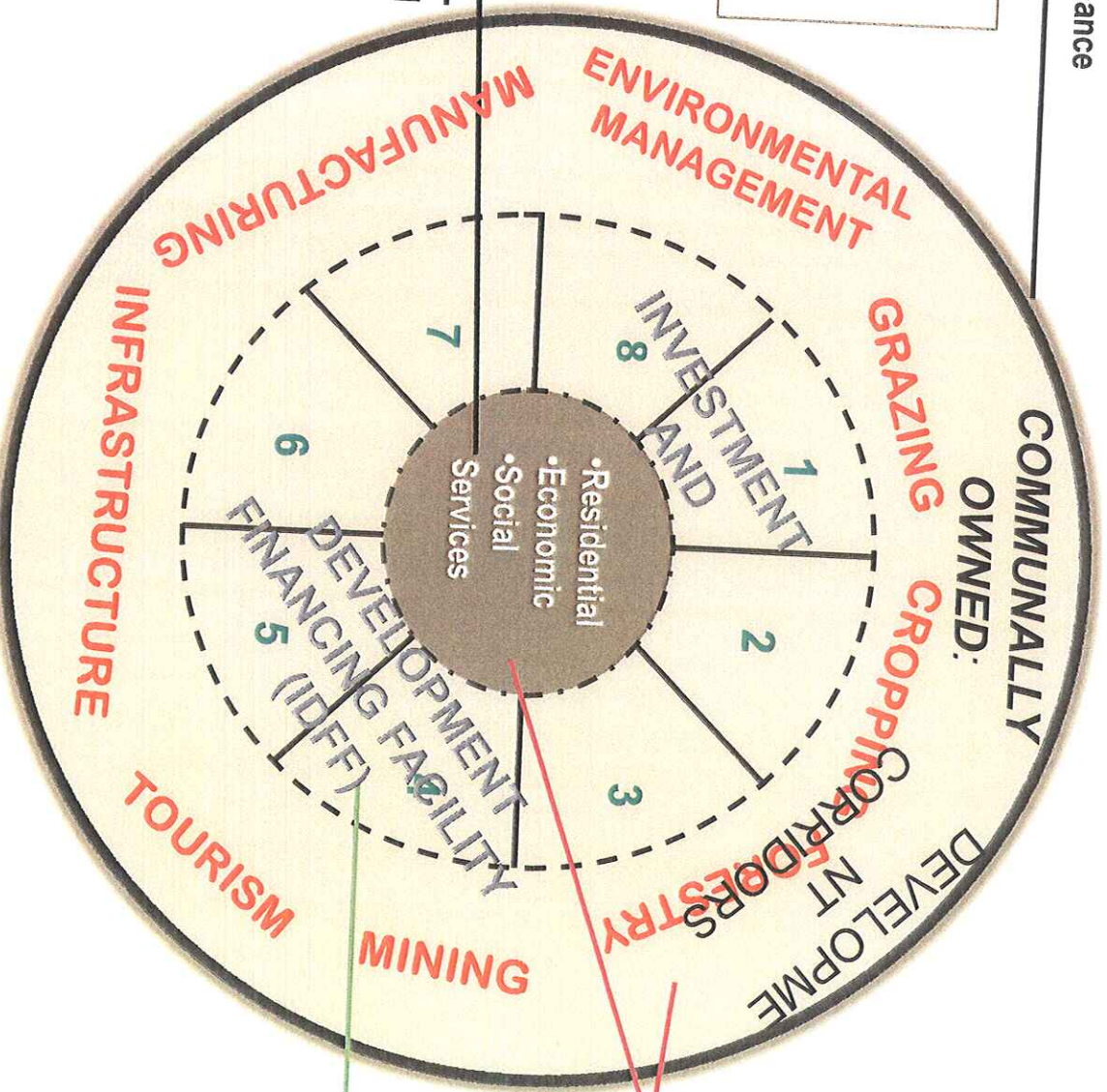
ROLES: TRADITIONAL COUNCIL/ MUNICIPAL COUNCIL
PRINCIPLE: COMPLEMENTARITY ACROSS TRADITIONAL & DEMOCRATIC INSTITUTIONS

**Figure 2 (b): RURAL ECONOMY TRANSFORMATION:
COMMUNAL TENURE MODEL**

Outer Boundary:
Single Title
Title Holder: Governance
Structure.

- Roles:**
- Title Holder
 - Adjudication of disputes on land
 - Reference Point
 - Land allocation

**COMMUNITY.
PUBLIC-PRIVATE-
COLLABORATION**

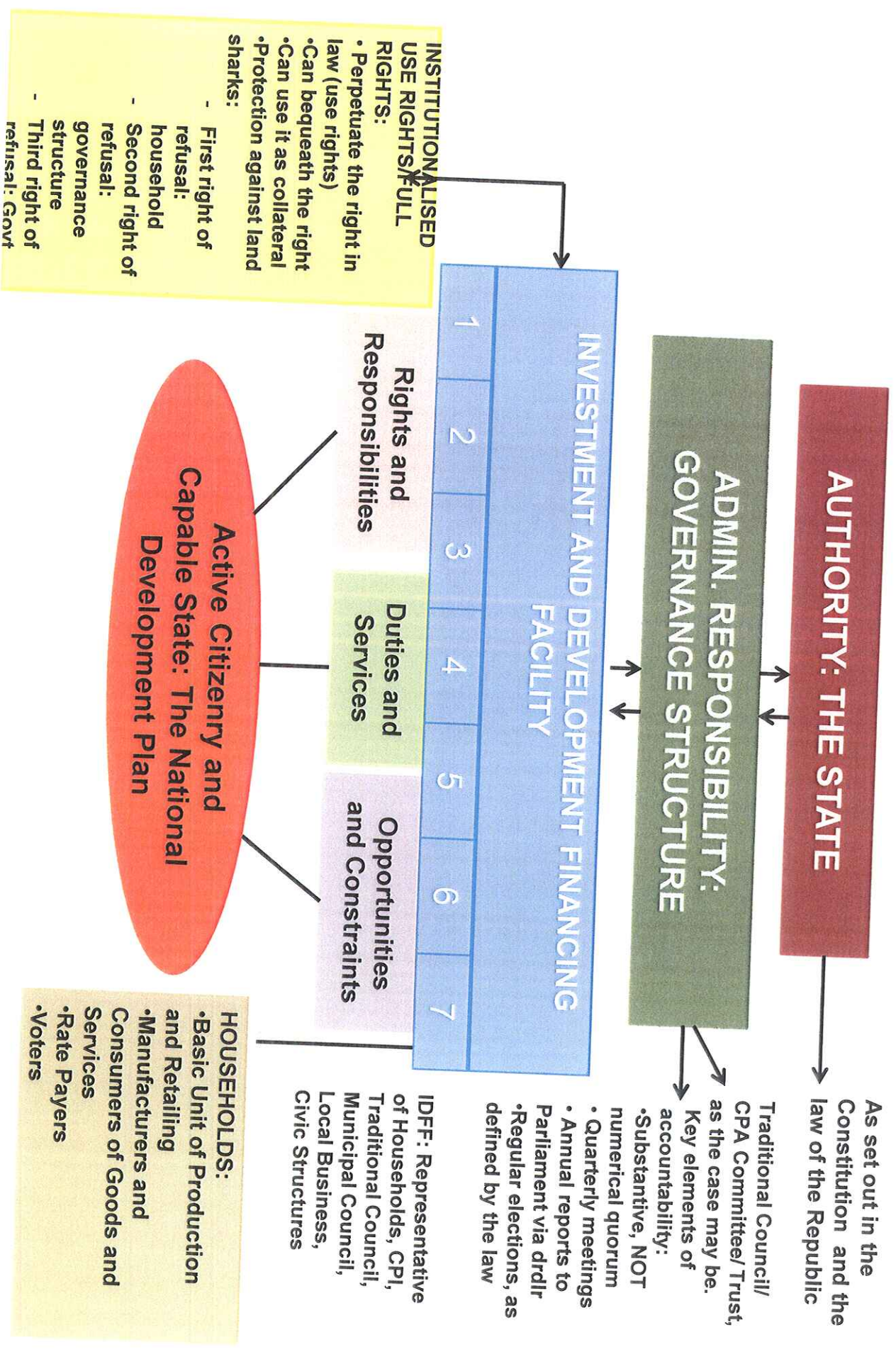


COMMUNALLY OWNED:
Collective and individual enterprise and industrial sector

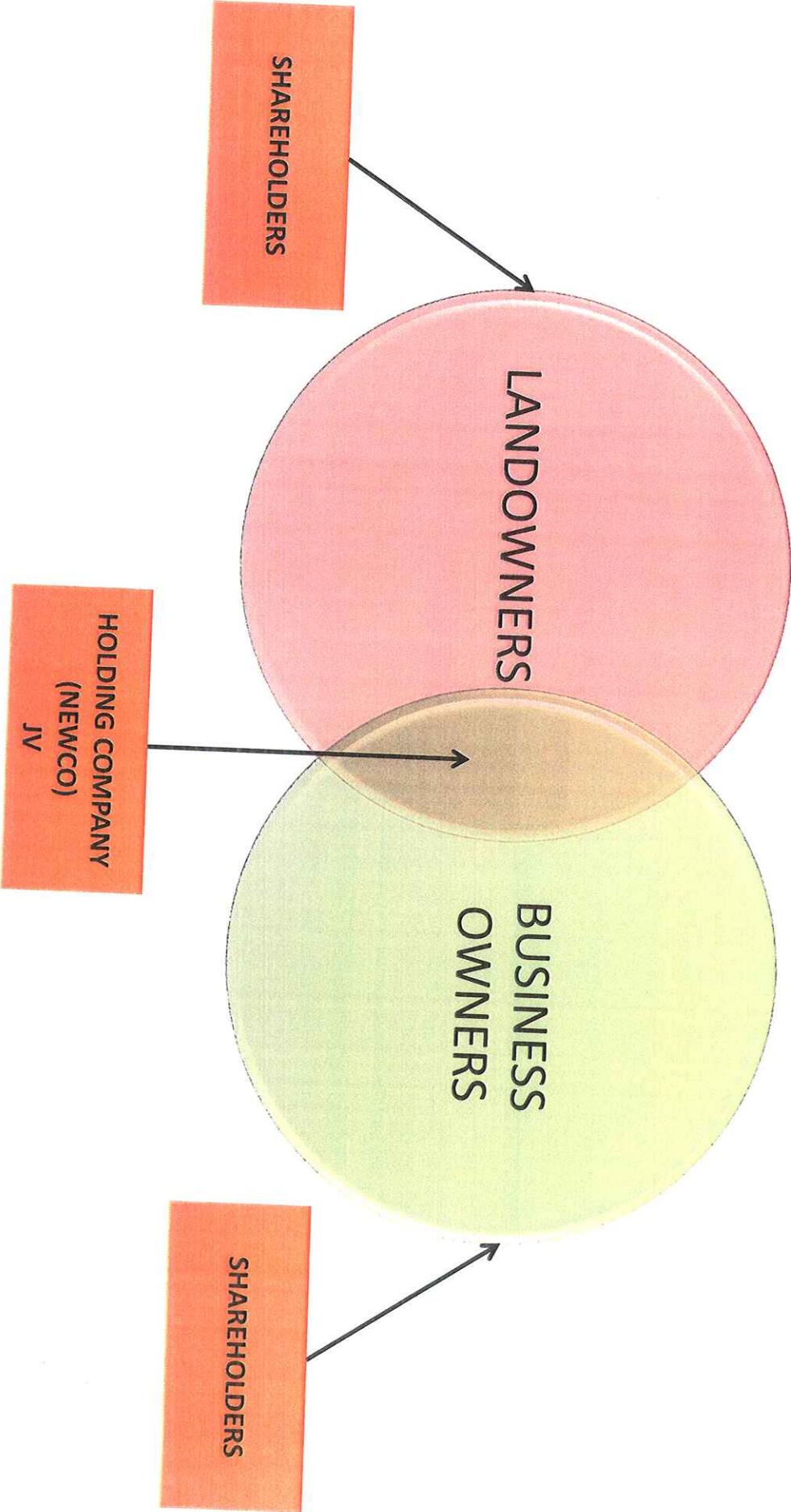
**1 - 8
HOUSEHOLD SECTOR:**
Basic unit of production

ROLES: TRADITIONAL COUNCIL/ MUNICIPAL COUNCIL / CPA / TRUST
PRINCIPLE: COMPLEMENTARITY ACROSS TRADITIONAL & DEMOCRATIC INSTITUTIONS

Figure 2 (c) : RURAL ECONOMY TRANSFORMATION: INSTITUTIONAL ROLES AND ROLE-RELATIONSHIPS



SHARE-EQUITY ENTERPRISE MODEL



SETTLEMENT FRAMEWORK: COMMERCIAL FORESTRY

- In 2008 the Minister approved a principle that claims on commercial forestry land would be settled by the acquisition of the land only, and not the timber. It would not be in the interest of the economy that trees must also be acquired.
- A second option of strategic partnerships, informed by the RETM was developed by the Commission.
- Both models can be supported by the Recapitalisation and Development Programme, which provides development assistance to beneficiaries of land reform.
- The strategy of the RADP is strategic partnerships which can take the form of mentorships, co-management, share equity arrangements, and contract farming and concessions.



SETTLEMENT FRAMEWORK: COMMERCIAL FORESTRY

Lease back Model

- DRDLR acquires and transfers ownership of the land to claimants.
- Claimants own land and lease it back to the owner of the trees for a maximum of two rotations (between 16 and 20 years for gum trees). Rental payable is 7% of the value of the land (with land values reviewed every 6 years)
- Lessee pays a market rental for the use of the land.
- Lessee provides incentives to claimants so as to help guarantee supply of raw material
- At the end of the second rotation, parties may re-negotiate new terms that could result in the increased ownership of business by claimants.
- Application of additional benefits described below



SETTLEMENT FRAMEWORK: COMMERCIAL FORESTRY

Strategic Partnerships Model

- DRDLR acquires and transfers ownership of the land to claimants.
- Government acquires a share in the trees, the extent of which is informed by a Plantation Management / Business Plan for the Plantation.
- Claimants and owner of the trees form a partnership in the ownership and management of the trees (the land is not to be included in the partnership).
- Partnership to rent the land for the duration of the partnership, paying rental of 7% of the value of the land.
- Partnership to have four pillars, tangible benefits, transparency and accountability, transformation and risk management.



SETTLEMENT FRAMEWORK: COMMERCIAL FORESTRY

Additional Benefits (applicable to both models)

- Formation of enterprises, where communities could start their own businesses and provide services to the plantation management. This shall enable Preferential procurement, i.e. contracting opportunities for claimants.
- Owner of the trees and DRDLR to assist claimants with development of enterprises and providing claimants with funding assistance.
- Owner of the trees to continue with its social compact and socio economic development initiatives within adjacent rural communities inclusive of claimants



SETTLEMENT FRAMEWORK: COMMERCIAL FORESTRY

Additional Benefits (applicable to both models)

- Provision of skills and knowledge transfers to land claimants
- Focus to rural infrastructure development for community benefit (public and private responsibility)
- Employment opportunities
- The objective is to ensure that the settlement of claims on forestry land is sustainable and presents direct, realistic tangible and maximum economic benefits to claimant communities.

SETTLEMENT FRAMEWORK: COMMERCIAL FORESTRY

- Contracts for the management of the timber land shall be made available to the community in six stages. Implementation of this approach shall be sequential and simultaneous. The stages are as follows:
 - Stage 1 – alien weed control
 - Stage 2 – stage 1 + tree maintenance (silviculture)
 - Stage 3 – stages 1+2+ planting
 - Stage 4 – stages 1-3 + fire prevention
 - Stage 5 – stages 1-4 + timber harvesting
 - stage 6 – stages 1-5 + timber transport

SETTLEMENT FRAMEWORK: COMMERCIAL FORESTRY

Model selection

- The appropriate settlement model to be implemented will be community specific and will be determined by:
 - Project size, i.e. area planted & full extent of claim
 - Availability of Government funding
 - Genus (gum, pine or wattle) and rotation length
 - Age class distribution
 - Technical, management & business expertise within community.

LAND CLAIMS ON SAFCOL OPERATIONS

STATISTICAL INFORMATION ON SAFCOL CLAIMS

Province	Phase One	Phase two	Phase Three	Phase four	Phase five	Phase Six	Total
	Lodgement	Screening and Categorisation	Research	Negotiations	Settlement	Implimentation	
KZN	-	-	-	1	-	-	1
LIMPOPO	-	-	1	16	3	-	20
MPUMALANGA	-	-	10	4	1	-	15
TOTAL	-	-	11	21	4	-	36

LAND CLAIMS ON SAFCOL OPERATIONS

- There are 36 land claims on SAFCOL Operations (lodged before 1998 cut-off date). New land claims are not being processed yet (section 6(1) (g) of Restitution Act)
- 61% of the land where SAFCOL operates is claimed (based on claims lodged before 1998 cut-off date).
- Most of the land is owned by the State, through the Department of Public Works, and leased by the Department of Agriculture, Forestry and Fisheries.
- To date, only 1 land claim has been settled with the land transferred to Beneficiaries (Shannon in Mpumalanga)
- 3 land claims were settled in Limpopo in 2005, but the land has not been transferred because there was no settlement model to settle SAFCOL claims, until May 2015; and SAFCOL only started paying rental for the land it uses in 2013.

CHALLENGES

- Discussions with SAFCOL on the settlement model to be applied to it started in 2008, after the erstwhile Minister of Land Affairs approve the settlement model for commercial forestry land.
- In February 2014 the Commission presented the Rural Economy Transformation Model to DPE and SAFCOL EXCO, and proposed model.
- In May 2015 the SAFCOL Board approved, for piloting, the leaseback settlement model for piloting in the claims in Entabeni Plantation (where the Commission has been working with the claimants since June 2014 discussing the commercial forestry model)
- The biggest challenge with the model is that the duration of the lease will be 70 years, as SAFCOL's rotation is 35 years.



CHALLENGES

- Section 27A of the National Forestry Act entitles successful claimants, which have claimed a state forest that is rented to a third party, to rental collected by the Minister of DAFF from the date of gazetting to the date of settlement. After settlement the rental is payable to claimants.
- The rental payable by SAFCOL (for DPW land it leases from DAFF) was R50 per hectare per year, significantly below market rental.
- SAFCOL only started paying rental for the land it uses in 2013. Payments for 2013 to 2015 (which are required to be on market basis) have not been made.
- This limits the benefits that claimants would ordinarily be entitled to, making it difficult to convince them to accept the lease back model that SAFCOL has opted for.



CHALLENGES

- Most of the claimed land is not vested (confirmation of ownership of land by the State in terms of the Constitution).
- Approval for disposal of land in terms of the State Land Disposal Act, 1961 is signed by the Minister of Public Works. This approval tends to delay transfer process, which normally takes the form of donation, which then require National Treasury approval in terms of Treasury Regulations.
- These factors contributed to the delay in the settlement of claims on SAFCOL operations

REMEDIAL ACTION AND WAY FORWARD

- The Commission has appointed universities and research institutions to supplement its research capacity.
- Of the 5152 land claims that require research, 2660 will be researched in the 2014/15 financial year and the balance in the 2015/16 financial year.
- The RETM provides a framework for the settlement of claims, including dispute resolution and problem solving mechanisms.
- The Department of Public Works has appointed a service provider that is assisting it with vesting of its properties. This will assist fast track the vesting process, enabling the settlement of claims (once there is an agreed model).

REMEDIAL ACTION AND WAY FORWARD

- SAFCOL has approved the leaseback model, albeit for piloting. The Commission will use the model and its Rural Economy Transformation Model (RETM) in engaging communities on settlement.
- It must be pointed out that there are some communities that do not want a 70 year lease on their land.
- SAFCOL has undertaken to pay market related rental, on an annual basis.
- DAFF is currently conducting rent-review, and valuation of all the land where SAFCOL operates. This valuation will be

THANK YOU

