

## **A tale of two countries – the mirror image between South African and Ukrainian Land Reform**

On the 23<sup>rd</sup> of September, the International Bar Association, in association with the Ukrainian Bar Association, hosted the world's first international conference on agricultural law. The discussions were rich and relevant, focusing on land reform, climate change the European Union's "Green Deal" as well as biotech where South Africa's Dr Lukeshni Chetty (General Manager at SANSOR) delivered a thought provoking and insightful presentation on the evolution of GMOs. The aspect that caught my eye was the contrast between South Africa's land reform programme and that of the Ukraine.

According to Professor Oleg Nivievskyi, the Ukrainian Government recently lifted a 20-year moratorium on the purchase and sale of farmland. As a former member of the Soviet Union, reforms were introduced in the early 1990s to transfer farmland from state to private ownership. With no real land market to speak of, the state may have feared that land would be sold for a pittance and introduced a nation-wide ban on the sale of agricultural land in 2001.

Although 77% of the country's farmland is in private hands with the remainder being split between communal and state land (Sound familiar?), private land could only be leased and could not be used as collateral to attract finance. All indications pointed to a lack of access to finance, soil degradation and depressed land values and productivity. Following a challenge in the European Court of Human Rights, the Government of Ukraine decided to lift the moratorium as of July 2021.

Now the next question may be; why do we care about what's happening in the Ukraine? Well for starters, the Ukraine is home to 42,7 million hectares of high potential, arable land. This accounts for almost one-third of all arable land in the European Union. However, due to the moratorium on land-based investments, the debt-to-asset ratio is roughly twenty times less than the United States as finance for the agricultural sector had to be backed by non-land assets. The Ukraine is already one of the dominant role-players in the global grain production but then one considers the low levels of finance to date, it may still be a sleeping giant. In fact, Prof Nivievskyi estimates that productivity could increase twofold.

Although the moratorium is being lifted, there are still restrictions on land size, foreign ownership and ownership by companies as well as a base price under which land cannot be sold. In addition, state and communal land remain off limits. These restrictions are substantial but they also come with an expiration date as restrictions will be gradually removed in 2024 and 2030 as the land market matures. These restrictions are substantial but there is a clear trend towards market liberalisation.

In contrast, the majority of land in South Africa is privately owned and we are not subject to such limitations. This is likely one of the key reasons why South Africa's agri-food value chains consistently punch above its weight. However, land redistribution beneficiaries are often denied ownership or tradable leases and still require consent from the state to enter into certain transactions. Very few would argue that the state has a vital role to play in land reform and that beneficiaries must be protected from exploitation. However, be an

expiration date and an expectation that land reform beneficiaries will one day enter into the land market as full participants without the state looking over their shoulders.

Perhaps, as Professor Rakuni noted during the conference, the challenge for Africa lies in the fact that there is an uneasy tension between traditional legal systems where communities have a legitimate interest in land transactions versus western legal systems that emphasises the autonomy of the individual. It is true that South Africa has a unique and complex history that must be taken into account. But then again, so does the Ukraine. We need to come up with solutions that are tailor made to South African circumstances but there is certainly much that we can learn from countries such as the Ukraine. Importantly, the South African economy is globally integrated and the agri-food sector's ability to lead the country's economic recovery relies heavily on producing food and fibre at prices that are globally competitive. With this in mind, we should be wary of moving towards a more centralised system with greater restrictions when the international trend is leaning more and more towards market liberalisation, investment and efficiency.