

Organic agriculture and the law



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LEGISLATIVE
STUDY

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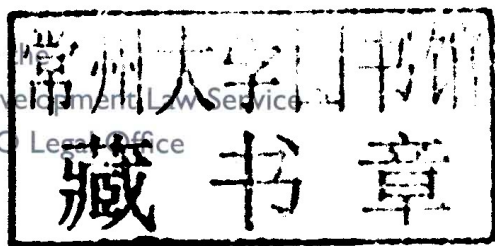
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FOREWORD

Organic agriculture has generated increasing global interest.¹ It is believed to produce significant social, economic and environmental benefits. It can provide an additional avenue for climate change mitigation through such measures as enhanced soil carbon sequestration. Broadly, it is also considered ecosystem-friendly because of its emphasis on minimum tillage and reduced use of pesticides, herbicides and synthetic fertilizers. Organic agriculture is also expected to play a major role in fighting against desertification, preserving biodiversity, contributing to sustainable development and promoting animal and plant health. The growing interest of consumers and markets worldwide in organic products has also opened new trade opportunities for developing countries, through internationally recognized certification.

The work of FAO in the field of organic agriculture started in the late 1990s. This work was inspired by and is in keeping with FAO's mandate of ensuring food security for all. Collaboration was initiated with organizations like the International Federation for Organic Agriculture Movement (IFOAM) and UNCTAD. Internally, there have been several initiatives to enhance the knowledge-base, including through the Inter-Departmental Working Group on Organic Agriculture, which was created to facilitate cross-departmental linkages and the sharing of experiences.

In 2005 the Codex Committee on Food Labelling developed the *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* in view of the growing production and international trade in organically produced foods. These guidelines have proven very useful as a basis for countries to develop regulatory mechanisms for organic agriculture. They have also been

1 In the recent past for instance, an International Conference on Organic Agriculture and Food Security was held in FAO (May 3–5 2007), which concluded that organic agriculture had a great potential to contribute to global food security. In addition, the World Bank issued the World Development Report 2007, which is the first in 25 years to focus on agriculture. The report also underscores the importance of the organic agriculture sub-sector, by pointing out, amongst other facts that organic crops now cover more than 31 million hectares and organic products now constitute about 47 per cent of all developing country exports.

useful in FAO's advisory work during projects. The Development Law Service has been involved in various projects and has been providing advice to FAO members on the review and drafting of organic agriculture legislation and the setting up of organic certification bodies.

In the course of these projects, one of the main problems identified, however, has been the limited information available to countries regarding best practices and issues to consider in the design of appropriate regulatory frameworks for organic agriculture. Often, beneficiaries of these technical assistance projects wished to know what legislative approaches other countries had taken, and what issues other countries grappled with in drafting their legislation. They were interested in knowing what legal requirements major potential markets, such as the United States, the European Union and Japan, have for organic products.

To fill this information gap, the Development Law Service carried out an initial study on the legal aspects of organic agriculture that will capture and summarise the practical lessons learned in advising countries on organic agriculture legislation. This publication seeks to identify and explain the different legal issues related to organic production, including a comparative analysis of selected public and private legal sources of international relevance, as well as recommendations on the issues to consider in the design of national organic agriculture legislation. It is a first step in unravelling the complex and highly technical issues related to drafting national legislation on organic agriculture, and it is hoped that comments from readers will contribute to refining and enriching the preliminary findings presented in this volume.

The study was written by Elisa Morgera, Carmen Bullón Caro (FAO Legal Office) and Gracia Marín Durán (consultant), with the contribution of Markus Arbenz (IFOAM), Ong Kung Wai (IFOAM), Andre Leu (IFOAM) and Joelle Katto (IFOAM); Sophia Twarog (UNCTAD), Diane Bowen on behalf of the Global Organic Market Access (GOMA) project, Nadia Scialabba (Natural Resources Officer, FAO), Ambra Gobena and Nathaniel Greeson (FAO Legal Office). The study authors would like to thank to Pascal Liu (Economist, FAO), Victor Mosoti, Margret Vidar and Jessica Vapnek (FAO Legal Office), Christine Barbeau (French Embassy in Egypt), Arnaud Bilen (French Embassy

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PART I

I

INTRODUCTION

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Organic agriculture is a system for crops, livestock and fish farming that emphasizes environmental protection and the use of natural farming techniques. It is concerned not only with the end-product, but with the entire system used to produce and deliver the agricultural product. To this end, the entire farm cycle, from production and processing, to handling and delivery, excludes the use of artificial products such as genetically modified organisms (GMOs) and certain external agricultural inputs such as pesticides, veterinary drugs, additives and fertilizers. Organic farmers rely instead on natural farming methods and modern scientific ecological knowledge in order to maximize the long-term health and productivity of the ecosystem, enhance the quality of the products and protect the environment. Proponents of organic methods believe that it is a more sustainable and less damaging approach to agriculture.

Organic agriculture has its roots in traditional agricultural practices in small communities around the world. Farmers passed down knowledge of effective practices onto subsequent generations. Organic agriculture became visible on a wider scale in the 1960s, when farmers and consumers became concerned that the amount of chemicals used in crop and animal production could have negative consequences for human health and the environment. Since then, it has developed into a more cohesive and organized movement and it is now the fastest growing food sector globally.

As organic foods cannot be distinguished from conventional products at a glance, consumers depend entirely on third-party certification, i.e. the process according to which public or private certification bodies provide assurance that organic products have been produced and handled according to applicable standards. Organic standards have long been used to represent a consensus about what an "organic" claim on a product means, and to convey that information to consumers. Certification not only leads to consumer trust in the organic system and products but also gives organic farming a distinct identity and makes market access easier. Thus, in contrast with food labelled as "environment-friendly", "green" or "free range", the organic label denotes compliance with very specific production and preparation methods. For farmers to use the organic label, they must receive certification that the product complies with applicable standards following third-party inspections of their operations. Organic standards usually include the use of only natural agricultural enhancers, conservation of natural resources, maintenance of biodiversity and preservation of the ecosystem. Owing to the fact that organic

farmers must take into account their impact on their immediate ecosystems, these methods are generally adapted to local conditions.

Overall, the benefits of organic agriculture are expected to be environmental, social and economic. After reviewing these benefits in further detail, the history of the organic movement and of the work of the Food and Agriculture Organization of the United Nations (FAO) on organic agriculture will be briefly outlined in order to provide a background to this study on national legislation on organic agriculture.

1. ENVIRONMENTAL BENEFITS OF ORGANIC AGRICULTURE

Land management has a significant impact on the environment. Conventional agriculture prioritizes high yields and does little to harmoniously interact with and preserve its immediate environment. These practices can result in widespread environmental degradation, commonly resulting in soil erosion, water, soil and air pollution, biodiversity loss, and desertification. They also contribute to global warming – agriculture today accounts for more than thirteen percent of global anthropogenic greenhouse gas emissions.² Conversely, organic agriculture uses an individualized approach to land management that emphasizes preservation of a land's natural ecosystem, while consuming less energy and reducing the risks of pollution common to conventional agriculture. Organic agriculture, therefore, seeks to offer a responsible alternative to conventional practices in the face of ever-growing concerns over climate change and environmental degradation.

Soil erosion is a main cause of loss of yield capacity and fertility. Long-term comparisons between conventional and organic farms have found that organic methods improve the fertility and overall health of the soil. Organically managed soils also demonstrate better moisture-retention capacity than those of conventional farms, which is important in arid climates and to reduce the risk of desertification. **Soil conservation** is therefore one of the key concepts in organic agriculture. Soil fertility is actually a cornerstone of

2 Intergovernmental Panel on Climate Change, Fourth Assessment Report (2007) available at: www.ipcc.ch.

organic farming by necessity because farmers cannot use synthetic products to restore degraded lands. They rely instead on maintaining and building soil fertility through multi-cropping systems, crop rotations, organic fertilizers, and minimum tillage. Organic farming has the ability to increase organic content in the soil, enhancing its capacity to retain water and circulate pollutants. Organic methods also counter soil erosion because they use natural pesticides and maintain a permanent soil cover, restoring even degraded soils quickly. Although there is little scientific evidence demonstrating that organic agriculture can reverse desertification, there are several practical examples of organic agriculture systems returning degraded lands back to fertility. This suggests that organic farming may prove to be an effective means to counter desertification.

Water pollution in agriculture is also due to soil erosion and nitrate and synthetic products leaking into water supplies. In light of the fact that organic farms do not use synthetic products, the risk of water pollution is greatly diminished. Organically-tended soils also show reduced rates of nitrate pollution in the water supply, as organic farms use fewer nitrates than conventional farms, and organic soils have an increased capacity to retain that

Organic farms also aim at consuming less **energy** and being more energy efficient than conventional farms. Studies show that they consume about forty-five to sixty-four percent of the non-renewable energy (fossil fuels) consumed by conventional farms. Depending on the climate and crops studied, organic farms were found to be between twenty-five and eighty-one percent more energy-efficient.

The environmental benefits of organic agriculture can also extend to **climate change**. The International Panel on Climate Change has strongly advocated the adoption of sustainable cropping systems such as those used on organic farms to reduce carbon emissions. Organic methods are indeed expected to result in lower emissions – carbon emissions are between forty-eight to sixty-six percent lower than on conventional farms. This is due to the high levels of organic matter found in organic soils, which allow the soil to trap and convert carbon, lowering emissions over time. Organic farms also tend to reduce nitrous dioxide emissions, simply because they use less nitrogen than conventional farms. This is particularly significant in light of the fact

that agriculture today is responsible for sixty-five to eighty percent of nitrous dioxide pollution, which contributes to the depletion of the ozone layer.

Organic agriculture is beneficial to **nature protection and biodiversity conservation**. The use of synthetic products and emphasis on mono-crop specialization and intensive yields that characterizes conventional agriculture has led to a considerable reduction in the number and variety of animals and plants used in agriculture. The International Union for Conservation of Nature's (IUCN) Red List of threatened species noted that habitat loss is the main threat to biodiversity, and that agriculture affected seventy percent of all threatened bird species and forty-nine percent of all plant species. Organic farmers, on the other hand, rely on biodiversity for their success. To insure against crop-failure, for example, organic farmers plant genetically diverse crops, thus perpetuating a diverse gene pool while also learning which seeds will be the most resilient and productive in the long term. Organic farmers depend on wildlife for pollination, pest control and maintenance of soil fertility. The absence of synthetic pesticides provides an improved natural habitat for birds, insects and micro-organisms in the soil. As a result of such practices, studies show that bird densities, plant populations, earthworms and insect populations are much higher on organic farms than elsewhere.

Organic agriculture eschews the use of artificial synthetic pesticides, supporting the use of local species and traditional techniques of pest management. These practices are known as **Organic Pest Management (OPM)**. OPM requires informed decision-making and careful planning. It includes: promoting populations of natural predators that contribute to controlling weeds, disease and insects; growing the most resistant varieties of crops; improving soil health to resist pathogens; growing plants in the proper seasons, which also contributes to biodiversity; using organic-approved pest-reduction and curative products, such as larvae of pest predators. These are considered effective means of controlling pests, while also promoting a healthy and diverse ecosystem.

Furthermore, organic agriculture rejects the use of **genetically modified organisms** or products, including plants and animals, although the possible risks posed by such products are debated widely (and in some cases such as in the EU and Tunisia, exceptions are provided for some veterinary medical products). This is because organic principles consider that the use of GMOs

de-emphasizes biodiversity and is an unnatural addition to the gene pool of cultivated crops, animals and micro-organisms living on farms. As a result, the exclusion of GMOs applies to every stage of production, processing or shipping of organic products. There is the risk that GMOs may enter organic products through cross-pollination. Organic farms can thus only ensure that there has been no intentional use of GMOs in their products.

Finally, **animal health and welfare** is another key issue in organic agriculture. Generally speaking, organic agriculture relies on disease preventive measures while restricting the administration of veterinary drugs to livestock. Organic livestock standards further require that animals receive adequate space, fresh air and suitable shelter. They also require specific nutritional programs using primarily organic feeds. This is a more humane and natural approach to livestock farming, which conventional agriculture does not necessarily take into consideration. There are also possible health benefits to this approach, as these techniques reduce stress in animals which is thought to prevent diseases.

2. SOCIAL BENEFITS OF ORGANIC AGRICULTURE

Organic agriculture may have a significant social impact on rural communities. To begin with, organic farming may lead to improved **employment opportunities** in local communities. Organic farming often requires more manual labour to compensate for the loss of synthetic fertilizers and pesticides, and thus generates more jobs in rural communities. The amount of extra labour required varies based on the product and farm in question – figures within Europe alone have been found to vary between countries and even studies. In general, however, the labour needed to manage an organic farm is ten to twenty percent higher than on comparable conventional farms. Organic farmers also diversify their crops and spread their planting schedules throughout the year in order to maintain biodiversity and enhance the health of the soil. This creates opportunities for year-round employment, reduces turnover and may alleviate problems related to migrant labour. Crop diversification also mitigates the effects of crop failure by spreading the risk among a wider variety of crops and products. Greater job opportunities on organic farms contribute to strengthening rural communities as well, by halting exodus to urban areas for jobs.

Organic farming has the effect of strengthening local communities and supporting **rural development**. In order to remain competitive, farmers must adapt to local conditions by managing labour, land and resources in a way that maximizes production and remains sensitive to the environment. Doing so requires constantly experimenting with new techniques and pooling local knowledge to learn best practices. Farmers also rely on their neighbours to maintain certain standards in order to ensure the integrity of their own air, water and soil. Collaboration on these issues strengthens ties within the community, which leads to partnerships and greater organization among organic farmers. Organized groups or cooperatives can thus pool their resources, enjoy greater access to markets, and gain leverage in trade negotiations. There is some evidence that increased co-operation results in more active participation in local government and new businesses among rural communities.

Many organic farms also incorporate fair trade principles with respect to **labour welfare**. Through the implementation of labour rights related to organic agricultural practices, organic producers agree upon minimum social and labour standards. To that end, farmers contribute to providing labourers with liveable wages, safe and healthy working conditions and access to social services. The organic movement believes that these social requirements are important, but recognizes that specific standards can be controversial and difficult to implement across numerous countries.

Consumer protection is another cornerstone of organic agriculture. Consumers prefer organic products to those made on conventional farms because they know that organic products avoid synthetic pesticides and fertilizers, are good for the environment, and are perceived to produce foods that are healthier and taste better. Strong regulatory frameworks, whereby the government verifies organic certifications, are necessary for consumers to trust the products they purchase.

Finally, organic agriculture can contribute to **food security**. Although the global food supply is adequate, 850 million people still go hungry. In addition, the cost of food has risen dramatically in the past decade and there is less genetic diversity in our foods due to conventional agricultural methods. Consequently, large populations are increasingly exposed to the risk of food shortage due to disease and poverty. Organic agriculture may have the potential to meet these challenges. Considering the fact that organic methods do not require