

# Organic Food Certification in South Africa: A Private Sector Mechanism in Need of State Regulation?

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## Abstract

Organic production targets the development of a sustainable cultivation system and a variety of high-quality products with an emphasis on environmental protection and high standards of animal protection. In South Africa the organic sector pioneered private practices and systems in small informal groups to guide the public and private sectors on environmental and sustainability issues. A private certification system for organic products is applicable in the country, consisting of network certification and third-party certification in collaboration with foreign and locally-based certification organisations. Local producers also use self-declaratory vendor claims associated with organic labels. A State auditor mechanism is nonetheless applicable with respect to the use of the term "free range" on labels for meat products. South African National Standards (SANS 1369) on Organic Agricultural Production and Processing (OAPP) have been drafted by the South African Bureau of Standards (SABS) but the final version has not yet been made public. There is currently no specific legislation on organic products in the country, while draft regulations on the control and sale of organic products are yet to be promulgated. This paper looks into organic food regulation in South Africa and examines how far this private sector mechanism for organic food certification is in need of State regulation.

## Keywords

Organic food production; third-party certification, participatory guarantee system; network certification; free range; self-declaratory vendor claims; state regulation.

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## 1 Introduction

South Africa has a growing organic market with products sold as home deliveries, in specialised stores and in large supermarket chains or in specialised restaurants or special organic markets.<sup>1</sup> Organic production targets the development of a sustainable cultivation system and a variety of high-quality products with an emphasis on environmental protection, biodiversity and high standards of animal protection. Organic agriculture as it is known today began in the 1930s and 1940s, mainly in Germany, the United Kingdom and Switzerland, as a reaction to agriculture's increasing reliance on synthetic fertilizers.<sup>2</sup> Demand for organic commodities also increased due to consumers' greater awareness about their health and the role of food in maintaining a healthy lifestyle.<sup>3</sup> In 2002 the world organic agricultural land area covered 24 million hectares with a total sale of 23 billion US dollars, reaching 43 million hectares in 2013 with a total sale value of 72 billion US dollars.<sup>4</sup> In 2013 Africa was the least prolific regional producer with 1.2 million hectares of organic agriculture, while the biggest regional producer was Oceania with 17.3 million hectares.<sup>5</sup> Organic standards have been used to create an agreement

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<sup>1</sup> Organic products are available at Woolworths, Pick 'n Pay, Hyperama and Shoprite Checkers. See UNEP Organic Agriculture in Africa 1; DAFF *Draft National Policy on Organic Production* 11. Products available on the local market may bear labels such as "organic" or "certified natural". It is unclear whether other products with labels such as "free range" (usually meat products) or "wild-harvested" are "organic" products or not.

<sup>2</sup> Alemanno 2009 ECLJ 85.

<sup>3</sup> See DAFF *Draft National Policy on Organic Production* 4.

<sup>4</sup> Willer and Youssefi *The World of Organic Agriculture - Statistics and Emerging Trends* 2004, accessible at <http://orgprints.org/2555/>. Organic methods of agriculture are used in more than 170 countries in 2013. Willer and Lernoud *The World of Organic Agriculture, Statistics and Emerging Trends* 2015 13, 23-24.

<sup>5</sup> Willer and Lernoud *The World of Organic Agriculture, Statistics and Emerging Trends* 2015 69. Organic agriculture in Africa is said to be gaining momentum. The International Federation of Organic Agriculture Movement (IFOAM) is currently working with the African organic sector, the African Union and other agencies in the framework of the "Organic Alternative for Africa Initiative" to facilitate the integration of organic agriculture into the core of African policies and the agricultural development agenda including the Comprehensive African Agriculture Development Programme (CAADP), developed under the African Union in the New Partnership for

regarding the understanding of an organic claim on a product, and to some extent, to inform consumers.<sup>6</sup> Regional groups of organic farmers began to develop organic standards in the 1940s.<sup>7</sup> Currently there are private organic standards worldwide as well as organic standards and regulations in more than 60 countries.<sup>8</sup>

The South African organic sector is said to have pioneered private practices and systems in small informal groups since 1970 to guide the public and private sector on environmental, health and sustainability issues.<sup>9</sup> In 1990 the number of organic farms had reached 50 while the first organic farms were certified for the export market in 1993.<sup>10</sup> Organic sales remained low until 2003 in both local and export markets.<sup>11</sup> While organic production in South Africa concerns both organic food and non-food products,<sup>12</sup> this paper will focus on organic food production. Certified organic food production started with rooibos tea, fruits (mangoes, avocados), spices and vegetables, and expanded to organic wines, olive oil, meat and dairy products.<sup>13</sup> Formal certified organic farming in the country was still relatively small with 45,000 hectares (0.05 % of the total agricultural area) in 2006.<sup>14</sup> The Western Cape is the nucleus of organic agriculture in South Africa and contributes a large share of the country's production destined for export with the European Union (EU) as the main

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Africa's Development (NEPAD). See CAADP <http://www.caadp.net/>. Willer and Lernoud *The World of Organic Agriculture, Statistics and Emerging Trends* 2015 42.

<sup>6</sup> Bennet *Food Identity Preservation and Traceability: Safer Grains* 232.

<sup>7</sup> Bennet *Food Identity Preservation and Traceability: Safer Grains* 232.

<sup>8</sup> See Willer and Lernoud *The World of Organic Agriculture, Statistics and Emerging Trends* 2015 127-129. See a list of organic regulations or standards (Organic Trade Association); US Organic Standards; European Union (EU) Organic Standards (see EC Regulation 834/2007 (28 June 2007)); UK Organic Certification Standards; Canadian Organic Standards; East African Organic Products Standards (EAOPS) adopted by the East African Community in 2007 as the official standard for Burundi, Kenya, Rwanda, Tanzania and Uganda. See Organic Standards International Certification Norms for Organic Food Production - AROS <https://www.organic-standards.info/en/documents>.

<sup>9</sup> The organic sector consisted of organic farmers as well as associations (such as the South African Bio-dynamic Association which was one of the five founders of IFOAM 1972). See UNEP-UNCTAD *Best Practices for Organic Policy* 9.

<sup>10</sup> See UNEP-UNCTAD *Best Practices for Organic Policy* 9.

<sup>11</sup> INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 12.

<sup>12</sup> Non-food products include health or body care products, baby care, pet food and care, household cleaning, dish washing liquids, washing powders, gardening and pest control. See go-organic <http://www.go-organic.co.za/searchdir.asp>.

<sup>13</sup> DAFF *Draft National Policy on Organic Production* 11.

<sup>14</sup> See DAFF *Draft National Policy on Organic Production* 10.

outlet area but also neighbouring Southern African States.<sup>15</sup> Informal organic farming by small-holder and subsistence producers is said to feed as much as two-thirds of the population.<sup>16</sup> However, the report on *The World of Organic Agriculture* indicates 37,466 hectares of organic cultivation for South Africa in 2013.<sup>17</sup>

Since there is a price premium on organic products, which can vary depending on the commodity or the market,<sup>18</sup> respect for the rules of organic production needs to be certified before an "organic" claim is authorised. It is uncertain to what extent South African organic food products respect the rules of organic production<sup>19</sup> and whether there is a non-organic material threshold.<sup>20</sup> It is also not clear whether genetically modified organisms (GMOs) are excluded from the production of organic food products in the country.<sup>21</sup> Currently, there are only draft regulations on the control and sale of organic products and draft South African National Standards on Organic Agricultural Products and Processing (OAPP SANS 1369) issued by the South African Bureau of Standards (SABS).<sup>22</sup>

The research question to be addressed in this paper is whether State regulation of the organic sector constitutes better regulation for organic food products than the current practice of the local organic sector. This paper begins with an overview of organic agriculture in the world and in

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<sup>15</sup> Particularly Mozambique. INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 70.

<sup>16</sup> DAFF *Draft National Policy on Organic Production* 4. Small farmers and subsistence farmers do not use pesticides and fertilizers in their farming operations due to the high costs of these inputs and they sell their products mainly in local village markets or farmers' markets. See DAFF *Draft National Policy on Organic Production* 11.

<sup>17</sup> Willer and Lernoud *The World of Organic Agriculture, Statistics and Emerging Trends* 2015 37.

<sup>18</sup> See INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 69, 80-81. The organic sector targets the high income market with Woolworths as the main retailer of organic products. INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 70.

<sup>19</sup> See the international standards set by the Codex Alimentarius Commission/FAO Guidelines for the production, processing, labelling and marketing of organically produced foods. See Codex Alimentarius Commission *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods*. See IFOAM Organics International "Internal Control Systems (ICS) for Group Certification".

<sup>20</sup> It refers to the threshold of what can be tolerated for non-organic material or ingredients or substances which are not allowed in organic food production. See section 4.2.8 below.

<sup>21</sup> See section 4.2.3 below.

<sup>22</sup> Only the draft version is available at this stage. It will be referred to as "OAPP SANS 1369".

South Africa. Section 2 provides a summary of the current laws and policies regulating the organic sector in the country. Section 3 examines claims associated with organic labelling in South Africa while Section 4 discusses the need for the State to regulate organic food production and processing in partnership with the private sector, and makes recommendations regarding a legislative framework for organic food production.

## 2 Current regulation of organic food products in South Africa

Although there is currently no specific legislation that applies exclusively to organic produce, there are laws and policies which apply to the production and sale of organic food products in South Africa.

The *Agricultural Product Standards Act*<sup>23</sup> (APSA) provides for the Biodynamic and Organic Certification Authority (BDOCA), which was set up to regulate and control the sale of organic products.<sup>24</sup> As for the export of organically produced commodities, the Perishable Products Export Control Board (PPECB) requires a certificate issued by an organic certification organisation that is accepted in the country of destination to accompany organic shipments.<sup>25</sup> Other laws regulate agricultural production,<sup>26</sup> the control of the sale and manufacture of food<sup>27</sup> and the fraudulent use of claims and descriptions.<sup>28</sup> There is no statute-based body representing the interests of the majority of organic farmers.<sup>29</sup> Private certification is applicable for organic products consisting mainly of network certification and third-party certification in collaboration with foreign and

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<sup>23</sup> 119 of 1990.

<sup>24</sup> Yearly inspections and one-year certificates are applicable. See Organic Seeds [http://www.organicseed.co.za/3\\_certified-organically-grown-registration-no-bdoca-102g](http://www.organicseed.co.za/3_certified-organically-grown-registration-no-bdoca-102g). Also see GN R260 in GG 38615 of 27 March 2015 under APSA which came into effect end March 2016), specifically reg 1 (definition of "organic") as well as reg 31(13) (use of "organic" on the container of a dairy product).

<sup>25</sup> This board aims at ensuring the authenticity of organic claims for products to be exported. See PPECB <http://ppecb.com/>.

<sup>26</sup> For instance, the *Agricultural Pests Act* 36 of 1983 (regarding the prevention of the introduction of agricultural pests from abroad); the *Animal Health Act* 7 of 2002 (regarding measures to promote animal health and control diseases as well as the import and export of animals); the *Genetically Modified Organisms Act* 15 of 1997.

<sup>27</sup> The *Food, Cosmetics and Disinfectant Act* (FCDA) 54 of 1972 and food labelling regulations (GN R146 GG 32975 of 1 March 2010 and proposed draft regulations GN R429 in GG 37695 of 29 May 2014).

<sup>28</sup> See s 41 of the *Consumer Protection Act* 68 of 2008.

<sup>29</sup> See DAFF *Draft National Policy on Organic Production* 17.

locally-based certification organisations.<sup>30</sup> Legal standards for organic food products (for instance, based on international standards)<sup>31</sup> are nonetheless required to serve as national benchmarks for such food production in the country. This paper refers to the contents of the draft version of the OAPP SANS 1369 (hereafter the "draft OAPP SANS 1369") since the final version of these standards is not publicly available at this stage.<sup>32</sup> The draft OAPP SANS 1369 states that all relevant national legislation will take precedence over the requirements set by these standards.<sup>33</sup> However, draft regulations under APSA regarding the control over the sale of organically produced products<sup>34</sup> (hereafter the "draft APSA Regulations") are still to be promulgated.<sup>35</sup> It is to be noted that a subsidiary regulation on organic agricultural production will be a government-imposed requirement as opposed to organic standards which are established by consensus and approved by a recognized body.<sup>36</sup>

Main policies concerning organic production in the country include a 2008 study on sustainable development and organic agriculture (hereafter "the

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<sup>30</sup> See SAOSO <http://www.saoso.org/>.

<sup>31</sup> See the Codex Alimentarius Commission Guidelines regarding organic food, which constitute the main international standard (see Codex Alimentarius Commission *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods*) or the IFOAM Family of Standards (INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 56).

<sup>32</sup> See SANAS 2015 *Media Release*. Organic stakeholders have been lobbying for the development of a national organic standard in line with international standards since 1994. INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 57; OAPP SANS 1369. Standards on organic agricultural products and processing were drafted by the organic sector in cooperation with the Government and were expected to be completed by 2002. Their lack of finalisation has been raised by a number of stakeholders as a key constraint to the growth of organic agriculture in South Africa. See INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 60.

<sup>33</sup> See clause 1 OAPP SANS 1369.

<sup>34</sup> See GN 1854 in GG 29493 of 29 December 2006.

<sup>35</sup> The contents of the draft regulations are said to be based on the requirements of major South African trading partners but leave emerging small farmers, subsistence growers and local markets well out of the loop. These regulations reserve the right to label products as organic only for producers who are certified as such by independent, third-party certifying agencies. See SAOSO <http://www.saoso.org/>. Small farmers claim that the certified organic sector dismisses the validity of production systems of subsistence farmers while other organisations do not see the necessity or obligation of an organic certification but prefer a system of "equivalence" to be established by an organic regulatory body. See DAFF *Draft National Policy on Organic Production* 11.

<sup>36</sup> Private standards and government regulations are both admissible in the IFOAM Family of Standards (see IFOAM Family of Standards ).

FRIDGE Study"),<sup>37</sup> the 2011 draft organic policy,<sup>38</sup> the 2012 draft National Strategy on Agro-ecology and the 2013 Industrial Policy Action Plan.<sup>39</sup>

The FRIDGE Study was commissioned by the Department of Trade and Industry (DTI) in collaboration with the Department of Agriculture, Forestry and Fisheries (DAFF) to investigate organic agriculture and develop strategies to support the development of this sector in South Africa. It aimed at developing a value chain strategy for the sustainable development and growth of organic agriculture with input from a range of stakeholders associated with organic agriculture in South Africa and other countries. The FRIDGE Study states that organic farming excludes the use of synthetic fertilizers and pesticides while targeting the optimisation of soil management and the environmental interaction of plants and soil.<sup>40</sup> It also describes organic farming as having food quality, human health, animal welfare and socio-economic aims. This study acknowledges that while there is no universally recognised definition or description of organic farming, the definition of the International Federation of Organic Agriculture Movements (IFOAM) is a good working definition.<sup>41</sup> It highlights the fact that many farmers in Africa may be using organic principles of production although they are not formally certified.<sup>42</sup> Socio-economic themes in relation with organic agriculture are also reviewed as well as opportunities for black empowerment, skills development, job creation, food security and the health benefits of organic production.<sup>43</sup>

A national organic policy for South Africa was deemed necessary, but it has still not yet been finalised.<sup>44</sup> Its main purpose is to create a broad framework for the development of a competitive and prosperous organic sector to support the Government's commitment towards poverty alleviation, job creation, rural development, food security, improved health

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<sup>37</sup> INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture*.

<sup>38</sup> DAFF *Draft National Policy on Organic Production*.

<sup>39</sup> DTI *Industrial Policy Action Plan*.

<sup>40</sup> INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 12-13.

<sup>41</sup> "Organic production is a production system that sustains the health of soils, ecosystems and people. It is adapted to local conditions rather than use of inputs". See INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 13.

<sup>42</sup> See INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 8.

<sup>43</sup> See para 10 FRIDGE Study. INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture*.

<sup>44</sup> See DAFF *Draft National Policy on Organic Production*.

and sustainable economic development.<sup>45</sup> This policy envisages the local organic industry as a public sector with the State as facilitator.<sup>46</sup> An alternative agricultural production system will contribute to the "green economy" strategy, sustainable agriculture, and the Clean Development Mechanism.<sup>47</sup> Organic production is also thought to bring economic benefits such as savings on increasingly expensive external chemical inputs.<sup>48</sup> According to the draft organic policy, "organic agriculture is meant to co-exist with conventional agricultural production until consumers dictate norms and standards aligned with the imperative and obligation of climate change mitigation and adaptation".<sup>49</sup>

The 2012 draft National Strategy on Agro-ecology includes organic farming as one of the different types of agro-ecological<sup>50</sup> and resource-conserving practices which does not use synthetic chemicals or genetically modified (GM) seeds.<sup>51</sup> Regarding organically raised animals, this strategy recommends the establishment of standards for the certification of free range, organically produced feeds.<sup>52</sup>

Although the 2013 Industrial Policy Action Plan under the DTI focuses mainly on industry policy promoting economic growth, it also provides for a feasibility study to determine the requirements for an accreditation programme for organic agricultural production and processing.<sup>53</sup> In March

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<sup>45</sup> See DAFF *Draft National Policy on Organic Production* 9.

<sup>46</sup> See DAFF *Draft National Policy on Organic Production* 4-5.

<sup>47</sup> See DAFF *Draft National Policy on Organic Production* 4-5. The "Green Economy" is a growing economic development model aiming at addressing the interdependence of economic growth and natural ecosystems as well as the adverse impacts that economic activities may have on the environment. South Africa hosted a Green Economy Summit in May 2010 in view of formulating a Green Economy Plan. See South Africa's Green Economy Strategy. Organic production is expected to minimise energy consumption by 30% to 70% per unit of land by eliminating the energy required to manufacture synthetic fertilizers, fossil-based fuels and by using internal farm inputs thus reducing the use of fuel for transport. See DAFF *Draft National Policy on Organic Production* 7.

<sup>48</sup> Especially emerging farmers. See DAFF *Draft National Policy on Organic Production* 8.

<sup>49</sup> See DAFF *Draft National Policy on Organic Production* 5.

<sup>50</sup> Agroecological farming also refers to interactions of all important biophysical, technical and socioeconomic components of farming systems and regards these systems as the fundamental units in which mineral cycles, energy transformations, biological processes and socioeconomic relationships are considered in an interdisciplinary way. See DAFF *Draft National Agro-Ecology Strategy* 2.

<sup>51</sup> DAFF *Draft National Agro-Ecology Strategy* 5-6.

<sup>52</sup> DAFF *Draft National Agro-Ecology Strategy* 6.

<sup>53</sup> DTI *Industrial Policy Action Plan* 47.



2015 the *Technical Requirements for Certification Bodies*<sup>54</sup> in organic agricultural production and processing (OAPP) were finalised under the South African National Accreditation System (SANAS) and a SANAS-accreditation programme for certification bodies was introduced.<sup>55</sup>

### **3 Claims associated with the organic label in South Africa**

The lack of legislation defining an "organic product" in the country raises concerns with regard to claims associated with the "organic" label. At this stage, the organic sector has recourse to (1) a private certification mechanism with network and third-party certification; (2) self-declaratory vendor claims which may be associated with organic claims for local products; (3) a State auditor mechanism prior to the use of the term "free range" on labels for meat products; and (4) the SANAS accreditation programme for organic agricultural production and processing. This subsection discusses the current practice regarding claims associated with the "organic" label in South Africa.

#### **3.1 Private certification of organic food products**

Network and third-party certification are applicable to the certification of organic food products in South Africa.

##### *3.1.1 Network certification*

Network certification for organic products is currently practised in the country, whereby growers, suppliers and retailers of locally grown food group together and use organic labels.<sup>56</sup> This form of group certification facilitates smallholders' access to organic certification and organic markets at affordable costs. Network certification is considered as an affordable alternative to third-party certification to avoid high certification costs but does not necessarily bring "organic certification". It provides a "network

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<sup>54</sup> SANAS is the State accreditation body. See SANAS 2015 *Technical Requirements for Certification Bodies*.

<sup>55</sup> See SANAS 2015 *Media Release*. See the comments on the introduction of this accreditation programme in section 4.3 below regarding the need for an accreditation body.

<sup>56</sup> Certification is usually applied to an individual or a single company that produces, trades or exports organic goods based on standards which are used to establish an agreement within organic agriculture with respect to what an "organic" claim on a product means. For instance, some local producers using network certification (Growers Association [www.greengrowersassociation.co.za](http://www.greengrowersassociation.co.za), Rainman *Landcare Foundation* at [www.rainman.co.za](http://www.rainman.co.za) and Slyavuna Abalimi *Development Centre* at [www.siyavuna.org.za](http://www.siyavuna.org.za)).

guarantee" or "natural stamp"<sup>57</sup> for products coming from a particular network of farmers.<sup>58</sup> The Participatory Guarantee System (PGS) for organic production is another form of a locally focused quality assurance system which caters for small-scale production.<sup>59</sup> It offers opportunities for the support and development of emerging farmers based on an agreed set of standards that are monitored by the respective farmers. It certifies producers based on the active participation of stakeholders and is built on a foundation of trust and social networks.<sup>60</sup> Both the South African Organic Sector Organisation (SAOSO) and IFOAM support the development of PGS as an alternative and complementary tool to third-party certification within the organic sector.<sup>61</sup>

### 3.1.2 *Third-party certification*

Third-party certification is a formal and documented procedure that is carried out by an independent organisation.<sup>62</sup> This third-party procedure reviews the manufacturing process of a product and determines whether the final product has been made in accordance with organic standards of production.<sup>63</sup> The third-party certifying body sends inspectors to visit the organic farm and inspect its operation and farm inputs as well as its pest management strategies. After the verification of the entire operational system of the organic farm, the product may bear the name of the independent institution which has verified its organic status. In general,

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<sup>57</sup> The Bryanston Organic Market's fresh produce is "certified organic" or bears the market's stamp of "natural assurance" that these products are free from artificial additives, preservatives and colourants. See Bryanston *Organic Market* at <http://www.bryanstonorganicmarket.co.za/>.

<sup>58</sup> For instance, the Organic Farms Group trains and develops black farmers with an emphasis on marketing under the "Organic Farms Group" brand. In line with the South African Government's mandate, Organic Farms Group experts are linked to beneficiary farmers and are assisted by graduates and interns with on-going public and private sponsorships. See Organic Farms Group [www.organicfarmsgroup.com](http://www.organicfarmsgroup.com).

<sup>59</sup> PGS South Africa is a voluntary organisation promoting and supporting the Principles of Organic Agriculture as defined by IFOAM, and serving as a network and support organisation for the development of market access for farmers through the PGS system of organic assurance. See African Organics at [www.organicsafrica.co.za](http://www.organicsafrica.co.za).

<sup>60</sup> It also offers training in conducting inspections of farms and is said to be a quality assurance of organic products with a certificate of organic status. See IFOAM Organics International "Internal Control Systems (ICS) for Group Certification".

<sup>61</sup> See IFOAM Organics International "Internal Control Systems (ICS) for Group Certification". The draft OAPP SANS 1369 includes PGS certified products produced in South Africa with the SAOSO PGS organic label. See clauses 4.10.1(b) and 4.10.2 OAPP SANS 1369.

<sup>62</sup> Munteanu 2015 *Network Intelligence Studies* 147.

<sup>63</sup> Munteanu 2015 *Network Intelligence Studies* 147.

foreign certification organisations monitor closely the use of their names and logos to protect the reputation of the certification body.<sup>64</sup>

Third-party certification in collaboration with certification bodies is costly in South Africa.<sup>65</sup> The IFOAM Family of Standards, one of the several organic standards worldwide, distinguishes between credible organic and non-organic standards and offers multilateral equivalence regarding organic standards and technical regulations.<sup>66</sup> Other foreign certification bodies also offer group certification as a third-party system for small-scale production with internal control systems.<sup>67</sup>

### **3.2 Self-declaratory vendor claims**

Self-declaratory vendor claims for higher health<sup>68</sup> standards or animal welfare are also currently used in South Africa. Such claims may be associated with health claims and the products to which they are attached may not be "organic" products as such or inspected by a third party or State auditors. A farmer or producer may for example guarantee through a vendor declaration that his or her products have a higher health standard relating to a particular aspect. For instance, some dairy products bear additional labels with a vendor's declaration such as a "farmer's' pledge" claiming that no antibiotics, animal by-products, giblets and growth hormones have been used in raising their livestock.<sup>69</sup>

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<sup>64</sup> Munteanu 2015 *Network Intelligence Studies* 149.

<sup>65</sup> See the following private certification bodies: Afrisco (see Afrisco <http://www.afrisco.net/>); BCS Öko-Garantie, a third party specialising in organic certification. See BCS Öko-Garantie [http://www.bcs-oeko.com/en\\_our\\_services.html](http://www.bcs-oeko.com/en_our_services.html). See the BDOCA (Organic Seeds [http://www.organicseed.co.za/3\\_certified-organically-grown-registration-no-bdoca-102g](http://www.organicseed.co.za/3_certified-organically-grown-registration-no-bdoca-102g)); the Skal international control union (SKAL <http://www.controlunion.com/certifications>); the Organic Food Federation (see Organic Food Federation <http://www.orgfoodfed.com/>). Ecocert Southern Africa is registered in South Africa since 2002 and offers its services also to Zimbabwe, Mozambique, Zambia, Lesotho and Malawi. See Ecocert <http://southafrica.ecocert.com/>. SGS South Africa offers organic food certification services to meet organic standards for export purposes to the European Union (EU) or the United States (US). See SGS "Organic Certification"; the Lacon Institut (see Lacon "Organic Farming"); the IFOAM's Organic Guarantee System (OGS) is meant to facilitate the development of organic standards and third-party certification worldwide as well as to provide an international guarantee of these standards and organic certification (see OGS <http://www.ifoam.bio/en/organic-guarantee-system-ifoam-organics-international>).

<sup>66</sup> See IFOAM Family of Standards.

<sup>67</sup> See IFOAM Organics International "Internal Control Systems (ICS) for Group Certification".

<sup>68</sup> Eg no added salt, sugar or additives.

<sup>69</sup> Parmalat milk products contain a farmers' pledge that suppliers of Parmalat milk warrant that no recombinant bovine somatotropin (rBST) hormones have been used

In 2014 the draft Guidelines on Criteria for the Evaluation of Dossiers Containing Applications to Use Certain Endorsement Logos on Foodstuff Labels and Advertising (applicable to Regulations Relating to the Labelling and Advertising of Foods) (hereafter "the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels") proposed recommendations for health claims on food products.<sup>70</sup> According to these guidelines, health claims must be truthful and not misleading. Manufacturers are expected to have evidence substantiating their claims.<sup>71</sup> Manufacturers are further required to follow guidance documents to ensure a health claim is properly substantiated.<sup>72</sup>

Producers also use the term "natural" on food labels, which may be perceived as "organic" labels. For instance, this term is used for certified "natural" lamb meat products that are available at Checkers Supermarket.<sup>73</sup> Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels provides criteria for the use of the

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to artificially stimulate milk production in cows. Livestock are regularly injected with or fed with antibiotic drugs to prevent disease and hormones to promote growth in South Africa. See DAFF *Draft National Policy on Organic Production* 6. The *Meat Safety Act* 40 of 2000 does not mention any requirement on the use of growth hormones. While a "stock remedy" is regulated, there is no obligation to indicate the administration of such a remedy on the labels of products derived from livestock and poultry within maximum residue levels. The term "stock remedy" refers to any substance intended or offered to be used in connection with domestic animals, livestock, poultry, fish or wild animals for treatment, cure, improvement and production capacity. See s 1 of the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act* 36 of 1947 (hereafter the "Farm Feed Law"). Regs 4, 5 and 6 of GN R1555 in GG 18439 of 21 November 1997 relating to Milk and Dairy Products (under the FCDA) state that the sale of milk containing antibiotics exceeding the maximum residue levels (Regulations Governing the Maximum Limits for Veterinary Medicine and Stock Remedy Residues that may be Present in Foodstuffs GN R 215 in GG 28584 of 10 March 2006) is forbidden, but do not require the disclosure of the use of antibiotics to raise cows. However, Guideline 1 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels requires the disclosure of the use of growth hormones for beef or bovine products, the use of routine antibiotics as a growth promoter for chicken products, and the use of rBST for milk products for consumer information requirements.

<sup>70</sup> See the 2014 draft Guidelines accessible at <http://www.factssa.com/DRAFT%20Guidelines%202014.pdf>.

<sup>71</sup> See the prohibited statements on health claims in the proposed Guideline 16 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>72</sup> See Guideline 16 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels. However, at this stage Regulations GN R429 in GG 37695 of 29 May 2014 have been proposed to govern only the use of health claims on food products in South Africa.

<sup>73</sup> See Checkers "Shoprite Group is First Retailer to Stock Certified natural Lamb".

term "natural".<sup>74</sup> The term "natural" is used on some local dairy products which are manufactured only from milk and are free from other ingredients or additives (such as preservatives, flavourings or colourants).<sup>75</sup>

References to the general, non-specific benefits of a nutrient or food for overall good health are required to comply with the Regulations relating to the Labelling and Advertising of Foods.<sup>76</sup> With respect to health and nutrition claims, the term "natural" or "naturally" means that either nothing has been removed or nothing has been added to the food.<sup>77</sup> In addition, the "natural" food must not have been subjected to any food processes or treatment.<sup>78</sup> This guideline states that it is misleading to use the term "natural" to describe foods or ingredients that employ chemicals to change their composition or comprise the products of new technologies.<sup>79</sup> Guideline 13 also regulates compound foods made from more than one ingredient and specifies that they should not be described directly or by implication as "natural".<sup>80</sup> It is nevertheless acceptable to describe such foods as "made from natural ingredients" if all the ingredients meet the criteria described in Guideline 13.<sup>81</sup>

The term "pure" or "purity" is also used on the local market for baby foods, cereals, milk products, seeds or other products.<sup>82</sup> In 2014 independent

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<sup>74</sup> It refers to a product which is comprised of natural ingredients, such as ingredients produced by nature, not the work of man or interfered with by man. See Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>75</sup> For instance, "natural" dairy products are "plain", unflavoured products such as "natural" yoghurt, "natural" *fromage frais* and "natural" cottage cheese. They use only the necessary, associated fermentation cultures. Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>76</sup> GN R429 in GG 37695 of 29 May 2014.

<sup>77</sup> Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>78</sup> Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>79</sup> Including additives and flavourings that are the product of the chemical industry or extracted by chemical processes. Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>80</sup> All additives and flavourings in ingredients that are used to make the final product must also satisfy the criteria set out in this guideline. It specifies that claims such as "natural goodness", "naturally better", or "nature's way" are confusing and ambiguous. They should not be used and are very likely to be misleading if applied to products not meeting the "natural criteria". See Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>81</sup> Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>82</sup> Organic Seeds sells seeds that come from the "pure and natural" range that are grown organically but not certified. Not all organic seed producers are willing, or can even afford, to tackle all the red tape involved in acquiring an organic certification. See Organic Seeds [http://www.organicseed.co.za/3\\_certified-organically-grown-](http://www.organicseed.co.za/3_certified-organically-grown-)

and accredited laboratory tests on seven baby formulas and cereals commissioned by the African Centre for Biosafety (ACB) found that 'Purity' brands contained high levels of GMOs.<sup>83</sup> Recommendations with respect to the term "pure" have also been suggested under Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels. The term "pure" is mostly used on single ingredient foods or to highlight the quality of food ingredients.<sup>84</sup> The validity of the use of the term "pure" is required to be determined by the properties of the food itself and not its storage conditions.<sup>85</sup> This term may be used to describe a single ingredient food, or a food to which nothing has been added and that is free from avoidable contamination with similar foods.<sup>86</sup> As for compound foods, they should not be described directly or by implication as "pure". However, it is acceptable to describe such foods as "made with pure ingredients" if all the ingredients meet the purity criteria of Guideline 13.<sup>87</sup> The claim "made with pure ingredients" may also be used if the product contains a named ingredient that meets the purity criteria and is the only source of that ingredient.<sup>88</sup> Contamination levels should be as low as practically achievable and significantly low.<sup>89</sup> "Pure bottled water" (250 to 1000 millilitres) is required to respect regulations regarding bottled water.<sup>90</sup>

While the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels made valuable recommendations regarding health claims using the terms "natural" and "pure" on food labels and advertising in the country, it is not clear whether these terms may be associated with organic

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registration-no-bdoca-102g. Also see reg 31(5) of GN R260 in GG 38615 of 27 March 2015.

<sup>83</sup> See Sarich 2014 *Natural Society*.

<sup>84</sup> For instance, the use of the term "pure butter shortbread" to indicate that the butter has not been blended with other fats or is the only fat in the shortbread. See Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>85</sup> Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>86</sup> Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>87</sup> Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>88</sup> The exception to this general rule is in the case of jams and marmalades where the term "pure fruit" is used to indicate that the fruit has not been preserved by sulphur dioxide prior to use in the jam/marmalade. Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>89</sup> It gives as an example the thresholds requiring GM labelling in South Africa. Guideline 13 of the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels.

<sup>90</sup> See GN R718 in GG 29051 of 28 July 2006 as amended by GN R455 in GG 33219 of 26 May 2010.

labelling or not.<sup>91</sup> These guidelines are yet to be published and gazetted. Since March 2016, the use of the terms "natural" or "pure" is regulated for dairy products.<sup>92</sup> Regulations on dairy products (under APSA) prohibit the use of the words "natural", "pure" or any other word or expression that directly or by implication creates the impression that a dairy product or an imitation dairy product is of a special or particular quality on the container of such a product.<sup>93</sup> These regulations specify that the word "organic" cannot be labelled on the container of a dairy product unless this product has been produced, processed and handled according to organic rules of production.<sup>94</sup> Consequently, the use of the terms "natural" or "pure" for dairy products does not necessarily mean that such dairy products are "organic" products. This specification is most welcome since it clarifies that dairy products with the terms "natural" or "pure" may be qualified as organic products only if they respect organic rules of production.

### **3.3 State auditor mechanism for the use of the term "free range"**

The term "free range" is also used for products from livestock or poultry which in general designate products with higher animal welfare.<sup>95</sup> Producers and suppliers of "free range" products are said to use words such as "free to roam" and "freedom to express normal behaviour" without providing further explanations.<sup>96</sup> A "free range" product usually has a price premium on the local market implying that it is of better quality than other meat products. The trademarks for "free range" products are audited by the South African Meat Industry Company (SAMIC),<sup>97</sup> which is assigned by DAFF to ensure the quality of meat products.

The local market offers several brands of free range meat products. Woolworths' free range beef, lamb, pork and chicken are sourced from farmers known for good management of their flocks and farming by

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<sup>91</sup> See GN R718 in GG 29051 of 28 July 2006 as amended by GN R455 in GG 33219 of 26 May 2010.

<sup>92</sup> See GN R260 in GG 38615 of 27 March 2015 (which came into effect in March 2016).

<sup>93</sup> See reg 31(5) of GN R260 in GG 38615 of 27 March 2015.

<sup>94</sup> See reg 31(13) of GN R260 in GG 38615 of 27 March 2015.

<sup>95</sup> Claiming poultry or livestock or derived products as "free range" in the country means that such poultry or livestock has access to fresh air and sunshine instead of factory farming techniques or layer cages. See Organics SA <http://organicsouthafrica.co.za/>. See Free Range Chicken Manual <http://freerangechickenmanual.co.za/>.

<sup>96</sup> See Eategrity "Trying to Clarify Free Range".

<sup>97</sup> It also audits trademarks on behalf of DAFF. See SAMIC <http://www.samic.co.za/>. See ss 3 and 8 APSA.

traditional, natural methods.<sup>98</sup> They normally respect high animal welfare conditions during production, while farms and slaughter houses are routinely inspected by SAMIC inspectors.<sup>99</sup> It is to be noted that other meat products on the local market may be associated with the "free range" claim but they do not use such claims. For instance, the certified "natural" lamb meat products available at Checkers supermarket<sup>100</sup> come from lambs raised in accordance with the free range method of production but these products do not bear the free range claim. The "Certified Karoo Meat of Origin"<sup>101</sup> label is used for sheep meat (mutton and lamb) regardless of breed, produced and slaughtered in the Karoo region as defined in the specifications. The reputation or distinctive character of the meat derives from free range grazing or production on indigenous veldt vegetation.<sup>102</sup> Other meat products such as Cape Veld Beef and Spier Pasture Reared Beef<sup>103</sup> bear claims associated with specific South African regions and seem to fall within the scope of "free range" livestock production.

With several brands of free range meat products available in the country, one may wonder whether all free range livestock or poultry in South Africa is fed with organic feed and is free of antibiotics or hormone additives. More importantly, there is a need for a standard protocol for free range livestock and poultry since there are currently over 26 different protocols for the "free range" method of production.<sup>104</sup> It is argued that products bearing the claim "free range" can be assimilated to an "organic" claim only to the extent that these products come from organically-raised

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<sup>98</sup> The "free range" chicken products available at Woolworth's food section in South Africa are derived from chickens raised on farms with good record systems and without feed lots, growth promoters, routine antibiotics and feed animal by-products. See Woolworths "Need to Know: Free Range Chicken".

<sup>99</sup> See the five freedoms: freedom from hunger and thirst, freedom from discomfort, freedom from pain, disease or injury, freedom to express normal behaviour, freedom from fear and distress. See Eategrity "Trying to Clarify Free Range".

<sup>100</sup> See Checkers "Shoprite Group is First Retailer to Stock Certified natural Lamb".

<sup>101</sup> Only sheep originating from the Karoo or that was born outside the Karoo but remained in the area of the Karoo for a continuous period of at least six months immediately before slaughter, and which are free of scheduled diseases qualify for certification. See Eategrity "Trying to Clarify Free Range".

<sup>102</sup> See Eategrity "Trying to Clarify Free Range". Veldt is a word of "Afrikaans" origin which refers to the open country (the fields) bearing grasses, shrubs, or thinly forested characteristic of parts of Southern Africa. See Dictionary.com <http://dictionary.reference.com/browse/veldt>.

<sup>103</sup> Breeding and slaughtering conditions need to apply in accordance with the Spier Wine Farm, Stellenbosch, where the cattle are raised and slaughtered. See Eategrity "Trying to Clarify Free Range".

<sup>104</sup> See Eategrity "Trying to Clarify Free Range".



livestock or poultry.<sup>105</sup> Such livestock or poultry is required to be fed with organic feed or non-GM feed, but there is currently no specific labelling requirement in the country for GM animal feed to distinguish between GM feed and non-GM feed. It is necessary for animal feed with GM material (for instance, a by-product of GM crops) to bear GM labels to facilitate the identification of non-GM animal feed by organic farmers.<sup>106</sup>

### **3.4 Certification through SANAS-accredited certification bodies**

Local organic farmers may also become certified organic producers through SANAS-accredited certification bodies.<sup>107</sup> Certification bodies seeking SANAS-accreditation to provide OAPP certification services need to satisfy the requirements of the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 17065 as well as those of the SANAS Technical Requirements on OAPP.<sup>108</sup> The finalised version of OAPP SANS 1369 is meant to be implemented by producers and processors of organic products.<sup>109</sup> Once the implementation has been achieved and the conversion period has been served, producers and processors can apply for organic certification from a SANAS-accredited certification body.<sup>110</sup>

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<sup>105</sup> There is to be no use of factory farming (industrial management reliant on veterinary and feed inputs) or intensive farming (landless animal husbandry) and production units (animal feedlots, container growing), a management system separated from conventional farmlands, animals and storage facilities (different equipment unless thoroughly cleaned). See OAPP SANS 1369.

<sup>106</sup> For instance, the requirement of labelling animal feed with GM content could be included in the Farm Feed Law and related regulations or food labelling regulations. In the EU, GM feed is required to be labelled except for feed containing a proportion of 0.9 % adventitious or technically unavoidable GM content. See EC Regulation 1829/2003 (22 September 2003) and EC Regulation 1830/2003 (22 September 2003).

<sup>107</sup> See SANAS 2015 *Media Release*. Accreditation is the procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks. A certification body refers to a body that will be responsible for verifying that a product sold or labelled as a certified product is produced, processed, prepared, handled, and traded according to the certification standards. INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 35.

<sup>108</sup> See SANAS 2015 *Technical Requirements for Certification Bodies* 3. The latest international standard for conformity assessment regarding the requirements for bodies certifying products, processes and services is known as ISO/IEC 17065: See ISO/IEC 17065:2012 *Conformity Assessment*. The draft OAPP SANS 1369 defines accredited certification bodies as accredited to ISO guide 65 (or ISO 17065).

<sup>109</sup> See SANAS 2015 *Media Release*.

<sup>110</sup> See SANAS 2015 *Media Release*.

### 3.5 *In the case of unsubstantiated organic claims*

Unsubstantiated organic food products are those which claim to be "organic" but do not respect organic rules of production, especially if the food product bears a "certified organic" label. In the case of unsubstantiated self-declaratory vendor claims or non-certified organic claims, there are currently no organic standards applicable in the country against which to measure the authenticity of these claims. OAPP SANS 1369, when finalised, may serve as a set of guidelines for organic standards in the country. Self-declaratory vendor health claims can be inspected in line with the Regulations relating to the Labelling and Advertising of Foodstuffs<sup>111</sup> and with the 2014 draft Guidelines on the Use of Endorsement Logos on Food Labels (when finalised). Claims of greater animal welfare can be inspected against the applicable free range method of production as verified by SAMIC inspectors.

In the case of an unsubstantiated certified organic product, non-certified organic product and health claim, possible issues may be incorrect labelling, false representation of a product as "certified organic", fraud, and the application of a prohibited substance. Under the *Consumer Protection Act*,<sup>112</sup> suppliers must not by word or conduct directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer.<sup>113</sup> Complaints regarding fraudulent organic or health claims can also be filed to the National Consumer Commission in terms of misleading representation.<sup>114</sup> Another recourse is the Advertising Standard Authority for misleading advertising,<sup>115</sup> which may lead to the withdrawal of the advertisement in its current format with immediate effect. Under APSA, the executive officer has powers of entry, investigation, sampling and seizure with a warrant granted by a judge of the High Court or magistrate who has jurisdiction in the area where the premises are situated.<sup>116</sup> Penalties and offences may lead to a fine, or imprisonment for not more than four years.<sup>117</sup>

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<sup>111</sup> GN R146 GG 32975 of 1 March 2010.

<sup>112</sup> 68 of 2008.

<sup>113</sup> See s 41(1)(a) *Consumer Protection Act*.

<sup>114</sup> An investigation will be carried out and a compliance notice will be served where necessary. See ss 72-73 of the *Consumer Protection Act*.

<sup>115</sup> See clause 4.2.1 of section II Code of Advertising - see ASASA <http://www.asasa.org.za/about/>.

<sup>116</sup> Section 7 APSA.

<sup>117</sup> See s 11 APSA.

## **4 Need for state regulation of organic food products in collaboration with the private sector**

As indicated above, the South African organic sector is mainly based on the private certification and inspection of organic claims. It is necessary to determine whether State regulation of the organic sector would constitute better regulation of organic food products. Standards for organic food production may be set by the Government or by the organic industry or by non-governmental organisations (NGOs) or by a coalition of these three entities based on international standards governing organic production.<sup>118</sup> This section argues in favour of the regulation of organic food products by the State in South Africa, the need for organic food regulation, a State accreditation of private certification bodies, and State monitoring of organic claims in collaboration with the private sector.

### **4.1 Justification of state regulation of organic food products in South Africa**

State regulation of organic food products in collaboration with the private sector, instead of a private regulatory framework for such products, seems necessary for the following reasons. First, a private sector mechanism for organic product certification may be an elitist mechanism which does not allow public access to the supply market of such products due to high costs. State regulation with a public-private partnership approach with regard to certification practices in collaboration with international certification bodies may reduce third-party certification costs and enable better market access to all farmers on an equal basis.

Second, the introduction of legislation on organic food products will give official recognition to local organic production and credibility to its producers for the export market.<sup>119</sup> The draft organic policy also acknowledges that countries are expected to develop their organic regulatory systems in line with the Codex Alimentarius Commission standards on organic production and IFOAM standards.<sup>120</sup> Amidst the

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<sup>118</sup> FAO *Environmental and Social Standards, Certification and Labelling for Cash Crops* Chapter 4.

<sup>119</sup> INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 50.

<sup>120</sup> DAFF *Draft National Policy on Organic Production* 19. See IFOAM Organics International "Internal Control Systems (ICS) for Group Certification"; the Codex Alimentarius Commission Guidelines on organic food constitute the main international standard meant to facilitate the harmonisation of requirements for organic products. See Codex Alimentarius Commission *Guidelines for the*

divergence of stances on organic standards in South Africa, it is necessary for the State to set national benchmarks for organic rules of production.<sup>121</sup> Practitioners in the local organic sector have major differences of opinion with regard to the cultivation practices and methodologies to be used in organic farming.<sup>122</sup> The organic sector is also divided with regard to organic certification. On the one hand there are the fundamentalists who prefer certification, and on the other hand there are those who prefer a local organic sector with both certified organic industry players and non-certified organic producers targeting a clientele based on trust.<sup>123</sup> The regulation of organic food products by the State would constitute a better regulatory framework than private regulation as it would regulate coexistence between non-organic agriculture and organic agriculture, the setting up of a non-organic threshold, the harmonisation of organic labels, as well as the control of imported organic products.

Third, for a product to be labelled or sold as an organic agricultural product with a price premium, it must respect the rules of organic production and be transparent at all stages of production. Most certification systems use a label as a tool to help consumers recognise products that meet certification standards.<sup>124</sup> Without a legal framework regulating the sale and production of organic products, consumers cannot be sure of the validity of claims on labels when purchasing food in retail outlets.<sup>125</sup> Requiring that food labels described as "organic" specify the certification

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*Production, Processing, Labelling and Marketing of Organically Produced Foods.* The Codex Alimentarius Commission's guidelines for organic food are in line with the IFOAM Basic Standards. See INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 38.

<sup>121</sup> The local organic sector is said to be fragmented with organisations representing particular farmers having different approaches on organic agriculture in the country. SAOSO was established to represent the organic sector as an intermediary between Government and the sector, and is meant to be an all-inclusive and representative national umbrella body under which small organisations will operate and participate in the process driven by the Organic Sector Strategy Implementation Committee-South African Organic Sector Organisation (OSSIC-SAOSO) forum on behalf of the DTI. See DAFF *Draft National Policy on Organic Production* 16-17.

<sup>122</sup> Various versions of organic farming are applicable in the country, namely biodynamic farming, permaculture, biological farming, natural farming and traditional farming. See DAFF *Draft National Policy on Organic Production* 12, 28-31. The SAOSO's definition of organic agriculture (growing from within) is not exclusive but includes all forms of agriculture that strive towards an input free (no external product) environment and refrains from the use of synthetic molecules or genetically manipulated organisms. See SAOSO <http://www.saoso.org/>.

<sup>123</sup> See DAFF *Draft National Policy on Organic Production* 12.

<sup>124</sup> INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 35.

<sup>125</sup> See DAFF *Draft National Policy on Organic Production* 13.

body or include its standard logo would build consumer trust.<sup>126</sup> It is also not fair to allow a producer to charge a premium for food that bears unsubstantiated organic claims.

Until there is consensus on the contents of the draft APSA Regulations, the draft OAPP SANS 1369 (when finalised) may provide guidelines to protect organic farming.<sup>127</sup> The main differences between the draft APSA Regulations and the draft OAPP SANS 1369 are *inter alia* that these draft regulations cover mainly formally certified organic products whereas the draft OAPP SANS 1369 includes a broader range of products as organic products.<sup>128</sup>

#### **4.2 Organic food regulation**

The lack of a common understanding of what "organic farming" means in South Africa necessitates the introduction of legislation on local organic production and processing. This legal framework needs to state the definition of organic production and set standards for organic labels, and establish rules for the production of organic plants and plant products, as well as livestock and poultry. Other aspects which this framework needs to regulate are coexistence issues between organic agriculture and other types of agriculture, the setting of a non-organic material threshold, and the control of imported organic products.

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<sup>126</sup> Honest and accurate information also applies to the advertising and promotion of such products. See ss 24(1) and 24(2) of the *Consumer Protection Act*. A uniform logo or mark for organic products would increase the recognition of organic products by consumers. See DAFF *Draft National Policy on Organic Production* 20.

<sup>127</sup> Regarding the lack of consensus on the draft APSA Regulations, see GN 1854 in GG 29493 of 29 December 2006. Some 18 countries in Asia and Africa have not adopted organic legislation but have national production standards which provide a national definition of organic products and are a reference point for certification activities. Willer and Lernoud *The World of Organic Agriculture, Statistics and Emerging Trends* 2015 126, 129.

<sup>128</sup> The draft APSA Regulations consider as "organic" only products produced according to the contents of these regulations and products certified by recognized competent authorities in the country of origin and Codex Alimentarius standards or by an accreditation body to ISO/IEC Guide 65. See reg 12 in GN 1854 in GG 29493 of 29 December 2006. The draft OAPP SANS 1369 covers products certified by a certification body with a national or international accreditation with an organic scope and products which carry the SAOSO organic label. It also includes products certified according to the IFOAM Family of Standards, imported products accepted by SAOSO on stated grounds of equivalence, imported products certified under an official governmental regulation, and PGS certified products as organic products. Products from wild harvesting are also covered by the draft OAPP SANS 1369 unlike the draft APSA Regulations. See clause 4.10.1 OAPP SANS 1369. See also 4.2.2 Standard Organic Labels below for further explanations.

#### 4.2.1 *Legal definition of organic production*

The term "organic production" must be defined legally in order that both the producer and the consumer may know what it means. The draft APSA Regulations refer to an organic product as having been produced, processed and/or handled with specific management practices in compliance with the contents of these regulations.<sup>129</sup> Such management practices are designed to enhance biological diversity within the whole system, increase soil biological activity, and maintain and improve long-term soil fertility.<sup>130</sup> The draft OAPP SANS 1369 endorses organic production management practices which preserve the integrity of the four IFOAM principles<sup>131</sup> and encompasses the management practices listed in the draft APSA Regulations. It also states that organic management practices are meant to restore and sustain ecological stability within the enterprise and the surrounding environment. Weeds, pests and diseases are also managed with biological and mechanical control methods.<sup>132</sup> Animal welfare is a primary consideration where organic livestock and poultry are provided with better living conditions as well as organically produced feed.<sup>133</sup>

According to the draft APSA Regulations and the draft OAPP SANS 1369, organic products are plants and plant products, live animals, products from beekeeping as well as processed and unprocessed products for human consumption derived mainly from the above.<sup>134</sup> The draft OAPP SANS 1369 covers the wild harvesting of plants and parts thereof that grow naturally in areas that are not under cultivation or the other agricultural management of harvested plants.<sup>135</sup> However, it excludes winemaking,

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<sup>129</sup> See reg 1 in GN 1854 in GG 29493 of 29 December 2006.

<sup>130</sup> They include the recycling of wastes of plant and animal origin in order to return nutrients to the soil and minimise the use of non-renewable resources. These practices should also rely on renewable resources in locally organised agricultural systems, promote the healthy use of soil, water and air, and minimise all forms of pollution that may result from agricultural practices. Other management practices stated in the draft APSA Regulations concern the handling of agricultural products with an emphasis on careful processing methods in order to maintain the organic integrity and vital qualities of the product at all stages. See reg 1 in GN 1854 in GG 29493 of 29 December 2006 and OAPP SANS 1369 at 3.

<sup>131</sup> Principles of health, ecology, fairness and care. See OAPP SANS 1369 at 1.

<sup>132</sup> Crop selection and rotation are important practices for organic agriculture. See OAPP SANS 1369 at 3.

<sup>133</sup> See OAPP SANS 1369 at 3.

<sup>134</sup> Reg 2(1)(a) in GN 1854 in GG 29493 of 29 December 2006 and clause 1 OAPP SANS 1369.

<sup>135</sup> In line with conditions set up under the OAPP standards. See clause 1 OAPP SANS 1369.

aquaculture, medicinal products, cosmetics and textiles from its scope.<sup>136</sup> It also does not cover products from the hunting of wild animals (game meat and by-products) and game farming and fishing.<sup>137</sup> Both the draft APSA Regulations and the draft OAPP SANS 1369 set standards for "organic in conversion" farming practices<sup>138</sup> regarding the establishment of any existing farm.<sup>139</sup>

#### 4.2.2 *Standard Organic Labels*

Without any regulation or standard indicating which products may bear an "organic" label, it is not easy to know which products bear unsubstantiated "organic" labels. Several terms are used for products with higher environmental or health or animal welfare claims on the local market namely, "natural", "organically grown", "sustainable", "free range", "wild-harvested". Whether they have the same meaning as the term "organic" must be legally determined. It is also uncertain whether a "Fair Trade" label is equivalent to an "organic" label. The "Fair Trade"<sup>140</sup> label is used to guarantee that producers and traders have met "Fair Trade" standards, including social, environmental and economic criteria as well as progress requirements in terms of trade. It is argued that if production methods regarding a product of plant or animal origin are environmentally friendly

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<sup>136</sup> See clause 4.5 OAPP SANS 1369. Until winemaking standards are developed, wine made from organic grapes shall be marked as "made by organic viticulture". See clause 4.9.10 OAPP SANS 1369. In the short term, priority will be given to the promotion of commodities that can gain immediate certification under the category of wild collection/harvesting areas such as fruit tree crops, spices and honey. See DAFF *Draft National Policy on Organic Production* 25.

<sup>137</sup> See OAPP SANS 1369 at 3.

<sup>138</sup> See regs 4(8),11(1), 11(6) and 13(10) in GN 1854 in GG 29493 of 29 December 2006 and clauses 4.1.8, 4.9.1, 4.9.6 OAPP SANS 1369. See discussion below for an explanation of the meaning of the concept "organic in conversion".

<sup>139</sup> The appropriate length of which is determined by site-specific factors such as the history of the farm-land and the type of crops and livestock to be produced. See reg 1 in GN 1854 in GG 29493 of 29 December 2006. See IFOAM *African Organic Agriculture Training Manual*.

<sup>140</sup> The Fair Trade Standards are designed to support the sustainable development of small-scale producers and agricultural workers in the poorest countries in the world. See Fair Trade <http://www.fairtrade.net/>. It is unclear whether an "Eco-label" can be assimilated to an "organic" label. The "Eco-label" ensures that products are labelled with information on the product and its ingredients (whether or not they are environmentally friendly) and the packaging is bio-degradable or recyclable. However the "Eco-label" concerns in general non-food products. Eco-labelling forms part of a company's environmental management system indicating how serious a company is about ensuring that its products and packaging do as little harm as possible to the environment. It uses two standards of the ISO 14000 environmental management series on eco-labelling, namely ISO 14020 and ISO 14021. See *Enviropedia: Rethinking Reality "Eco-labelling"*.

but do not respect all the rules of organic production, the respective product cannot be considered as "organic".

According to the Codex Alimentarius Commission Guidelines regarding organic standards, a product may bear indications referring to organic production methods where, in the labelling or claims (including advertising material or commercial documents), the products or their ingredients are described by the terms "organic", "biodynamic", "biological" and "ecological".<sup>141</sup> It is argued that the country needs standard "organic" labels instead of numerous labels associated with an "organic" claim. Both the draft APSA Regulations and the draft OAPP SANS 1369 state that a product is regarded as bearing indications referring to organic production methods where in the labelling of claims (including advertising material or commercial documents) the product or its ingredients is described by the term "organic" or derivatives referring to "organic".<sup>142</sup> However the draft OAPP SANS 1369 is more inclusive and encompasses other terms referring to organically produced products from plant and animal origin, namely "product of organic agriculture", "organic", "organically produced", "certified organic" or other verbal formulae referring to "organic".<sup>143</sup> It also includes the SAOSO organic label and the label "PGS Organic" for products produced by Participatory Guarantee Systems.<sup>144</sup> Specific terms are to be used for "organic in conversion" products such as "produce of organic agriculture in process of conversion" or "organic in conversion" or similar wording referring to "organic" and "conversion" in letters of the same size, type and colour.<sup>145</sup> The word "organic" is required not to be

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<sup>141</sup> Or words of similar intent including diminutives which in the country where the product is placed on the market suggest to the purchaser that the product or its ingredients was obtained according to organic production methods. See Codex Alimentarius Commission *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* 3.

<sup>142</sup> Derivatives referring to "organic" suggest to the purchaser that the product or its ingredients was obtained according to organic production methods. See clause 1 OAPP SANS 1369 and reg 2(1)(b) in GN 1854 in GG 29493 of 29 December 2006.

<sup>143</sup> See clause 4.9.2 OAPP SANS 1369. Organic standards in other countries require an extended period of conversion that is necessary for the purging of chemical residues. See DAFF *Draft National Policy on Organic Production* 14.

<sup>144</sup> In places that sell "PGS Organic", PGS suppliers must supply notices informing customers of the meaning of this term. See clause 4.9.9 OAPP SANS 1369. However, the draft APSA Regulations do not consider PGS products as certified organic products and such products may only have a pamphlet with a written explanation indicating that the system is based on "organic principles". See reg 11(8) in GN 1854 in GG 29493 of 29 December 2006.

<sup>145</sup> See reg 11(1) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.9.1 OAPP SANS 1369.



more prominent than the rest of the expression on the labelling of organically produced products from plant origin in conversion.<sup>146</sup>

In addition to a standard organic label, a national logo<sup>147</sup> for organic products may also be introduced in the country with the name of the certifying agency and a certification code that can be traced back or verified upon request.

#### 4.2.3 Principles of organic production for plants and plant products

Foods labels should refer to organic production methods only if they come from an organic farm system with management practices which seek to nurture ecosystems and achieve sustainable productivity.<sup>148</sup> Farming practices for plants and plant products must contribute to the equilibrium of agricultural production systems with prohibited synthetic chemicals.<sup>149</sup> Organic farming also entails a management system separated from conventional farmlands, animals and storage facilities.<sup>150</sup> Organic production is required not to allow GMOs and products with GM content except for certain veterinary medicinal products.<sup>151</sup> Such farming also entails measures for the improvement of landscape, biodiversity and soil fertility<sup>152</sup> while compost and composted manures are to be used as a substitute for inorganic fertilizers.<sup>153</sup> Best practices and pest resistant plants are to be used as far as possible and planting in areas suitable for the crops.<sup>154</sup> Shelterbelts should be introduced as wildlife corridors, carbon

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<sup>146</sup> After a conversion period of 12 months. See reg 11(1)(a)(ii) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.9.1 OAPP SANS 1369.

<sup>147</sup> See the EU logo on organic products produced in the EU, which label was introduced by EU Regulation 271/2010 (31 March 2010).

<sup>148</sup> The organic farm system should also include the recycling of plant and animal residues, crop selection and rotation, water management, tillage and cultivation. Weed, pest and disease control should be provided through a diverse mix of mutually dependent life forms. See Codex Alimentarius Commission *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* 3.

<sup>149</sup> Including pesticides and fertilizers. See regs 4(1) and 4(3) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.1.3 OAPP SANS 1369.

<sup>150</sup> Including different equipment unless thoroughly cleaned. See reg 4(9)(f) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.1.9 OAPP SANS 1369.

<sup>151</sup> See reg 4(4) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.1.4 OAPP SANS 1369. See Codex Alimentarius Commission *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* 3.

<sup>152</sup> See reg 4(1) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.1.1. OAPP SANS 1369.

<sup>153</sup> DAFF *Draft National Policy on Organic Production* 32.

<sup>154</sup> Including physical, biological and mechanical means to control pests, weeds and diseases. DAFF *Draft National Policy on Organic Production* 32.

sequestration and moderation of climate and humidity.<sup>155</sup> Water harvesting techniques and other soil hydrating methods for effective use of the water cycle are also included in organic management practices.<sup>156</sup> Organically open-pollinated propagated seeds and other propagating material are preferred.<sup>157</sup>

Organic food products also include processed organic foods which need to respect the rules of organic food production.<sup>158</sup> Processing includes cooking, baking, heating, drying, freezing or manufacturing which materially alters the flavour, keeping quality, or any other property or the making of any substantial change of form.<sup>159</sup> The use of ingredients produced by conventional methods is limited to certain percentages and is conditional on the respective organic ingredient not being available.<sup>160</sup> While water and salt is allowed, no other processing aids, ingredients or additives or GMOs or treatment using ionising irradiation are allowed in production and processing.<sup>161</sup> It is recommended that the regulatory framework on organic food production should also cover the preparation and sale of organic food with respect to final consumers in restaurants, large-scale cafeterias, schools and hospitals.

#### *4.2.4 Principles of organic production with regard to livestock and poultry*

Principles of organic production with regard to livestock and poultry are also necessary for the organic sector in South Africa. The basis for organic livestock husbandry is the development of a harmonious relationship between land, plants and livestock and respect for the physiological and

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<sup>155</sup> DAFF *Draft National Policy on Organic Production* 32.

<sup>156</sup> DAFF *Draft National Policy on Organic Production* 32.

<sup>157</sup> Including the use of bees. DAFF *Draft National Policy on Organic Production* 32.

<sup>158</sup> South African processed organic products include herbs (sold for processing or packaging), deciduous fruit (in the form of organic apple juice), subtropical fruit (guava puree producer), stone fruit (olives that are pickled or processed in some other ways), grapes (for red or white wine) and wild harvested crops (such as honeybush and rooibos that are fermented, dried and packed as teas). INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 91-92.

<sup>159</sup> It also involves mixing, crushing, pressing, churning, separating, extracting juices or other material, peeling, fermenting, eviscerating, preserving and dehydrating. However, processing does not include refrigeration at temperatures which are above freezing point or any other treatment which merely retards or accelerates the natural processes of ripening or decomposition. See clause 3.22 OAPP SANS 1369 11 and reg 1 in GN 1854 in GG 29493 of 29 December 2006.

<sup>160</sup> See reg 11(6) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.9.6 OAPP SANS 1369.

<sup>161</sup> See clause 4.1.5 OAPP SANS 1369; reg 4(5) in GN 1854 in GG 29493 of 29 December 2006.

behavioural needs of livestock.<sup>162</sup> Organic livestock husbandry needs a combination of good quality organically grown feed and appropriate stocking rates.<sup>163</sup> Livestock husbandry systems are required to be appropriate to behavioural needs and animal management that minimise stress.<sup>164</sup> No factory farming (industrial management reliant on veterinary and feed inputs) or intensive farming (landless animal husbandry and production units (animal feedlots) should be allowed for organically raised livestock and poultry.<sup>165</sup> Animals are required to be fed 100% organic feed.<sup>166</sup> Disease prevention regarding organic livestock and poultry should not include the use of chemical allopathic veterinary drugs.<sup>167</sup> The harmonisation of the existing protocols<sup>168</sup> for free range livestock and poultry is necessary and it should be specified whether free range livestock and poultry can be considered as organically raised or not.

#### 4.4.5 Principles of organic production with regard to organic beekeeping

Both the draft APSA Regulations and the draft OAPP SANS 1369 state that the organic production of beekeeping requires specific rules of management with hives situated in organically managed fields and farmland or uncultivated areas/bush/veldt.<sup>169</sup> The foundation comb needs to be made of organic beeswax while the beehive shall primarily consist of natural materials.<sup>170</sup> Organic beekeeping products are required to respect the rules of organic production for at least one year before they may be so labelled.<sup>171</sup> Conventional and organic hives are required to be sited at least six kilometres from each other while simultaneous conventional and

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<sup>162</sup> See Codex Alimentarius Commission *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* 3.

<sup>163</sup> See Codex Alimentarius Commission *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* 3. See reg 6 in GN 1854 in GG 29493 of 29 December 2006 and clause 4.13 OAPP SANS 1369.

<sup>164</sup> See Codex Alimentarius Commission *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* 3; Reg 6 in GN 1854 in GG 29493 of 29 December 2006 and clause 4.13 OAPP SANS 1369.

<sup>165</sup> Reg 4(2) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.3.1(a) OAPP SANS 1369.

<sup>166</sup> Reg 6(2)(f) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.3.2(f) OAPP SANS 1369.

<sup>167</sup> Including antibiotics. See Codex Alimentarius Commission *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* 3.

<sup>168</sup> See Eategrity "Trying to Clarify Free Range".

<sup>169</sup> Reg 7(1) in GN 1854 in GG 29493 of 29 December 2006; clause 4.4.1.1 OAPP SANS 1369; veldt at Dictionary.com <http://dictionary.reference.com/browse/veldt>.

<sup>170</sup> No material with potentially toxic effects can be used. Regs 7(3) and 7(4) in GN 1854 in GG 29493 of 29 December 2006 and clauses 4.4.1.3 and 4.4.1.4 OAPP SANS 1369.

<sup>171</sup> Reg 7(10) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.4.1.10 OAPP SANS 1369.

organic production is allowed only if the hives are clearly identified.<sup>172</sup> Other standards for organic beekeeping include disease prevention based on stress-free practices encouraging resistance to disease and the prevention of infections.<sup>173</sup> Strict conditions apply to the use of veterinary medicinal products with a preference for phytotherapeutic and homeopathic products rather than chemically-synthesised allopathic veterinary medicinal products.<sup>174</sup>

#### 4.2.6 Different Types of Agricultural Production and Coexistence Issues

When two or more crops of the same species using different types of agricultural production coexist,<sup>175</sup> they may have an impact on each other or one another. Agriculture using GMOs coexisting with organic farming may have impacts on each other to the extent that the use of GMOs is banned in organic farming. Potential adverse impacts on biological diversity also include the effects of insect-resistant GM crops on non-target vulnerable organisms or pests.<sup>176</sup> There may be the unintentional release of GM crops through pollen or seed dispersal<sup>177</sup> when GM crops

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<sup>172</sup> Reg 7(11) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.4.1.11 OAPP SANS 1369.

<sup>173</sup> Including the monitoring of any health anomalies and drone broods in the hives. Reg 7(15) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.4.1.15 OAPP SANS 1369.

<sup>174</sup> Provided that their therapeutic effect is effective for the condition for which the treatment is intended. See reg 7(16) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.4.1.16 OAPP SANS 1369.

<sup>175</sup> For instance, the production of maize using conventional agriculture in the vicinity of organically-grown maize or agriculture using GM maize in the vicinity of organically-grown maize. Petitpierre-Sauvain "Coexistence and liability: implications for international trade drawn from the Swiss example" 175. Coexistence is the practice of growing crops with different quality characteristics or intended for different markets in the same vicinity without becoming commingled and thereby possibly compromising the economic value of both. See CropLife International <https://croplife.org/plant-biotechnology/stewardship-2/co-existence/>.

<sup>176</sup> Such as evolving resistance to the toxins produced by GM crops. DEA *Monitoring the Environmental Impacts of GM Maize in South Africa* 1. See WHO 2015 <http://www.who.int/foodsafety/publications/biotech/20questions/en/>. The subject of GMOs is a hotly-debated food and environmental topic. Scientists working with recombinant DNA technology tend to disagree about the risks associated with genetic engineering techniques and the ecological consequences that may result from releasing genetically altered organisms (see Ewing 2002 *Suffolk Transnational Law Review* 640). Genetically engineered products have been claimed to be safe by the biotechnological industry and GM crop exporting countries over the past two decades. The first GM tomato was introduced in the United States (US) in 1996. ASSAF *Regulation of Agricultural GM Technology in Africa* 9.

<sup>177</sup> Eg the spreading of GM seeds by the wind (see Strauss 2010 *Journal of Legal Studies in Business* 163), by birds or by way of pollen drift (see Preston 2002-2003 *Texas Law Review* 1154). According to a study conducted to monitor the impacts of GM maize in South Africa, there was gene flow from *Bacillus thuringiensis* (Bt) maize

are cultivated in the vicinity of conventional and organic crops.<sup>178</sup> Due to these concerns, the local organic production system must be isolated from the general production chain to minimise the accidental presence of GM crops in non-GM farming systems. Not only is there a risk of contamination during cultivation but also during processing and storage through mishandling.<sup>179</sup> The 5% GM labelling threshold for local or imported goods may be an issue for organic production and processing to the extent that it is not compulsory for the respective producer to use a GM label for products with less than 5% of GM content.<sup>180</sup> Besides, there is also no threshold for the adventitious or technically unavoidable presence of GMOs in the country.<sup>181</sup> Labelling is voluntary where a product has less than 1% of GM material and a label indicating that the product does not contain GMOs may be used.<sup>182</sup> One may argue that a food product with less than 1% of GMOs should not bear a "GM-free" label since it is misleading for consumers. Since organic products are sold at a higher price than conventional products, organic producers must take the responsibility to bear the costs for respecting organic production

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and non-Bt maize results in the production of low levels of Bt toxin. See DEA *Monitoring the Environmental Impacts of GM Maize in South Africa* at 1.

<sup>178</sup> There are also concerns regarding the use of chemicals for herbicide-resistant GM crops. The International Agency for Research on Cancer (IARC) under the aegis of the WHO concludes in its 2015 report on the carcinogenic effects of glyphosate on human beings that there is evidence of an association between exposure to glyphosate and the development of cancers such as non-Hodgkin lymphoma and lung cancer. Glyphosate is an active ingredient used for herbicides used on herbicide-resistant GM crops. See IARC *Some Organophosphate Insecticides and Herbicides: Diazinon, Glyphosate, Malathion, Parathion, and Tetrachlorvinphos*. Other concerns target the impact of GMOs on biological diversity. The coming into existence of a voluntary private sector compensation mechanism known as the "Compact" by six major plant biotech companies with regard to the damage caused to biological diversity by one of their living modified organisms (LMOs) is an indirect acknowledgement by the biotech industry of the potential adverse environmental impacts of LMOs. This redress mechanism initiated by BASF, Bayer CropScience, Dow AgroSciences, DuPont, Monsanto and Syngenta became operational in 2010. See the Compact <http://www.biodiversitycompact.org/>. LMOs can be considered as a sub-group of GMOs according to the Food and Agriculture Organisation (FAO) (see FAO <http://www.fao.org/newsroom/en/news/2004/43684/index.html>).

<sup>179</sup> It is debatable whether the assessment of non-GM seeds or agricultural products (in terms of GM content) is being carried out adequately in South Africa. See Lim Tung 2011 *SAJELP* 119. From the farm gate to the silo in the country, there is no distinction between GM and non-GM grain in terms of handling and storage, while three regionally-based former cooperatives (Afgri, Senwes and Noordwes) dominate the storage node of the grain value chain, holding 70% of the domestic storage facilities (see Food Pricing Monitoring Committee 2003 <http://www.nda.agric.za/docs/fpmc/default.htm> 148).

<sup>180</sup> See reg 7 in GN R293 in GG 34180 of 1 April 2011.

<sup>181</sup> See GN R293 in GG 34180 of 1 April 2011.

<sup>182</sup> See reg 7(6) in GN R293 in GG 34180 of 1 April 2011.

methods.<sup>183</sup> Since the EU is one of the major importers of South African organic products, the quality of such products must be up to international standards or at least up to EU accepted standards.<sup>184</sup>

#### 4.2.7 *Organic in conversion practices*

Switching the conventional farm's production or field to organic farming entails undertaking a lengthy process of modification with respect to land quality and its biological characteristics.<sup>185</sup> Where intensive agricultural production methods have been used, minimum principles of organic production must be respected ensuring a transition or conversion period.<sup>186</sup> Substantial investments may be required of agricultural producers and processors for conversion to organic production.<sup>187</sup> It is commendable that the draft APSA Regulations and the draft OAPP SANS 1369 both introduce a conversion period for plant products and perennial plants.<sup>188</sup> An "organic in conversion" production system needs adherence to organic rules of production for at least one year for the purging of

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<sup>183</sup> See Nelson 2002 *Drake Journal of Agricultural Law* 255. Bratspies 2003 *William and Mary Environmental Law and Policy Review* 593. The unintended presence of GMOs in organic crops will cause a loss of income for the producers of such organic products.

<sup>184</sup> The use of GMOs is prohibited in organic production in the EU while products containing GMOs may not be labelled as organic unless the ingredients containing GMOs entered the products unintentionally and with less than 0.9% of GM content. See EC Regulation 1829/2003 (22 September 2003). Organic products from third countries are allowed in the EU only when they are produced and controlled under the same or equivalent conditions. See European Commission Organic Farming Information System.

<sup>185</sup> Petitpierre-Sauvain "Coexistence and liability: implications for international trade drawn from the Swiss example" 176.

<sup>186</sup> South Africa is considered as a net food exporter. For instance, in 2012 it sold 30% more agricultural goods abroad than it imported in 2010. See Southafrica.info <http://www.southafrica.info/business/trade/export/agriculture-030212.htm#.Vp90wvI97cs#ixzz3xmiY1khV>. however, 2015 has experienced one of the most severe drought periods since 1992, which has considerably affected agricultural production by close to half of the crop production estimates for 2011-2015 crop years. Vink 2016 <http://www.timeslive.co.za/local/2016/01/14/South-Africa%E2%80%99s-poor-face-rising-food-prices-as-drought-intensifies>.

<sup>187</sup> Particularly with respect to control systems and the establishment of traceability systems. INR 2008 *Study to Develop a Value Chain Strategy for Sustainable Development and Growth of Organic Agriculture* 63.

<sup>188</sup> The applicable period is 24 months for the conversion of plant products and 36 months for perennial plants (that live for more than two years). See reg 5(3) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.2.3 OAPP SANS 1369.

chemical residues.<sup>189</sup> The term "organic in conversion" is applicable only to plants and plant products, not to animals and animal products.<sup>190</sup>

More importantly, the organic management system must be separated from conventional farmlands, animals and storage facilities, while different equipment must be used unless thoroughly cleaned.<sup>191</sup> Organic, organic in conversion and conventional production shall be allowed in the same operation only provided that organic and organic under conversion farmlands animals and any other parts of the operation are clearly separated from conventional ones.<sup>192</sup> The coexistence of organic, organic in conversion and conventional production should also take place only if conventionally produced annual plants are from different varieties that are clearly identifiable and grown in separate areas.<sup>193</sup>

#### *4.2.8 Need for a non-organic material threshold*

The legal framework on organic production and processing is required to indicate the threshold of what can be tolerated for non-organic material or ingredients or substances which are not allowed in organic food production.<sup>194</sup> The draft OAPP SANS 1369 acknowledges that organic practices and standards cannot ensure that organic products are entirely free of residues of substances prohibited by such standards and of other contaminants.<sup>195</sup> The practices permitted by the draft OAPP SANS 1369 are designed to assure the least possible residues at the lowest possible levels.<sup>196</sup> Both the draft APSA Regulations and the draft OAPP SANS 1369 introduce a non-organic material threshold of at least 95% of organic

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<sup>189</sup> But it does not qualify as fully organic. Reg 1 in GN 1854 in GG 29493 of 29 December 2006 and clause 3.18 OAPP SANS 1369.

<sup>190</sup> See reg 1 in GN 1854 in GG 29493 of 29 December 2006 and clause 3.18 OAPP SANS 1369.

<sup>191</sup> See reg 4(9)(b) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.1.9 OAPP SANS 1369.

<sup>192</sup> As well as other parts of conventional operation and are available for audit. See reg 4(9)(a) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.1.9(a) OAPP SANS 1369.

<sup>193</sup> They should be kept separate throughout the production system including storage. See reg 4(9)(b) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.1.9(b) OAPP SANS 1369.

<sup>194</sup> The draft APSA Regulations and the draft OAPP SANS 1369 introduce conversion to organic principles for farmlands. See regs 4(8), 11(1) and 11(6), 13(10) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.2.3 OAPP SANS 1369.

<sup>195</sup> Since exposure to such compounds from the atmosphere, soil, ground water and other sources may be beyond the control of the operator, it may not be possible to source all ingredients in organic form. See OAPP SANS 1369 at 3.

<sup>196</sup> See OAPP SANS 1369 at 3.

material to be present in organic products.<sup>197</sup> Products that contain organically certified ingredients may not be made necessarily using an organic process or may not be "100% organic". If the product contains less than 95% but not less than 70% of organic material, only labels using the terms "made with organic (in conversion) ingredients" or "with organic (in conversion) ingredients" may be used.<sup>198</sup> If less than 70% of the ingredients are of certified organic origin, only the terms "an ingredient is organic" or "organic in conversion" may appear in the ingredient list of the respective product.<sup>199</sup> Both the draft APSA Regulations and the draft OAPP SANS 1369 state that added potable water and salt are not included in the percentage calculations of organic ingredients.<sup>200</sup>

#### *4.2.9 The control of imported organic food products*

Without a regulatory framework for organic products at the local level, there is also no national benchmark or standards for the import of organic products. The BDOCA currently regulates and controls the sale of organic products in South Africa to ascertain the equivalence of the rules of organic production for such products from third countries.<sup>201</sup> It is argued that it should be legally determined which rules of organic production are applicable for imported organic products. The draft APSA Regulations and the draft OAPP SANS 1369 include the regulation of imported organic products, but with standards which are not exactly the same.<sup>202</sup> The draft APSA Regulations specify that only certified organic products by recognised certification organisations may be imported.<sup>203</sup> As for the draft OAPP SANS 1369, imported products may be those approved by the IFOAM Family of Standards or accepted by SAOSO on stated grounds of equivalence as well as certified products under a government organic

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<sup>197</sup> See reg 11(6)(a) in GN 1854 in GG 29493 of 29 December 2006 and ss 4.1.9(a) and 4.9.6(a) OAPP SANS 1369.

<sup>198</sup> Reg 11(6)(b) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.9.6(b) OAPP SANS 1369.

<sup>199</sup> Reg 11(6)(c) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.9.6(c) OAPP SANS 1369.

<sup>200</sup> See reg 11(6)(d) in GN 1854 in GG 29493 of 29 December 2006 and clause 4.9.6(d) OAPP SANS 1369.

<sup>201</sup> Certificates are required for such products. See Organic Seeds [http://www.organicseed.co.za/3\\_certified-organically-grown-registration-no-bdoca-102g](http://www.organicseed.co.za/3_certified-organically-grown-registration-no-bdoca-102g).

<sup>202</sup> See regs 12(4) and 12(5) in GN 1854 in GG 29493 of 29 December 2006 and ss 4.10.1(d) and 4.10.4 OAPP SANS 1369.

<sup>203</sup> With a proof of certification or equivalent document. Certification organisations recognised by competent authorities of the country of origin of the products, certification organisations which comply with the contents of the draft APSA Regulations and Codex Alimentarius Standards and ISO accreditation. See reg 12(4) in GN 1854 in GG 29493 of 29 December 2006.



regulation or a certifier holding international organic accreditation.<sup>204</sup> The draft OAPP SANS 1369 regulates such products in more details, stating that products that are sold in their original, unaltered, foreign packaging and with marks indicating their certification status will not require further certification.<sup>205</sup> The importer is required to furnish copies of the original organic certificate and the transaction certificate (associated with the transport) to any buyer that requests it.<sup>206</sup> Imported products that are repackaged, relabelled or processed in any way after import will require organic certification by an accredited certifier who shall ensure the organic integrity and regulated chain of custody along the whole supply chain.<sup>207</sup>

### **4.3 State accreditation, inspection and control of organic claims in partnership with private certification bodies**

It is argued in this sub-section that State accreditation and control of organic claims is needed to improve the regulation of organic food production. State regulation is recommended in partnership with private certification bodies through a State accreditation system for certification bodies and a State inspection body.

Accreditation by a State accreditation body would authorise private, foreign or State entities to certify farms or processing facilities and to ensure that local organic products meet organic rules of production. The accreditation programme by SANAS as a State accreditation body with respect to certification bodies is an initiative which falls within this line of thought. The SANAS technical requirements with respect to OAPP certification also include conformity assessment bodies (CABs) that provide conformity assessment services<sup>208</sup> and will be accredited by the International Accreditation Forum (IAF).<sup>209</sup> Local organic products meeting the requirements of the organic regulations or standards will then be certified by a certification body holding a national or international accreditation with an organic scope. A State accreditation body operating in collaboration with international certifying bodies may result in the reduction of third-party certification costs. There could be a wider range of such nationally-accredited organic certification bodies which may enable

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<sup>204</sup> See clause 4.10.1(d) OAPP SANS 1369.

<sup>205</sup> See clause 4.10.3 OAPP SANS 1369.

<sup>206</sup> See clause 4.10.3 OAPP SANS 1369.

<sup>207</sup> See clause 4.10.4 OAPP SANS 1369.

<sup>208</sup> See SANAS 2015 *Technical Requirements for Certification Bodies 4*.

<sup>209</sup> In line with IAF Mandatory Documents applicable for the application of ISO/IEC 17065. See SANAS 2015 *Technical Requirements for Certification Bodies 4*.

organic certification services with reduced costs and in turn allow access to organic certification to small and emerging organic farmers.

There is also a need for a strong State inspection body for organic claims regarding local and imported products that is empowered to monitor a national list of certified organic producers. The existing inspection body known as the BDOCA carries out inspections regarding organic products already on the market or products bearing claims associated with the organic label once a year. However, it is not clear if inspections are done at the organic farm or production level or which organic standards are used for inspection by this State inspection body. Inspections should encompass documentary controls and physical controls at the organic farm level. Traceability through the keeping of production practices records in the farm for quality assurance purposes is necessary to avoid contamination along the supply chain.<sup>210</sup> Audit and inspection can also be strengthened by unannounced inspection at any stage of production, by at least one annual inspection and by the use of compulsorily closed packaging after audit. It is recommended that there should be a duty for nationally-accredited organic certification bodies to inform the State inspection body regarding their certifiers' findings about transgressions. Where non-compliance is ascertained during official controls, the State inspection body must take appropriate measures,<sup>211</sup> taking into account the nature of the non-compliance and that operator's past record with regard to non-compliance.

## 5 Conclusion

Due to its agro-ecological diversity and natural resources as well as its being a net food exporter, South Africa possesses great potential for organic food production. With well-established practices that go beyond good agricultural practices, organic production also contributes to mitigate climate change, build resilient farming systems, reduce poverty and improve food security.<sup>212</sup> Developing the organic industry in South Africa would help to align economic development with sustainability, meet health considerations and decrease pollution.

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<sup>210</sup> See DAFF *Draft National Policy on Organic Production* 22.

<sup>211</sup> For instance, withdrawal of the products from the market, certification suspension, removal of the respective certified organic producer from the national list of certified organic producers, failure to pay a certifier's fees and fraud.

<sup>212</sup> See DAFF *Draft National Policy on Organic Production* 7.

This paper examines the current practice of the South African organic sector with respect to organic claims to determine whether State regulation of the organic sector constitute better regulation for organic food products. A private sector mechanism for organic product certification without public regulation may be an elitist mechanism which does not allow public access to the supply market of such products due to its high costs. A lack of regulation of the certified organic space may result in penalising those who invest in following certification procedures while other non-certified suppliers get to trade off the low levels of consumer awareness in the country. Certification for these high-quality products will also build consumer trust that rules of organic production system have been respected. The State regulation of organic food products in collaboration with the private sector instead of a private regulatory framework for such products seems necessary.

A legislative framework with organic standards respecting international norms on organic farming may be a better organic food production regulation than a self-regulated private organic sector. The control of the use of the term "organic" with standard labels on foods described as "organic" needs to be State-regulated. The organic certification system needs to include criteria, standards and guidelines against which a product is certified, and a monitoring mechanism. The SANAS accreditation programme for local certification bodies may allow access to organic certification to small and emerging organic farmers if SANAS-accredited certification bodies do not offer costly certification services. To ensure compliance with the rules of production at all stages of production and marketing, and transparency, a strong State inspection body must be set up. An organic product certification audit with updated documentation kept by the operator as well as a certification process is of particular importance for the integrity of organic products. Appropriate penalties should be applicable for irregularities where there is manifest infringement or an infringement with prolonged effects. Protecting the integrity of organic food and non-food farming can only be beneficial to the country's organic sector.

Acknowledging organic farming is indeed one of the pioneering approaches to sustainable production while regulating and backing the organic sector would help promote the greening of agriculture as one of the key sectors targeted by the South African Green Economy. A regulatory framework to govern the organic sector is called for, in order to increase compliance, transparency, traceability and accountability in

support of the widespread production of high quality and safe organic products for the local community and export markets.<sup>213</sup>

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## List of Abbreviations

ACB	African Centre for Biosafety
APSA	Agricultural Product Standards Act
AROS	Asia Regional Organic Standard
ASASA	Advertising Standards Authority of South Africa
ASSAF	Academy of Science of South Africa
Bt	Bacillus thuringiensis
BDOCA	Biodynamic and Organic Certification Authority
CAADP	Comprehensive African Agriculture Development Programme
CABs	Conformity assessment bodies

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DAFF	Department of Agriculture, Forestry and Fisheries
DEA	Department of Environment Affairs
DTI	Department of Trade and Industry
EAOPS	East African Organic Products Standards
EC	European Community
ECLJ	European Consumer Law Journal
EU	European Union
Farm Feed Law	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act
FAO	Food and Agriculture Organisation
FCDA	Foodstuffs, Cosmetics and Disinfectants Act
FiBL	Research Institute of Organic Agriculture
FRIDGE Study	2008 Study on sustainable development and organic agriculture
GM	genetically modified
GMOs	Genetically Modified Organisms
IEC	International Electrotechnical Commission
IFOAM	International Federation of Organic Agriculture Movement
INR	Institute of Natural Resources
IAF	International Accreditation Forum
IARC	International Agency for Research on Cancer
ISO	International Organization for Standardization
LMO	Living modified organism
NEPAD	New Partnership for Africa's Development
NGOs	Non-governmental organisations
OAPP	Organic Agricultural Production and Processing
OGS	Organic Guarantee System
PGS	Participatory Guarantee System
PPECB	Perishable Products Export Control Board
rBST	Recombinant Bovine Somatotropin
SABS	South African Bureau of Standards
SAMIC	South African Meat Industry Company
SAJELP	South African Journal of Environmental Law and Policy
SANS 1369	South African National Standards
SANAS	South African National Accreditation System
SAOSO	South African Organic Sector Organisation
UK	United Kingdom

UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
US	United States
WHO	World Health Organisation to give?