LAYING DOWN THE FACTS V3

ANIMAL WELFARE STANDARDS OF THE COMPANIES PROVIDING YOUR FAVOURITE FOODS

CORPORATE ACCOUNTABILITY AND THE EGG INDUSTRY IN SOUTH AFRICA

ANIMAL LAW REFORM
SOUTH AFRICA

***NOTE:** This is Version 3 of the report titled "*Laying Down the Facts: Animal Welfare Standards of the Companies Providing Your Favourite Foods*," originally published in August 2023 ("**Version 1 of the Initial Report**"). Version 2 was published in September 2024, with revisions relating to one of our Selected Stakeholders, Bidcorp, indicated throughout in red font, with red asterisks and/or yellow highlighting. As of November 2024, further amendments have been made that relate specifically to the Regulations Regarding the Grading, Packing, and Marking of Eggs Intended for Sale in the Republic of South Africa (the "**Egg Labelling Regulations**") indicated throughout in red font, with red asterisks. For a record of all changes, please see **Revision Note I of September 2024** on pages 281–283 and **Revision Note II of November 2024** on page 284 below. Any reference to the Initial Report or "this report" throughout this document should be regarded as a reference to Version 3, rather than Versions 1 or 2 of the Initial Report.

ANIMAL LAW REFORM SOUTH AFRICA

Animal Law Reform South Africa ("**ALRSA**") is South Africa's first and only dedicated animal law non-profit organisation. ALRSA envisages a society whose laws, courts, enforcement agencies and private entities advance the protection and flourishing of humans, non-human animals and the environment, and are held accountable.

ALRSA operates through three key Pillars being: **Animal Flourishing; Social Justice; the Law.**

ALRSA undertakes its work through three main "Mechanisms", namely:

Education & Research; Legislative & Policy Reform; Litigation & Legal services.

Through these Mechanisms, ALRSA aims to contribute to the development of a robust animal law ecosystem in South Africa **which recognises the intrinsic worth of non-human animals as sentient beings.** Our work is grounded in our understanding that it is critical for a context-sensitive approach to be taken to the furtherance of animal protection in South Africa, and that the impact of our work is enhanced through an intersectional understanding of animal flourishing, social justice and environmental protection.

ALRSA is a civil society organisation and registered non-profit company and NPO acting in the public interest.

ACKNOWLEDGEMENTS

FUNDING

Our work is in part funded by a grant from the Open Wing Alliance ("**OWA**"). Read more on their website: https://openwingalliance.org/.

CO-AUTHORS' DISCLAIMER

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***PLEASE READ OUR LEGAL AND DISCLAIMERS SECTION.**

PLEASE CONSULT OUR GLOSSARY FOR A LIST OF DEFINED TERMS. Unless the context otherwise requires, capitalised terms have the meanings ascribed to them in the Glossary.

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This Initial Report and other information relating to the Project are accessible at: www.animallawreformsouthafrica.org

We welcome comments, corrections, suggestions on and proposed amendments to this Initial Report including by the Selected Stakeholders.

We remain committed to engaging in an open and transparent manner in respect of this Initial Report. We reserve the right to amend this Initial Report.

Please email: outreach@animallawreform.org

"[t]he right to freedom of expression
in s 16 of the Bill of Rights
protects every citizen
to express himself or herself
and to receive information and ideas.

The same right is accorded to activists
to disseminate information to the public.

The Constitution recognises that
individuals in our society
need to be able to
hear, form and express opinions freely,
on a wide range of topics...

The public has a right
to be informed
of the humane or inhumane
treatment of animals...

Members of the public
have the freedom to decide
which commercial enterprise
they support and which they do not.

That freedom of choice can only be exercised
if activities happening ... are laid bare for the public."

-R S Mathopo,
Supreme Court of Appeal Judge

(Smuts and Another v Botha (887/2020) [2022] ZASCA 3; 2022 (2)
SA 425 (SCA) (10 January 2022)

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BACKGROUND

Approximately 1 billion chickens are killed every year for food in South Africa at the hands of the Poultry Industry.[1]

This number does not include the millions of Egg-Layer Hens used in the Egg Industry nor the thousands of baby male Chicks who are killed in the Egg Industry each year.

In 2021, the national layer flock of hens comprised 26.85 million hens in South Africa.[2] Over 86% of Egg-Laying Hens in South Africa are confined to live in Battery Cages. [3]

8,480,400,000 eggs were produced in 2021.[4] South Africans consume between 150 and 159 eggs per capita, and this number is increasing.

Chickens are sentient beings worthy of legal protection and consideration. They have been shown to exhibit various capacities and capabilities, including that they: have visual and spatial capacities; some understanding of numerosity; can demonstrate self-control and self-assessment; communicate in complex ways; the capacity to reason and make logical inferences; perceive time intervals and may be able to anticipate future events; behaviourally sophisticated; complex negative and positive emotions; and have distinct personalities.[5]

In the Egg Industry, chickens suffer terribly due to various Cruel Practices,[6] including the use of Battery Cages, the culling of male Chicks, and others.

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1 United Nations FAO https://www.fao.org/faostat/en/#data/QCL.

2 Ibid.

3 NSPCA Refutes Layer Hen Cage Sizes in South Africa available at https://nspca.co.za/nspca-refutes-layer-hen-cage-sizes-in-south-africa/ (accessed on 13 April 2023).

4 South African Poultry Association Annual Report 2021 available at https://www.sapoultry.co.za/wp-content/uploads/2022/06/SAPA-ANNUAL-REPORT-2021.pdf [Based off of reported **706,700,000 dozen eggs** per year 2021].

5 Marino, L. Thinking chickens: a review of cognition, emotion, and behavior in the domestic chicken. Anim Cogn 20, 127–147 (2017). https://doi.org/10.1007/s10071-016-1064-4.

6 Practices involved in the Egg Supply Chain that cause suffering and pain to layer-hens including, but not limited to the use of Battery Cages, beak trimming, de-toeing or toe clipping , and/or overstocking within cages and in relation to male Chicks - culling. Many of these practices have been banned or are being phased out elsewhere in the world due to their cruel nature.

Cruel Practices within the Egg Supply Chain[7] negatively implicate not only animal welfare but also the environment, human rights, social justice, consumer protection, and food health and safety, among other issues.

In South Africa the Poultry Industry is facing several challenges, including as a result of rising prices (including due to cost of feed), the current electricity crisis and associated load shedding causing huge financial losses,[8] and major risks from highly pathogenic viruses such as avian flu.[9] More information on the Egg Industry in South Africa (which is part of the broader Poultry Industry) is set out in the Industry Component in Section II of this Initial Report.

Despite these major challenges, the South African Government aims to greatly increase and promote the consumption and use of chickens and eggs through initiatives and policies such as the "Poultry Sector Master Plan"[10] and the "Egg Master Plan" by the Department of Agriculture Land Reform and Rural Development ("**DALRRD**") and the Department of Trade, Industry, and Competition ("**DTIC**").

Another major challenge in respect of the Egg Industry, is the governance thereof. ALRSA takes the view that existing governance mechanisms do not adequately address the negative consequences and impacts of the Egg Industry. From an animal welfare perspective, the law does not sufficiently protect the interests of the millions of animals implicated in animal agriculture, including egg Laying Hens and their Chicks. While there are negative duties in the form of anti-cruelty laws which technically apply to farmed animals, evidence suggests that these are rarely utilised for such animals, particularly those industrialised agricultural facilities. Section III of this Initial Report, the Research Component, reveals that there are very few enforceable legal standards setting out positive requirements to ensure the welfare and well-being of animals implicated in the Egg Industry. As a result, there is a proliferation of soft laws or voluntary standards, largely produced by the Egg Industry, which impose limited (if any) consequences in the event of non-compliance. Further, the public can do little to ensure compliance with or the enforcement of these soft laws and voluntary measures. Consequently, they do little to protect the interests of the millions of animals in the Egg Industry.

Where hard (enforceable) animal protection laws do exist (particularly in the form of the anti-cruelty statutes such as the Animals Protection Act), enforcement is largely left up to a statutory body which is a non-profit organisation, namely, the National Council of Societies

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7 Every step and role-player involved the production of eggs for consumption by customers from fertilisation to plate in South Africa, including the steps taken in relation to the supply of eggs by cage and/or feed manufacturers, egg producers, brands or retailers, hotel chains, fast food chains, restaurants, as well as Industry Associations, and Relevant Authorities.

8 News 24, https://www.news24.com/fin24/economy/see-farmer-to-put-r15m-claim-to-eskom-after-tens-of-thousands-of-chickens-killed-20230119.

9 News 24, https://www.news24.com/fin24/companies/quantum-had-to-kill-420-000-chickens-due-to-bird-flu-warns-of-egg-crunch-20230509.

10 http://www.thedtic.gov.za/wp-content/uploads/Poultry-Master-Plan.pdf.

for the Prevention of Cruelty to Animals ("**NSPCA**") and its individual Societies for the Prevention of Cruelty to Animals ("**SPCAs**"). These entities are reportedly over worked and under-resourced and receive no government funding.[11] Instead, the NSPCA relies on fundraising, and has received and continues to receive millions of rands in funding from Astral Foods Ltd the single largest integrated poultry producer in South Africa, as reported on in several of Astral Foods' Annual Integrated Reports[12] as well as donations from Meadow Feeds,[13] which is a subsidiary of Astral Foods Ltd. Our research reveals that the enforcement of animal protection laws by the NSPCA in the Egg Industry and more particularly, the inspections conducted between 2018 and 2022 are deficient in several respects as further set out in the Animal Welfare Pillar in Section III and Appendix I of this Initial Report.

Overarching South Africa's animal protection-related laws (and other areas of law regulating the Egg Industry such as in relation to food safety), the environmental right as contained in the supreme Constitution of the Republic of South Africa, 1996 (the "**Constitution**") has been interpreted by the country's highest court (the Constitutional Court), in 2016[14] to protect animal interests on the basis that animals are sentient beings with intrinsic value. This interpretation has since been adopted and extended by lower courts.[15] In addition, courts have interpreted other human rights in the Constitution to apply to animals including the right to information[16] and the right to freedom of expression. [17]

The supreme Constitution has horizontal application, meaning that it not only applies to relationships between the state or Government and the public, but also applies as between members of the public and non-state actors such as Corporations.[18] Accordingly, Corporations and other juristic entities have duties and responsibilities in respect of human rights, including those rights that have been interpreted to protect animal interests.

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11 See: NSPCA 2017 - 2018 Annual Report available at http://nspca.co.za/wp-content/uploads/2021/07/NSPCA-Annual-Report-2017-2018.pdf.

12 In Astral's 2020 Integrated Report, they reported donating more than R500 000 to the NSPCA: https://www.astralfoods.com/assets/Documents/Investor%20Centre/2020/Integrated-report-for-the-year-ended-2020.pdf. In their 2021 Integrated Report, they reported that Astral donated R500 000 to the NSPCA during the financial period: https://www.astralfoods.com/assets/Documents/Index/Integrated-Report-for-the-year-ended-30-September-2021.pdf. In their 2022 Report they reported that they had donated R1 000 000 to the NSPCA: https://www.astralfoods.com/assets/Documents/Investor%20Centre/2022/Integrated%20Report%20for%20the%20year%20ended%2030%20September%202022.pdf.

13 https://nspca.co.za/meadow-feeds-assists-nspca/. Meadow Feeds is a brand of Astral Operations Limited, which is 100% owned by Astral Foods Ltd.

14 The National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development [2016] ZACC 46 (the "**NSPCA Case**" or "**2016 NSPCA Case**").

15 The National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others [2019] ZAGPPHC 337 (the "**Lion Bones Case**").

16 *Smuts N.O. and Others v Member of the Executive Council: Eastern Cape Department of Economic Development Environmental Affairs and Tourism and Others* (1199/2021) [2022] ZAECMKHC 42 (26 July 2022).

17 *Smuts and Another v Botha* (887/2020) [2022] ZASCA 3; 2022 (2) SA 425 (SCA) (10 January 2022).

18 Section 8(2) of the Constitution.

Accordingly, as the human right to have the environment protected includes considerations of animal welfare and Corporations are required to respect, protect, promote, and fulfil this right, then, by extension, Corporations have duties toward animals, including considerations relating to animal welfare. In our view, Corporations involved in the Egg Industry in South Africa owe duties to both humans and animals which should be further explored. Such duties include transparency and accountability, values permeating the entire constitutional scheme, applicable to Corporations. These values are given effect by, among others, the horizontally applicable right to access to information in terms of section 32 of the Constitution and enabling legislation such as the Promotion of Access to Information Act 2 of 2000 ("**PAIA**").

Despite these constitutional norms, due to a lack of transparency on the part of Corporations, among other factors, the public generally is unaware of their processes by which food is produced and made accessible to them. Regardless, we believe that the public interest dictates that consumers be informed about their food and its impacts on animals, the environment and society, in order for them to be empowered to make conscious choices.

THIS PROJECT AND INITIAL REPORT

Against this background, ALRSA has undertaken the Project entitled: "Laying Down the Facts: the Animal Welfare Standards of the Companies Providing your Favourite Foods" subtitled "Corporate Accountability in the Egg Industry" in order to:

i. foster public and consumer interest and understanding of the regulatory and policy regime governing farmed animals; and

ii. incentivise and promote accountability from Corporations in relation to their farmed animal practices (including in relation to improved transparency), and in so doing, encourage improved practices relating to animals in the Egg Supply Chain (including through Cage-free Commitments from South African retailers, restaurants, fast food chains, hotels and others).

Initially, the Project consisted of two main components, a Research Component (as contained in Section III of this Initial Report) and a Stakeholder Component (as contained in Section IV of this Initial Report). Further research was required to understand the Egg Industry more broadly in South Africa, resulting in another component, the Industry Component (as contained in Section II of this Initial Report). The Industry Component aims to provide information about the Poultry Industry and Egg Industry in South Africa including in relation to the chickens (life-cycle and stages); eggs (types, size, grading) and the South African market, economics and impacts.

For purposes of the Research Component contained in Section III of this Initial Report, six key "Pillars" applicable to the South African Egg Industry have been researched and introduced at a high level in terms of how they intersect with the Egg Supply Chain – these

include Pillars relating to: Animal Welfare; the Environment; Food Health and Safety; Social Issues and Rights; Consumer Protection, and Corporate and Business issues. The Animal Welfare Pillar is the main focus of this Initial Report and is accordingly described in the most detail. Each Pillar contains a high-level summary of how the selected issue relates to the Egg Industry in South Africa and sets out some of the main governance documents in respect thereof.

For purposes of the Stakeholder Component in Section IV of this Initial Report, thirty-six (or three dozen) Corporations within the Egg Supply Chain were identified and selected for rating on issues in respect of certain matters identified in the aforementioned Pillars among others, animal welfare, transparency, and co-operation. The Stakeholder Component consists of four Parts: Part A, the introduction; Part B, which sets out the methodology adopted; Part C, the rating exercise conducted and Part D, our analysis.

Having evaluated the information relative to the Selected Stakeholders obtained through the Project against the 10 main Criteria (namely, Animal Welfare-centred Internal Policies; Annual reporting on animal welfare and asset and stock registers; Compliance with Relevant Legislation; Adverse Findings; Relevant Commitments and Supply Chain Details; Public Statements; Memberships of Industry Associations; Certifications; Transparency; and Co-operation) and their respective Indicators, a colour-rating was assigned to each Selected Stakeholder (as summarised in the table on the next pages).

Finally, based on the aforementioned four Sections and following our analysis of the research and Selected Stakeholders, several recommendations have been proposed (in Section V) to assist the Egg Industry in South Africa in becoming more accountable, particularly in relation to animal welfare. Our proposals include governance measures intended to ensure that the Egg Industry is more ethical, more transparent, more co-operative and more inclusive. Briefly, these recommendations include: voluntary governance measures such as: animal welfare commitments; Cage-free Commitments; other corporate commitments to improve animal welfare and well-being as well as alternatives; commitments to transparency; engagement and co-operation with the animal protection / animal welfare sector and civil society organisations; third-party certifications and enhanced Internal Policies. Recommendations aimed at law reform include: legislative amendments aimed at explicit recognition of sentience; prohibitions of Cruel Practices such as Battery Cages beak trimming, male chick culling; the introduction of positive legal standards such as mandatory reporting; and duties to conduct ovo-sexing; reform environmental laws; increased environmental reporting: inclusion of animal welfare (well-being); and mitigation measures in climate law and policy.

The final colour-rating for our Selected Stakeholders is set out on the following page. For a more detailed analysis as well as information relating to the criteria, please refer to Section IV, Part C.

SELECTED STAKEHOLDERS	OVERALL RATING
Major retailers	
(1) Pick n Pay, (2) Shoprite, (3) Spar	🟠
(4) Woolworths, (5) MassMart	☐
Fast food outlets and restaurants	
(13) Kauai, (16) Subway	☐
(6) Spur, (7) Rocomamas, (8) Mugg n Bean, (9) Wimpy, (10) Steers, (11) Nandos, (12) Papachinos, (14) KFC, (15) McDonalds, (17) Bidvest	🔴
Wholesalers	
(18) Tiger Brands, (19) Bakers, (22) Rhodes Food Group,	🔴
(20) Unilever, (21) Pioneer Food Group	☐
(23) Bidcorp*** As amended in Version 2 of this Initial Report.**	🟠
Hotels	
(24) Sun International, (26) Southern Sun	🔴
(25) City Lodge	🟢
(27) Hotel Verde, (28) Marriott Hotels	☐
(29) Hilton Hotels	🟠
Egg producers and equipment (cage and feed) manufacturers	
(30) Eggbert, (32) TopLay, (35) RCL Foods	☐
(31) Quantum Foods, (33) Big Dutchman, (34) AFGRI, (36) Meadow Feeds	🔴

SECTION I

INTRODUCTORY MATTERS

ANIMAL LAW REFORM
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SECTION I:
INTRODUCTORY MATTERS

PART A: GLOSSARY

Below are terms and abbreviations used widely throughout this Initial Report. Additional terms and abbreviations not widely utilised are defined in the relevant part and section to which they apply.

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
Adverse Finding/s	Any judgments, decrees, rulings or other official statements containing findings against a Selected Stakeholder or their supplier or any other relevant third party in relation to non-compliance with or enforcement of Relevant Legislation or action against them by any Relevant Authority
AIA	Animal Improvement Act 62 of 1998
AIDA	Animal Identification Act 6 of 2002
ALRSA	Animal Law Reform South Africa
Animal Legislation	Legislation (including any amendments, rules, lists, notices, regulations, etc.) regulating human-animal interactions and/or animal agriculture, including, but not limited to, the Regulations Regarding the Grading, Packing and Marking of Eggs Intended for Sale in the Republic of South Africa of 31 May 2019, Notice 289 of 2019; the Animals Protection Act 71 of 1962 ("APA"), the Meat Safety Act 40 of 2000; the Animal Identification Act 6 of 2002; and the Veterinary and Para-Veterinary Professions Act 19 of 1982; the Animal Diseases Act 35 of 1984.
Animal Welfare Bill	The proposed new Animal Welfare Bill for South Africa as referenced by DALRRD
Animal Welfare Commitment	A Cage-free and/or Better Chicken Commitment of a Selected Stakeholder respectively

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
Annual Reports	The Annual Reports, Integrated Annual Reports, Sustainability Reports and/or Environmental Social and Governance ("ESG") Reports and similar records of a Selected Stakeholder for the period of 1 November 2018 to 30 November 2022, requested by ALRSA. These documents are distinct from Internal Policies (as defined in this Initial Report) and are generally tabled with and approved by the boards and shareholders of stakeholders. Annual Reports are often available in the public domain
APA	Animals Protection Act 71 of 1972
AU	African Union
AWSA	Animal Welfare Strategy for Africa
Battery Cage/s	A housing system utilised for various animals, especially Egg Laying Hens, generally made of wire on all sides
Better Chicken Commitment	A Better Chicken Commitment refers to a statement in which a private body commits to addressing Cruel Practices, primarily towards broiler chickens, either immediately or through Progressive Measures. This science-based chicken welfare policy addresses issues related to breeding for fast-growth and high-yield, housing, stocking density and slaughter. Further information available at https://betterchickencommitment.com/
Broiler	A chicken used primarily for meat or in the meat industry (as compared to a Laying Hen or chicken utilised in the Egg Industry)
Cage-free Commitment	A Cage-free Commitment is a formal statement in which a private body pledges to eliminate the specific Cruel Practice of cage-confinement, primarily of Layer Hens, either immediately or through Progressive Measures
Chicks	Young bird/s, both male and female, especially chickens for purposes of this Initial Report (from the moment a chicken is born up until they are classified as a Pullet in the case of a female or a cockerel in the case of a male)
Constitution	The Constitution of the Republic of South Africa, 1996
Corporations or Companies or similar terms	Includes but is not limited to juristic entities or persons and businesses in various forms, for example a company or close corporation as defined in the Companies Act 71 of 2008, cooperative, association, and others. Specifically, for purposes of this Initial Report, this term refers to non-state actors operating within the Egg Industry regardless of where in the Egg Supply Chain they operate

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
Comprehensive	In relation to a Public Statement, refers to a Public Statement that addresses Progressive Measures and Cruel Practices of the Selected Stakeholder in detail, with full disclosure and the utmost transparency, for instance, not only disclosing Progressive Measures aimed at eliminating Cruel Practices, but also the extent to which the Selected Stakeholder remains complicit or a participant in Cruel Practices
CPA	Consumer Protection Act 68 of 2008
Criteria and Criterion with reference to any one of the Criteria	A set of 10 main standards against which Selected Stakeholders are evaluated by ALRSA in this Initial Report
Cruel Practices and Cruel Practice with reference to any one	Practices involved in the Egg Supply Chain that cause suffering and pain to layer-hens including, but not limited to the use of Battery Cages, beak trimming, de-toeing or toe clipping, and/or overstocking within cages and in relation to male Chicks - culling. Many of these practices have been banned or are being phased out elsewhere in the world due to their cruel and unnecessary nature. For further information on these and other practices, see Section III, the Animal Welfare Pillar, Part B, heading IV.
DALRRD	Department of Agriculture Land Reform and Rural Development – formerly the Department of Agriculture, Forestry and Fisheries (DAFF)
DFFE	Department of Forestry, Fisheries and Environment (South Africa) – formerly the Department of Environmental Affairs (DEA)
DoH	Department of Health
DTIC	Department of Trade, Industry, and Competition
Egg Industry	Any and all economic activity concerned with the Egg Supply Chain
Egg Supply Chain	Every step and role-player involved the production of eggs for consumption by customers from fertilisation to plate in South Africa, including the steps taken in relation to the supply of eggs by cage and/or feed manufacturers, egg producers, manufacturers or retailers, hotel chains, fast food chains, restaurants, as well as Industry Associations, and Relevant Authorities
Environmental Commitment	A commitment by a Selected Stakeholder related to environmental matters including sustainability, best practices relating to the use of the environment and its components (such as land, air, water, food, etc.) and environmental protection,

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
	including those that directly or indirectly provide for measures addressing animal welfare, specifically regarding Layer Hens and Chicks
Environmental Legislation	Legislation (including any amendments, rules, lists, notices, regulations, etc.) concerning the environment, including, but not limited to: the National Environmental Management Act 107 of 1998 ("NEMA"); the National Environmental Management: Waste Act 59 of 2008 ("NEMWA"); The National Environmental Management: Air Quality Act 39 of 2004 ("NEMAQA") and the National Water Act 36 of 1998 ("NWA")
EU	European Union
FAPU	Farmed Animal Protection Unit of the NSPCA
FAO / UN FAO	Food and Agricultural Organisation of the United Nations
FCD Act	Foodstuffs, Cosmetics, and Disinfectants Act 52 of 1972
Five Freedoms	Internationally accepted standards of minimum care developed by Britain's Farm Animal Welfare Council in 1965 which include: freedom from hunger or thirst, freedom from discomfort, freedom from pain, injury or disease, freedom to express normal behaviour, and freedom from fear and distress
Five Domains	Science-based structure developed by Professor David Mellor, former Director of the Animal Welfare Science and Bioethics Centre at Massey University for assessing animal welfare, which recognises that animals can experience feelings, ranging from negative to positive. These include good nutrition, good environment, good health, appropriate behaviour and positive mental experience
Glossary	This Glossary of abbreviations and terms used in this Initial Report
Industry Component	Section II of this Initial Report
Initial Report	This Initial Report as at 3 August 2023 and its various sections, parts, annexures including the Introductory Matters; Research Component; Industry Component; Stakeholder Component and Recommendations
Introductory Matters	Section I of this Initial Report
IPCC	Intergovernmental Panel on Climate Change

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
Layer/s / Layer Hen/s / Egg Layer / Hen/s / Egg Laying Hen /s	A domesticated female chicken raised primarily for the production of eggs (as opposed to for meat, see Broiler). Broadly referenced to include any stage of life unless otherwise specified (e.g. see Pullet or Chick or Point of Lay or Spent Hen)
Greenwashing	The practice of making a false, misleading, or exaggerated action or set of claims made by a Selected Stakeholder about the positive impact that a company, product or service has on the environment
Humane-washing	The practice of making a false, misleading, or exaggerated claim about the treatment of animals or the conditions in which they are born, raised, transported, or killed, creating the (false) impression that animals are treated with compassion or in a humane manner
Indicators or Indicator to refer to any one of the Indicators	To evaluate the Selected Stakeholders against each Criterion, Indicators have been developed which inform the colour scores awarded in respect of the relevant criteria. The Indicators provide more detailed inquiries in respect of our analysis of Selected Stakeholders and their efforts (or lack thereof) towards animal welfare, transparency and willingness to engage with ALRSA concerning their involvement in the Egg Supply Chain
Industry Association/s	Any relevant association regulating any aspect of the Egg Supply Chain that supports and protects the rights of companies and employers and requires adherence to relevant welfare standards of the South African Bureau of Standards ("SABS") and/or other voluntary compliance measures, including, but not limited to, the South African Poultry Association ("SAPA") (both the SAPA Egg Organization and SAPA Broiler Organization), the Livestock Welfare Coordinating Committee ("LWCC"), the Sustainable Retailer Forum, the Animal Feed Manufacturer Association or any other poultry, egg or chicken organisation or association that may be relevant to animal welfare
Information Officer	The person designated as an Information Officer in terms of the PAIA Manual of a Selected Stakeholder, often 'the head of a private body' as defined in s 1 of PAIA, and the person responsible for compiling and ensuring compliance with a private body's PAIA Manual
Internal Policies	Any policy document of a Selected Stakeholder, including, but not limited to their responsible sourcing policy, sustainability policy, or environmental policy that specifically addresses or regulates animal welfare (whether in general or in relation to the Egg Supply Chain specifically). Internal Policies, however, exclude Annual

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
	Reports, Relevant Commitments and Other Commitments, as defined in this Initial Report
MSA	Meat Safety Act 40 of 2000
NAMC	National Agricultural Marketing Council
NEMA	National Environmental Management Act 107 of 1998
NEMAQA or NEM:AQA	National Environmental Management: Air Quality Act 39 of 2004
NEMBA or NEM:BA	National Environmental Management – Biodiversity Act 10 of 2004
NEMLAA	National Environmental Management Laws Amendment Act 2 of 2022
NEMWA or NEM:WA	National Environmental Management: Waste Act 59 of 2008
Non-responsive	A situation contemplated by s 58 of PAIA, where the Selected Stakeholder is deemed to have refused access by virtue of their failure to give a decision on a request for access within the prescribed period (i.e. 30 days or an extended period) whether having acknowledged receipt of a request for access to information or not.
NSPCA	National Council of Societies for the Prevention of Cruelty to Animals
Other Certification	Certifications, notices, letters and correspondence or other relevant documentation issued by any relevant third parties (other than SABS and/or AGW) such as the United Nations or a similar body in respect of animal welfare.
OWA	Open Wing Alliance
PAIA	Promotion of Access to Information Act 2 of 2000
PAIA Manual	The Manual referred to in s 51 of PAIA which must be compiled by the head of the private body, updated regularly, and must contain, among other things, contact details, records available without the need for a PAIA request, records available in terms of applicable legislation, details as to how to request information
PAIA Requests	The requests sent by ALRSA to the Selected Stakeholders in terms of the Project as more fully set out in Section IV
PAJA	Promotion of Administrative Justice Act 3 of 2000
Part	Any part within a Section of this Initial Report

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
Pillars or Pillar or Pillar Reports	Each of, or all of the 6 identified pillars forming part of this Project being collectively or individually: Animal Welfare Pillar; Environment / Environmental Pillar; Food Health and Safety Pillar; Social Issues and Rights Pillar; Consumer Protection Pillar and/or Business and Corporate Pillar
Point of Lay	When a hen starts to lay eggs
Poultry Industry	Any and all economic activity concerned with the supply of poultry in South Africa, with a focus for purposes of this Project on chickens in particular and includes both the industry relating to Broilers as well as the Egg Industry and includes every step and role involved the production of poultry for consumption by customers from fertilisation to plate in South Africa, including the steps taken in relation to the supply of poultry including but not limited to by cage and/or feed and/or equipment manufacturers, producers, wholesalers, retailers, hotel chains, fast food chains, restaurants, as well as Industry Associations, and Relevant Authorities
Progressive Measures	Any measure that phasing out and taking other reasonable steps to enhance the welfare of Layer Hens and Chicks and address Cruel Practices (as defined in this Initial Report) so as to align with best practice elsewhere in the world
Project	ALRSA's Corporate Accountability Project relating to the poultry (specifically egg) industry in South Africa, specifically for purposes of this phase entitled "Laying Down the Facts: the Animal Welfare Standards of the Companies Providing your Favourite Foods" subtitled "Corporate Accountability in the Egg Industry"
Public Statement	A statement made by a Selected Stakeholder available in the public domain and provided to ALRSA in response to a request for access to information in which it discloses its sourcing practices in respect of the Egg Supply Chain (as a distributor or user thereof) and/or its production system in respect of eggs (as applicable). It does not include statements not provided to ALRSA
Pullet	A young hen who has been sexed but is typically not yet laying eggs (see Egg Laying Hen)
Recommendations	Section V of this Initial Report
Refusal	A situation where a Selected Stakeholder refused to provide access to information requested by ALRSA in terms of PAIA by invoking one or more of the grounds of refusal listed in ss 62 to 70 of PAIA, as opposed to a situation contemplated by s 58 of PAIA, where the Selected Stakeholder is deemed to have refused access by virtue of their failure to give a decision on a request for access within the prescribed period

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
	(i.e. 30 days or an extended period). In this Initial Report, the latter situation is referred to as 'Non-responsiveness', whereas the former situation is referred to as a Refusal. In terms of PAIA, a refusal would include both situations
Relevant Authority	The South African Police Service ("SAPS"), the National Council of Societies for the Prevention of Cruelty to Animals ("NSPCA") and any Society for the Protection of Cruelty to Animals ("SPCA"), and any other relevant authority responsible for implementing or enforcing Relevant Legislation (as defined in this Initial Report) in respect of animal welfare
Relevant Commitment	One or more Animal Welfare Commitments and Environmental Commitments
Relevant Legislation	Animal Legislation as defined in this Initial Report, Environmental Legislation as defined in this Initial Report, and any other legislation that may be relevant to the Egg Supply Chain
SABS	South African Bureau of Standards
SABS/AGW Certification	Certifications, notices, letters and correspondence or other relevant documentation issued by the South African Bureau of Standards ("SABS") or A Greener World ("AGW") to a third party indicating compliance with relevant requirements of the SABS, SANS or AGW in respect of animal welfare
SAPA	South African Poultry Association
SAPA COP	South African Poultry Association, Code of Practice of 2022
SAPS	South African Police Services
SAVC	South African Veterinary Council
Section	Any of the 5 main sections as contained in this Initial Report
SEMA	Specific Environmental Management Act
SDGs	Sustainable Development Goals, also known as the Global Goals, which were adopted by the United Nations in 2015
SPCA	Societies for the Prevention of Cruelty to Animals individually or collectively
Spent Hen	Refers to an Egg Laying Hen who is at the end of her egg-laying cycle
Selected Stakeholder or Selected Stakeholders	All or any one of the entities in the Egg Supply Chain being either a major retailer, fast food outlets and restaurants, wholesalers, hotels, egg producers and equipment (cage and feed) producers identified as such based on factors including the size of

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
	their market share; their popularity (i.e. whether they are well-known or associated with iconic brands in South Africa to the general public); and/or whether they have been identified as a relevant entity for purposes of OWA's cage-free agenda
Stakeholder Mapping	The Stakeholder Mapping exercise undertaken by ALRSA in respect of the Egg Supply Chain
Stakeholder Component	Section IV of this Initial Report
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UNEP	United Nations Environment Program
VPPA	Veterinary and Para-Veterinary Professions Act, 1982
WHO	World Health Organisation
WOAH or OIE	World Organisation for Animal Health formerly the Office International des Epizooties (OIE)
WOW Report	Who Owns Whom Industry Report: The Poultry and Egg Industry in South Africa 30 June 2021 by Gary Phillips
USA	United States of America
ZAR	South African Rands

*Note: All references to legislation, regulations, policies and other legal documents are as amended and include the regulations, notices and similarly gazetted documents.

PART B: PURPOSE AND NEED

I. PURPOSE

This Initial Report is part of a project by ALRSA entitled: "Laying Down the Facts: the Animal Welfare Standards of the Companies Providing your Favourite Foods" (the "**Project**") which commenced in June 2022.

Broadly, this Project has two main purposes, it:

1. intends to foster public and consumer interest in and understanding of the regulatory and policy regime governing farmed animals, particularly those in the Egg Supply Chain; and

2. intends to incentivise and promote accountability from Corporations in relation to their farmed animal practices in the Egg Supply Chain (including in relation to improved transparency) and in so doing encourage improved practices relating to animals (including through Cage-free Commitments from South African retailers, restaurants, fast food chains, hotels and wholesalers).

The focus is on chickens utilised in the Egg Industry including Layer Hens and male Chicks. This initial report (the "**Initial Report**") is the ultimate output of this phase of the Project and seeks to illustrate challenges with and opportunities for the regulation of South Africa's Egg Industry in relation to animal welfare and well-being in particular; to include reference to jurisdictions which have made progress in respect thereof; to examine existing Layer Hen welfare practices of identified Corporations (the "**Selected Stakeholders**")[19] and to rate these corporations' performance and commitments against the rating Criteria established.

The Project has been undertaken through a lens which opposes factory farming and intensive, industrialised animal agriculture, and which promotes improved farmed animal welfare, well-being and flourishing in South Africa, through research-based investigations into relevant issues taking place in the supply chains of well-known Corporations operating in South Africa.

This Initial Report will also serve as a resource for Corporations, consumers, government, and activists to freely find information on standards, policies, and practices prevalent in the country. We hope that in time and subject to continuity of the Project post 1 year, through proposed annual updating, it will

[19] All or any one of the entities in the Egg Supply Chain being either a retailer, hotel chain, fast food chain, restaurant, egg producer or cage and/or feed manufacturer identified as such based on factors including the size of their market share;, their popularity (i.e. whether they are well-known or iconic brands in South Africa to the general public); and/or whether they have been identified as a relevant entity for purposes of OWA's cage-free agenda.

form a baseline from which other animal welfare organisations can organise to pursue commitments and move the cage-free movement forward.

II. THE NEED FOR THIS INITIAL REPORT

Two hypotheses formed the basis of the Project: Hypothesis 1 centres around governance and accountability in the food system, and Hypothesis 2 centres around the need for greater transparency on the part of Corporations involved in the food system.

Hypothesis 1: Legal protection for farmed animals (including in the Egg Industry) within South Africa remains scarce and weak. A lack of regulation and enforcement enables Companies to largely "self-regulate" (through non-binding and voluntary industry standards and internal policies). Institutions often fail to produce and implement policies that meaningfully improve animal welfare. Industry standards prioritise economic interests at the expense of animal welfare and well-being, and other important matters (such as the protection of the environment). This situation compromises animal welfare throughout industrial farming processes, including within Layer Hen farming. Corporations (and industry bodies) hold immense power over the animal welfare practices taking place in their operations and supply chains and are able to initiate change which can have massive implications for farmed animal welfare. Due to this power, Corporations should be held accountable and should be more responsible.

Hypothesis 2: From the perspective of the public and public representatives such as civil society organisations, there are major gaps in knowledge, information, research, and transparency around animal production for food in South Africa. This includes in respect of several important matters falling within the public interest and impacting on human rights, for example: the number of animals utilised and killed; the methods of production and animal welfare infringements and enforcement (including Battery Cages and male Chick culling); food safety and health implications (from the use of antibiotics to the prevalence of diseases and culling of animals); environmental impacts of production; consumer protection matters; constitutional human rights, and the duties of Corporations and failures of the regulatory regime, among others. Due to these gaps in knowledge, Corporates should be transparent about their operations to allow for greater consumer awareness and conscious decision making.

Based on these hypotheses, ALRSA undertook the Project with the aim of researching these matters and conducting a strategic process of requesting information from various Corporations and publishing the findings contained in this Initial Report.

WHAT IS CORPORATE ACCOUNTABILITY?

Throughout this Initial Report and in terms of the Project, the term "Corporate Accountability" is used. However, there is no universal definition of what this term means. Prior to explaining the term, it is important to understand background information about why Corporate Accountability is important and relevant.

While historically, Corporations have been driven by profitability and have been primarily accountable to their shareholders and other role-players within their organisations (from investors to directors to employees), this has been changing over time. Specifically, given the growing recognition of the critical and dominant role Corporations play in society and the major impact they have economically, environmentally, socially and otherwise, it is no longer acceptable that their bottom line is the only motivating factor.[20] Increasingly, around the globe, pressure is being put on Corporations and work is being done to address the negative impacts of Corporations on socio-ecological systems as a feature of predatory capitalism.[21] This can be seen through the rise in regulation of and case law relating to Corporations, as well as through the emergence of concepts such Corporate Social Responsibility ("**CSR**")[22] and programmes such as Environmental, Social and Governance ("**ESG**").[23]

Broadly, Corporate responsibility means that Corporations are responsible for the impacts that they have on the world around them, and that they are responsible to those that their operations have an impact on. It has not only legal dimensions, but also non-legal ones, including ethical and moral responsibilities. To ALRSA, this includes responsibilities (and duties) in respect of the Pillars identified being animal welfare; the environment; human rights and social justice; protecting consumers; and ensuring safety and health. These responsibilities and duties expand beyond shareholders and investors, and include the public and society at large, employees, and other specific stakeholders, such as animals.

Corporate Accountability broadly speaking means mechanisms to ensure responsibility and compliance with applicable laws, standards and other governance measures. Given the aforementioned supremacy and horizontal application of the Constitution, it is one such powerful and overarching mechanism that can be utilised in the South African context to protect the interests of humans and nonhumans alike from the immense power of Corporations.

According to Bilchitz, "[t]he Constitution has established a foundation which recognises that animals and their welfare matters. That lens, bolstered by the APA read with the Criminal Procedure Act, is

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20 See Blowfield M & Murray A Corporate Responsibility (3rd ed.) Oxford University Press (2014) and Coelho R, Jayantilal S & Ferreira J The impact of social responsibility on corporate financial performance: A systemic literature review Wiley Online Library (2023) https://doi.org/10.1002/csr.2446 and Mintzberg, H. (1983), *The Case For Corporate Social Responsibility*", Journal of Business Strategy, Vol. 4 No. 2, pp. 3-15. https://doi.org/10.1108/eb039015.

21 Dahlmann F et al *Corporate Actors, the UN Sustainable Development Goals and Earth System Governance: A Research Agenda*, The Anthropocene Review 2019, Vol 6(1-2) 167 -176. Available at https://journals.sagepub.com/doi/full/10.1177/2053019619848217.

22 CSR is a self-regulating business model which is designed to assist corporations to be socially accountable to itself, its stakeholders and the public at large. CSR is often broken into four categories namely, environmental impacts, ethical responsibility, philanthropic endeavours and financial responsibility. Investopedia: https://www.investopedia.com/terms/c/corp-social-responsibility.asp.

23 ESG is a framework used to assess a corporations business practices and performance on various sustainability and ethical issues. It also provides a way to measure business risks and opportunities in respect of these areas. The role of ESG is to ensure accountability and the implementation of systems and processes to manage a company's impact, such as its carbon footprint. Tech Target: https://www.techtarget.com/whatis/definition/environmental-social-and-governance-ESG.

the basis through which we should view corporate accountability and that of its directors and employees. That, in turn, requires us to reflect on the role corporate law can play with the goal of embedding a concern with animals within the corporate structure." [24]

Within this constitutional context ALRSA seeks to establish that in South Africa, it is no longer acceptable for Corporations to be motivated solely by profits, but must be motivated by protecting the interests of all who are impacted by its operations, whether they are humans or nonhumans.

The legal obligations of Corporations, also referred as "businesses", to the societies around them have been evolving through work being done in the areas of "Business and Human Rights"[25] and "Business and Environment".[26] However, this evolution has not sufficiently influenced Corporations' duties towards animals or how their duties towards humans and the environment intersect with their duties towards animals. This Initial Report aims to go some way in establishing some discourse around the duties of Corporations towards animals, specifically within the Egg Industry. It aims to assist Corporations to understand their role in animal welfare and how this impacts on issues of sustainability.

While the law is an important avenue to compel accountability and action, there are several other key non-binding governance measures and tools that can and should be utilised by Corporations. One critical example, in respect of Corporations operating within the Egg Industry, is Cage-free-Commitments.[27] Accordingly, this Initial Report serves to assist those in negotiating with, and securing Cage-free Commitments by, Corporations for improved animal welfare, well-being and flourishing.

PART C: SCOPE AND STRUCTURE OF RESEARCH AND INITIAL REPORT

I. COMPONENTS

The Project consists of two main interrelated components which ran parallel over the course of this 1 (one) year Project:

- **Component 1: A Research Component** (primarily contained in Section III of this Initial Report); and

[24] David Bilchitz, *Corporate Accountability Towards Animal Well-Being: Exploring The Legal Possibilities*, *Forthcoming* in "Animal Law and Welfare in South Africa" edited by Melanie Murcott and Amy P. Wilson, Taylor and Francis (2024).

[25] United Nations Human Rights Office of the High Commissioner: https://www.ohchr.org/en/business-and-human-rights.

[26] See ESG at 19.

[27] A Cage-free Commitment is a formal statement in which a private body pledges to eliminate the specific Cruel Practice of cage-confinement, primarily of Layer Hens, either immediately or through Progressive Measures. https://www.google.com/url?q=https://www.cagefreecommitment.com/commitments-gl&sa=D&source=docs&ust=1687257079769875&usg=AOvVaw3cEmCc-B_jGud-tmqf6jI4.

- **Component 2: A Stakeholder Component** (primarily contained in Section IV of this Initial Report).

In addition, another component was incorporated to assist with a better understanding of the Egg Industry in South Africa, or an **Industry Component** (primarily contained in Section II of this Initial Report).

This Initial Report is the culmination of phase 1 of a multi-phase Project which will be undertaken over several years, with a different emphasis each year. In phase 1, the main emphasis is on animal welfare and well-being and related animal protection matters. Subsequent phases will focus on other Pillars as identified.

ALRSA will expand on this Initial Report in upcoming years. In addition, ALRSA hopes to receive input, feedback, suggestions or corrections from interested parties, including the Selected Stakeholders to ensure this Initial Report is as accurate and useful as possible and achieves its aims. In future iterations of this Project, ALRSA may amend the Selected Stakeholders by expanding or reducing those identified within the Egg Supply Chain for rating and engagement, and amend (through expansion, reduction, or otherwise) its rating Criteria and Indicators[28] or methods of rating.

This Initial Report aims to be one step towards greater Corporate Accountability in South Africa and contribute to the discourse around these and related matters as well as serve as a resource for the public, NGOs, the government and Corporations. It is not intended to serve as a full analysis of all relevant issues and recognises there are many complexities and important realities and issues which are not included or highlighted. As such, ALRSA is referencing this as the Initial Report as it is considered to be an initial or first step at an in-depth analysis of the Egg Industry in South Africa from the perspective of animal welfare and well-being as well as other important social justice components discussed in the remaining Pillars.

COMPONENT 1: RESEARCH FINDINGS SUMMARY

In order to provide a holistic view of the system and industry producing egg products for purposes of this Initial Report, the following Pillars were identified as overarching subject matter areas for research analysis and ultimate rating, which served ALRSA in placing informed questions and requests on Corporations (specifically the Selected Stakeholders) and determining the rating Criteria and Indicators.

The identified Pillars are:

- **Pillar 1: Animal Welfare**
- **Pillar 2: Environment**

[28] To evaluate the Selected Stakeholders against each Criterion, Indicators have been developed which inform the colour scores awarded in respect of the relevant criteria. The Indicators provide more detailed inquiries in respect of our analysis of Selected Stakeholders and their efforts (or lack thereof) towards animal welfare, transparency and willingness to engage with ALRSA concerning their involvement in the Egg Supply Chain.

- **Pillar 3: Food Safety and Health**
- **Pillar 4: Social Issues and Rights**
- **Pillar 5: Consumer Protection**
- **Pillar 6: Corporate and Business**

(collectively, the "**Pillars**").

Research into each of the Pillars is set out in further detail in the Research Component in Section III of this Initial Report, however each of the Pillars is introduced briefly below as well as the reason for their selection. Due to the focus of this Project on animal welfare, each additional Pillar is specifically linked with and analysed against this issue.

Other than in respect of the Animal Welfare Pillar, we have attempted to follow the same format for each Pillar as far as possible by dividing them into the following main Parts:

- PART A: Laying the Foundations
- PART B: Laying Down the Facts
- PART C: Laying Down the Law
- PART D: Egg samples of the relevant Pillar in Practice (where appropriate or applicable)

PILLAR 1: ANIMAL WELFARE

Animal welfare (also including concepts of animal well-being and animal flourishing) is the core component and focus of our work and research for this phase of the Project and this Initial Report. Our research indicates that there is a lack of effective regulation pertaining to animal welfare in industrialised animal agriculture including scarce or non-existent positive mandatory and enforceable legal standards. Due to this lack, and gaps in regulation, statutory bodies such as the South African Bureau of Standards ("**SABS**") and industry bodies such the South African Poultry Association ("**SAPA**") produce non-binding standards that ALRSA and other animal protection organisations regard as deficient from an animal welfare perspective as they allow for Cruel Practices and do not adequately consider the sentience and capacities and capabilities of animals implicated, nor do they withstand scrutiny against the Five Freedoms and Five Domains. These voluntary and unenforceable standards further highlight the absence of legally binding and government-initiated regulation, enforcement, disclosure, reporting obligations and compliance applicable to animal agriculture, among other issues. There are however some laws that can be utilised for improvement of animal welfare which can and should be explored to advance animal protection.

In the Animal Welfare Pillar, Part A seeks to lay the foundations of animal welfare and well-being governance, specifically the constitutional foundations as to how these matters intersect with certain guaranteed human rights and how the courts have interpreted these issues (such as the right to an environment not harmful to health and well-being; the right to access to information and the right to freedom of expression). Part A also discusses the constitutional and legislative competence of relevant

government entities. Part B sets out background information as to how the Pillar connects with the Egg Industry by highlighting important capabilities and qualities of chickens, such as sentience, and globally accepted markers of welfare including the Five Freedoms and Five Domains, contrasted against Cruel Practices within the Egg Industry. Part C provides an overview of selected governance issues associated with this Pillar in the context of the Egg Supply Chain including in terms of national policies; national legislation; provincial legislation; local legislation; industry standards; and international law. Part D provides examples of the other Parts in practice, specifically when it comes to the enforcement of existing animal protection legislation, and the primary entity responsible for animal welfare in South Africa, the NSPCA (more on this is set out in Appendix I).

PILLAR 2: ENVIRONMENT

The environment has been selected for purposes of the Project, because in addition to the animal welfare issues arising during the industrial egg production process (as further set out in the Animal Welfare Pillar), the Egg Industry also has negative environmental impacts, including contributing significantly towards global greenhouse gas ("**GHG**") emissions and climate change, use of non-renewable resources such as land, habitat, and biodiversity loss, a significant water footprint, water pollution, and other polluting atmospheric emissions.

The Environmental Pillar contains a high-level summary of some of the environmental issues applicable to the Egg Industry in South Africa, as well as the regulation thereof, more specifically how these issues intersect with animal welfare and well-being. It is intended to provide an overview of selected matters only and is non-exhaustive of all of the relevant environmental considerations and law and policy relevant to the industry. [29] Part A sets out the rationale for the selection of this Pillar; and connects it with our Stakeholder Report in Section IV; Part B sets out background information as to how the Pillar connects with the Egg Supply Chain (including environmental harms associated with the Egg Industry); and Part C provides an overview of selected governance matters associated with this Pillar in the context of the Egg Supply Chain (including highlighting specific environmental legislation at national and international level).

PILLAR 3: FOOD SAFETY AND HEALTH

Food safety and health has been selected as a Pillar for purposes of this Project because, as suppliers of a foodstuff (eggs) to the public and consumers, Corporations in the Egg Industry have various legal and moral duties and responsibilities – including to ensure that food is safe. Additional duties arise to limit the spread of animal diseases and others in respect of public health. The methods of production, including the intensive farming of chickens, raise not only serious animal welfare concerns, but have major implications on food safety and human (and animal) health.[30]

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29 For a more detailed analysis of Environmental matters applicable to animal agriculture in South Africa, please refer to ALRSA's Food System Working Paper https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf and White Paper (October 2022) https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf respectively.

30 These will be discussed in subsequent components of this study.

The Food Health and Safety Pillar contains a high-level summary of some of the food health and safety issues applicable to the Egg Industry in South Africa, as well as the regulation thereof, more specifically how these issues intersect with animal welfare and well-being. It is intended to provide an overview of selected matters only and is non-exhaustive of all of the relevant food safety and health considerations and law and policy relevant to the Egg Industry. [31] Part A sets out the rationale for the selection of this Pillar; the main national government departments with mandates in respect thereof; and connects it with our Stakeholder Report in Section IV. Part B sets out background information as to how the Pillar connects with the Egg Supply Chain. Part C provides an overview of selected governance issues associated with this Pillar in the context of the Egg Supply Chain.

PILLAR 4: SOCIAL ISSUES AND RIGHTS

Social Issues and Rights have been selected for purposes of this Project because the Constitution is the supreme law of South Africa and the rights contained in the Bill of Rights must be protected and respected. All law and conduct must be consistent with the Constitution in order to be valid. Further, in the adjudication of disputes, courts have a duty to interpret legislation and the common law in a manner that is consistent with the spirit, purport and objects of the Constitution. This includes the overarching social justice imperative of the Constitution (emerging from its preamble) and the value of ubuntu which permeates the entire Constitution. Aligned with ubuntu, communitarianism is of great importance throughout South Africa and community activism has been at the heart of mass change within the country as part of the liberation struggle and since the beginning of democracy. The robust, transformative, supreme Constitution grants a plethora of critical rights to people in South Africa, including the right to an environment not harmful to health and well-being, and the right to access information (in the case of private bodies, when the information required for the exercise and protection of a right).[32] These rights are both vertically and horizontally applicable and thus bind not only the state, but also Corporations. They further impose both positive and negative duties.

The Social Issues and Rights Pillar contains a high-level summary of some of the social matters (including social justice) and human and other rights issues applicable to the Egg Supply Chain, as well as the regulation thereof, more specifically how these issues intersect with animal welfare and well-being. It is intended to provide an overview of selected matters only and is non-exhaustive of all of the relevant social issues and rights considerations and law and policy relevant to the industry. [33] Part A sets out the rationale for the selection of this Pillar; the main national government departments with mandates in respect thereof; and connects it with certain information from our Stakeholder Report in

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31 For a more detailed analysis of Food Safety and Health matters applicable to animal agriculture in South Africa, please refer to ALRSA's Food System Working Paper https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf and White Paper (October 2022) https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf respectively.

32 Section 24 of the Constitution.

33 For a more detailed analysis of social issues and rights matters applicable to animal agriculture in South Africa, please refer to ALRSA's Food System Working Paper https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf and White Paper (October 2022) https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf respectively.

Section IV. Part B sets out background information as to how the Pillar connects with the Egg Supply Chain. Part C provides an overview of selected governance issues associated with this Pillar in the context of the Egg Supply Chain.

PILLAR 5: CONSUMER PROTECTION

Consumer protection has been selected as an area of research for purposes of the Project because consumers are often unaware of, or even misled or deceived by Corporations, including within the animal agriculture industry as to where their food comes from. This lack of awareness or misinformation can relate to anything from the methods of production to the subjective feelings of the animals. By asking Corporations questions and for specific information such as their Public Statements[34] about animal welfare or the environment, we can begin to interrogate the extent to which Corporations are being transparent and accountable toward their consumers and members of the public, specifically in respect of duties owed.

The Consumer Protection Pillar contains a high-level summary of some of consumer protection issues applicable to the Egg Industry in South Africa, as well as the regulation thereof, more specifically how these issues intersect with animal welfare and well-being. It is intended to provide an overview of selected matters only and is non-exhaustive of all of the relevant consumer protection considerations and law and policy relevant to the industry.[35] Part A sets out the rationale for the selection of this Pillar; the main national government departments with mandates in respect thereof; and connects it with our Stakeholder Report in Section IV. Part B sets out background information as to how the Pillar connects with the Egg Supply Chain. Part C provides an overview of selected governance issues associated with this Pillar in the context of the Egg Supply Chain in South Africa. Part D provides examples of the other Parts in practice.

PILLAR 6: CORPORATE AND BUSINESS

The Constitution entrenches rights that impose positive obligations and have horizontal application, meaning that some rights not only apply to relationships between the state or government and the public, but also as between non-state actors such as Corporations, which are accordingly responsible for and have duties in respect of those rights. In liberal Western constitutions, rights typically only prevent interference by the state with persons and entities in a country, and do not impose obligations within the private sphere. Thus, non-state actors (e.g. Corporations) are not responsible for human rights under those regimes. This is not the case in South Africa and many other post-colonial societies.

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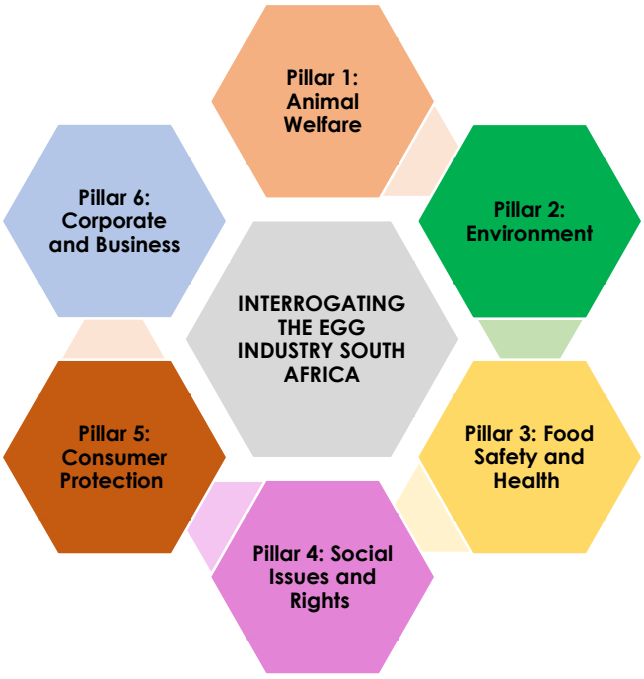
34 A statement made by a Selected Stakeholder available in the public domain and provided to ALRSA in response to a request for access to information in which it discloses its sourcing practices in respect of the Egg Supply Chain (as a distributor or user thereof) and/or its production system in respect of eggs (as applicable). It does not include statements not provided to ALRSA.

35 For a more detailed analysis of Consumer Protection matters applicable to animal agriculture in South Africa, please refer to ALRSA's Food System Working Paper https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf and White Paper (October 2022) https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf respectively.

The Corporate and Business Pillar contains a high-level summary of some of the corporate and business considerations applicable to the Egg Industry in South Africa, as well as the regulation thereof, more specifically how these issues intersect with animal welfare and well-being. It is intended to provide an overview of selected matters only and is non-exhaustive of all of the relevant corporate and business considerations and law and policy relevant to the industry.[36] Part A sets out the rationale for the selection of this Pillar; the main national government departments with mandates in respect thereof; and connects it with our Stakeholder Report in Section IV. Part B sets out background information as to how the Pillar connects with the Egg Supply Chain. Part C provides an overview of selected governance issues associated with this Pillar in the context of the Egg Supply Chain in South Africa. Part D provides examples of the other Parts in practice.



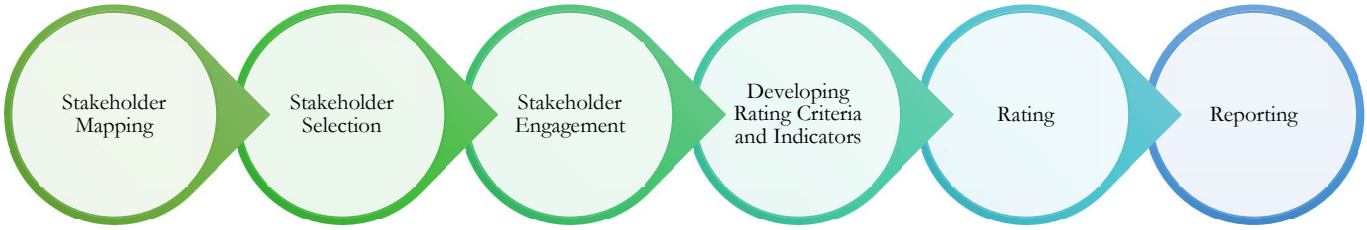
Graphic Representation of Summary of Key Research Areas reflected as "Pillars"

COMPONENT 2: SUMMARY

Component 2 of the Project, or the "Stakeholder Component" involved a process to identify, engage with and gain information from Selected Stakeholders in the Egg Industry, the development of certain benchmarking Criteria and Indicators, and the rating of such Selected Stakeholders against such Criteria and Indicators.

[36] For a more detailed analysis of business and corporate matters applicable to animal agriculture in South Africa, please refer to ALRSA's Food System Working Paper https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf and White Paper (October 2022) https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf respectively.

The process is summarised below and expanded in further detail in the Stakeholder Component (Section IV of this Initial Report):



Representation of Methodology: Component 2

II. FORMAT

This Initial Report is divided into five main Sections with additional Pillars and Parts and one Appendix, which are:

Section I: Introductory Matters

Section II: Industry Component

Section III: Research Component

Section IV: Stakeholder Component

Section V: Recommendations

Appendix I: Selected PAIA Correspondence and Engagement with the NSPCA

Acknowledgements and Legal

III. EXCLUSIONS, LIMITATIONS, SCOPE

The focus for the Project is on the large scale, industrialised and intensive animal agricultural and production sector, specifically in relation to chickens in the Egg Industry, and where relevant other poultry (including broilers, among others). As such, this Initial Report does not include the informal sector, nor small-scale and subsistence farming operations. Where appropriate, examples of other farmed animals, or examples from other jurisdictions have been incorporated, particularly where such information is not readily, nor easily available in the South African context.

While government and public bodies have an essential role to play in ensuring the well-being and welfare of animals as well as the protection of the environment and human rights, the focus of this Initial Report is largely on the role of the private sector, specifically Corporations. Aspects of governmental and public body regulation and policies are highlighted and discussed; however, these aspects are not the focal point of this Initial Report.

As an organisation focused primarily on animal law reform, this is the predominant lens through which this Initial Report has been drafted and should be considered, i.e., the centering of animals, their interests, and their intrinsic worth in the dialogue, as well as how the law ought to reform so as to centre animals and their interests. While social justice and environmental protection are critical components of the work of ALRSA, less attention has been paid to these areas, as there are already a number of important organisations focusing on these aspects. As such, this Project aims to fill a gap within current research to include animals and their welfare, flourishing, and protection into this discussion, and the legal and policy tools which can be used to do this.

This Initial Report is as a result of the preliminary research and the review performed by ALRSA and the co-authors and commenter as at the published date. It is published as at 3 August 2023 and is intended to provide only a summary of some of the issues which may be relevant to the topic. It is limited in scope based on various factors. This is a non-exhaustive Report intended to stimulate debate, research and law reform in the area of animal law and food systems and requiring further context and information in relation to all of the issues included herein.

ALRSA has focused on selected regulatory aspects and has not considered all legal, economic, political, social, environmental, technological, and other relevant aspects pertinent to some of these issues. All such factors should be considered when pursuing any further work or research.

It is also important to note that the focus of this Initial Report is on highly industrialised animal agricultural practices. Various types of systems exist within these practices, and each of these have different considerations and consequences. Several of the statements, observations and recommendations do not and will not apply to small-scale and extensive farming nor to other less harmful methods of animal agriculture, including in the context of egg production. Our statements, observations, and recommendations should not be construed as allegations.

It is recognised that animal agriculture, including egg production, is not conducted in one manner, and is dependent on the particular farmer, facility, method of farming, geographic location, and various other factors. Therefore, only generalised statements and recommendations are made focusing on harmful potential impacts of industrialised animal agriculture and are representative of what is understood in that context, which may not be applicable to or appropriate for all animal agriculture and animal production, nor appropriate to all of the role-players mentioned in this Initial Report. Statements made do not apply to all facilities or Selected Stakeholders and should not be construed as such.

This Initial Report does not contain a detailed description of all relevant laws and policies, papers and each document reviewed. Its purpose is to set out those legal issues which we consider to be material. Reliance should not be placed solely on any of the summaries contained in this Initial Report, which are not intended to be exhaustive of the provisions of any document or circumstances. ALRSA reserves the right to amend and update this Initial Report.

Unless otherwise expressly agreed by ALRSA in writing, no person is entitled to rely on this Initial Report and neither ALRSA nor the co-authors or commenter shall have responsibility or liability to any party, whether in contract, delict (including negligence), or otherwise relating hereto.

This Project has been conducted and this Initial Report drafted in the public interest. In particular, with regard to the protection of guaranteed constitutional rights in mind.

ALRSA is registered and established as a non-profit company and non-profit organisation. It is neither a registered law firm nor a law clinic. This Initial Report therefore does not constitute legal advice.

The views and opinions expressed in this Initial Report are those of ALRSA and do not necessarily reflect the views or positions of any entities they represent. Resources included in this Initial Report do not constitute endorsement nor does ALRSA and/or the co-authors or commenter accept any responsibility for the use of same.

None of the statements made or information presented in this Initial Report shall be considered as allegations against any person or entity, including the Selected Stakeholders of contravention of or offences in terms of any South African or international law and/or regulation.

SECTION II

CHICKEN AND EGG: INDUSTRY COMPONENT

ANIMAL LAW REFORM
SOUTH AFRICA

ANIMAL LAW REFORM
SOUTH AFRICA

OPEN WING ALLIANCE

THE NUMBERS: SOUTH AFRICA 2021

CHICKEN AND EGG DATA

DID YOU KNOW?

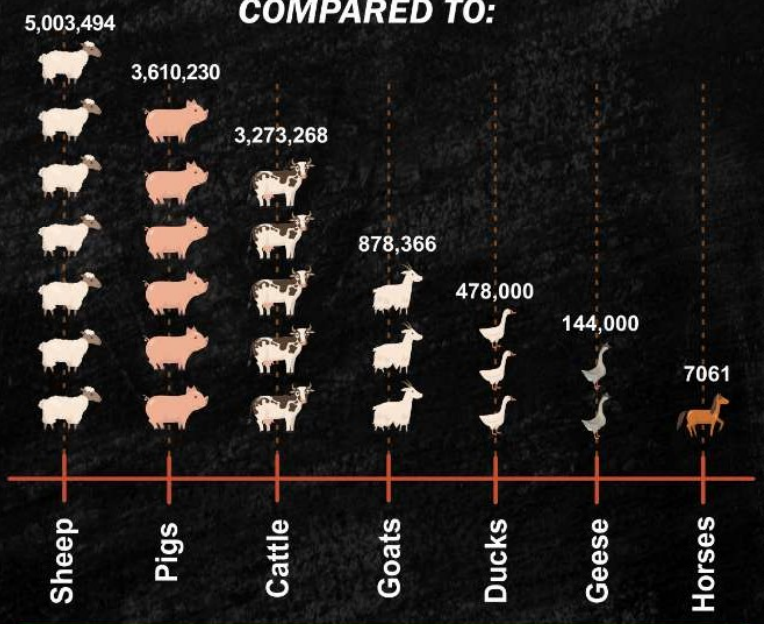
Chickens are primarily used in two industries: the broiler industry (chickens killed for their meat) and the egg industry.

THE MEAT INDUSTRY

THIS IS HOW MANY ANIMALS WERE KILLED FOR MEAT IN SOUTH AFRICA IN 2021[1]

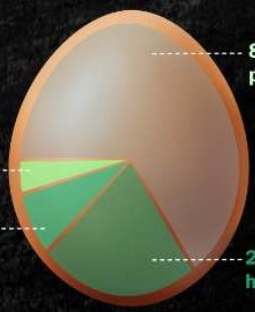
999,478,000 CHICKENS

COMPARED TO:



Just one facility alone in South Africa claims to process approximately 700 000 live birds per week (that is around 100,000 chickens killed per day)[2]

THE EGG INDUSTRY

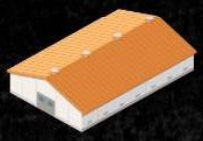


- 8,480,400,000 eggs produced in 2021[3]
- 2,200,000 layer hens culled due to Avian Influenza[5]
- 146 eggs eaten per person[6]
- 26,850,000 egg layer hens being kept in 2021[4]

PRODUCTION OF EGGS[7]

1990 / 1991: 232,000 tons

2020 / 2021: 549,000 tons



HUMAN CONSUMPTION OF EGGS[8]

1990 / 1991: 214,000 tons

2020 / 2021: 515,000 tons

COST OF EGGS[9]

1990 / 1991: 186

2020 / 2021: 1,189.15

Grade 1 large eggs per dozen, Weighted average price

Does not include all types of animals killed for their meat

1. https://www.fao.org/faostat/en/#data/QCL
2. https://sangiro.co.za/
3. South African Poultry Association Annual Report 2021 available at https://www.sapoultry.co.za/wp-content/uploads/2022/06/SAPA-ANNUAL-REPORT-2021.pdf [Based off of reported 708,700,000 dozen eggs per year 2021]
4. Ibid
5. Ibid
6. Supra 3
7. Supra 3
8. http://www.dalrrd.gov.za/index.php/publications/45-statistics-and-economic-analysis/66-statistical-information?download=690:abstract-2022
9. Ibid

SECTION II: CHICKEN AND EGG: INDUSTRY COMPONENT

PART A: CONTEXTUALISING THE EGG INDUSTRY

I. INTRODUCTION AND BACKGROUND

As per our Glossary, reference to the "Egg Supply Chain" means "Every step and role-player involved the production of eggs for consumption by customers from fertilisation to plate, including the steps taken in relation to the supply of eggs by cage and/or feed manufacturers, egg producers, wholesalers or retailers, hotel chains, fast food chains, restaurants, as well as Industry Associations, and Relevant Authorities."

A slightly broader term is also utilised throughout this Initial Report, being the "Egg Industry", which connotes "Any and all economic activity concerned with the Egg Supply Chain".

This Industry Component contains an overview of the Egg Supply Chain and Egg Supply Industry in South Africa and background to contextualise certain important aspects of how it operates and its impact on different stakeholders.

As one of South Africa's most important agricultural sub-sectors worth billions of rands, it is not surprising that the Poultry Industry, including the Egg Industry is very well organised. SAPA is the body representing the interests of the industry and has been around for over 80 years. Further information on this body is contained in the Animal Welfare Pillar in Section III. The Egg Industry has a value of ZAR 11.44 billion with a 3.1% share of total agriculture production in South Africa making this industry a key space of engagement.[37] The Egg Industry consists of both formal and informal markets.

While there are many different role-players involved in the Egg Industry, there are several major players with integrated structures, making them very powerful entities with a lot of influence. For example, Nulaid, the egg-layer division of Quantum Foods, is the largest egg producer in South Africa and the only national producer. Emerging egg producers constitute only 1.0 % of the industry.[38]

After embarking on this Project, it became apparent that it was necessary to try to understand and contextualise the Egg Industry as well as the relevant role-players. This Section contains some initial information about the Egg Industry largely sourced from SAPA and DALRRD, as well as a Stakeholder Mapping process that ALRSA undertook as part of the Project. The Stakeholder Mapping process is discussed further in Section IV.

37 South African Poultry Association 2021 Industry Profile.
38 https://quantumfoods.co.za/eggs/.

Under heading II, we describe the animals implicated in the Egg Industry; under heading III, we discuss the different types of eggs and egg production systems; under heading IV, we provide an overview of the South African industry. The Research Component as contained in Section III and the Stakeholder Component in Section IV should be considered against the background of this Industry Component.

II. CHICKENS

Before providing statistical and other information on the Egg Industry, including about the final product involved, eggs, we discuss the animals directly implicated – chickens.

POULTRY INDUSTRY CLASSIFICATIONS

Chickens and other birds in the Poultry Industry are predominantly used in one of two ways: those who are killed for their meat (referred to as "**Broilers**") and those used in the Egg Industry (referred to as "**Layers**" or "**Laying Hens**" or similar terms, although different terms are used depending on how old the animals are). The broiler industry is not the focus of this Initial Report, other than for comparative or contextual matters, as the focus is the Egg Industry. However, many of the same major role-players are active in both the Egg Industry and broiler industry. In South Africa, approximately 74% of the birds are killed for their meat, while 26% are used as Layers.[39]

LIFE CYCLE AND TERMS

A summarised understanding of different stages of the life cycle of and activities relating to chickens in the Egg Industry is included below:

EGG:

- NON-FERTILISED EGG: Generally, end up for distribution in various forms by different suppliers (retailers, restaurants, hotels, etc.) and middlemen (wholesalers and manufacturers using eggs in ingredients)
- FERTILISED EGG: Sent to hatcheries to be incubated. Unhatched eggs which contain live embryos are macerated (i.e. shredded or ground up). Otherwise, eggs are hatched after +/- 21 days of incubation to become "Chicks".

CHICKS / PULLETS:

[Hatcheries → Hatched]

- BROILERS: These birds are sent to broiler facilities where they are grown and killed for meat. *This cycle is not further discussed.*
- EGG-LAYERS: These birds are sent to Layer Farms to be used in the Egg industry. More specifically, day old Pullets are reared on layer replacement farms for 21 weeks after which they are transferred to "laying farms".

SEXING:

[Sent for sexing and sorting]

[39] SAPA Annual Report 2021.

- MALE CHICKS: Due to the fact that they are deemed useless in the Egg Industry, male Chicks are killed shortly after birth / sexing, including through maceration / grinding up (shredded) alive in a macerator; gassed; ground alive in an auger; or sometimes thrown into plastic containers and suffocated or even dumped.
- FEMALE CHICKS: Pullets and ultimately "Layer Hens" and are generally subjected to a life of Cruel Practices on Layer Farms.

PULLETS: Young hens less than 1 year old who are not yet physically mature enough to lay eggs. Once they reach a certain age (generally 52 weeks or 1 year), they become Laying Hens.

EGG LAYERS / LAYING HENS: These birds grow to reach egg laying age at around 21 weeks. They live their short lives as Layer Hens – in cages and forced to lay eggs. Their eggs are consistently taken away from them. They generally have a +/- 20-month lifespan laying 300 eggs annually and cage confinement throughout their lifespan until they become are considered to be "spent".

SPENT HENS / END OF LAY: Once Layer Hens are of no more useful to the Egg Industry / their productivity drops to unprofitable levels:

- CULLING OPERATIONS: They are sent to abattoirs or culling operations to be slaughtered and their bodies processed for secondary products; or
- LIVE BIRDS SOLD: They are sold from spent hen depots in townships, *peri-urban*, *and rural areas*, at auction, or in other areas / for other uses involving their consumption.

THE SEQUENCE OF SUFFERING

ANIMAL LAW REFORM
SOUTH AFRICA

OPEN WING ALLIANCE

LIFE CYCLE OF CHICKENS IN THE EGG INDUSTRY IN SOUTH AFRICA

1

EGG

NON FERTILISED EGG
Generally end up for distribution in various forms by different suppliers (retailers, restaurants, hotels, etc.) and middle men (brands using eggs in ingredients)

FERTILISED EGG
Sent to hatchery Incubated.

Unhatched eggs which contain live embryos are macerated

Hatched after +/- 21 days of incubation

Once hatched:

Broilers: Sent to broiler facility - to be grown and killed for meat

Sent to Layer Farms to be used in Egg industry

2

BABY CHICK

SEXING: Baby chicks sent for sexing and sorting

Female chicks become "Layer Hens" and are subjected to a life of cruelty

Male chicks = killed in cruel ways including maceration / grinding up shredded alive in a macerator; gassed; ground alive in an auger; or sometimes thrown into plastic containers and suffocated

3

PULLET

Young hen > 1 years (not ready to lay eggs)

4

HEN

Grow to reach egg laying age at around 18 weeks
Life as a layer hen – live in a cage and forced to lay eggs +/- 20-month lifespan laying 300 eggs annually and cage confinement throughout their lifespan

Egg taken away from mother

SPENT HEN/ END OF LAY
Once no more useful to industry:

Sent to abbatoir to be slaughtered and body processed for products

Live birds sold off at auction in other areas / for other uses

III. EGGS

TYPES OF PRODUCTS

Within the Egg Supply Chain various products (in addition to whole eggs) are produced, including but not limited to powdered and liquid eggs. This Initial Report and the Project focuses predominantly on whole eggs including those sold and utilised for sale and consumption by the public. However, other forms of eggs are important and must be considered for future research.

TYPES OF EGGS

GRADE / QUALITY

Eggs in South Africa are classified according to grades and size. Eggs that do not comply with the standards for grading are not presented for sale.[40]

Agriculture and Agri-Food regulations define three quality grades that apply to eggs for sale to customers, based on their appearance, condition, and quality of the egg's shell, egg white, and yolk. These are:[41]

- Grade A or 1: sold at retail markets for household use (among other differences, this grade has certain specifications in relation to its yolk, egg white haugh value, air cell depths and other characteristics)
- Grade B or 2: used mostly in bakeries
- Grade C or 3: sent to egg breakers for processing (eggs are sent to egg breakers where they are broken and sold as pulp, dried eggs to industrial bakers or used as emulsifiers in mayonnaise production).

SIZE

Only Grade A eggs are sized according to the weight of each egg:[42]

- Jumbo: at least 70 g
- Extra Large: at least 63 g
- Large: at least 56 g
- Medium: at least 49 g
- Small: at least 42 g
- Pee Wee: less than 42 g

The multitude of egg uses in the Egg Industry and profit produced entails a range of actors involved at the various stages in the Egg Supply Chain. Those involved in egg production use a range of production systems.

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40 See for example Regulations regarding the Grading, Packing and Marking of Eggs intended for Sale in the Republic of South Africa 2020.

41 DALRRD, A Profile of the Egg Market Chain 2021. http://webapps1.daff.gov.za/AmisAdmin/upload/Egg%20Market%20Value%20Chain%20Profile%202021.pdf.

42 Ibid.

PRODUCTION SYSTEMS

Eggs are differentiated according to the systems pursuant to which they were produced, as follows:[43]

Organic Free Range

These eggs are produced by free-range hens that are fed on grains and pulses that are grown without pesticides, chemical fertilisers or any other genetically engineered products

Omega 3-enriched

Omega 3 fats, which are excellent for brain functioning, the immune and nervous systems and healthy hearts, are found in oily fish. The hens that lay these eggs are fed salmon oil as part of their diet. Omega 3-enriched eggs are not necessarily free range.

Free range

The chickens that lay these eggs are exposed to sunlight and grass pastures. They have room to scratch, flap and bath in the dust. Their diet is not necessarily vegetarian; it could include insects or fishmeal.

Barn

These eggs are produced by chickens that live inside , but are not kept in cages. Barn eggs are laid by chickens that are fed a

Grain Fed

Grain-fed chickens do not eat commercial feed, which can include fish and chicken meal. These eggs are not free range, and not necessarily barn. The chickens may be kept in cages.

Commercial

These are the cheapest eggs to buy, and so make up the bulk of the eggs consumed in the country. The chickens are kept inside, in cages. They are fed with meal, which includes commercially farmed grains and pulses and processed fish and/or chicken meal. Electric lights are kept on much of the time to encourage the chickens to lay.

[43] http://webapps1.daff.gov.za/AmisAdmin/upload/Egg%20Market%20Value%20Chain%20Profile%202021.pdf.

IV. SOUTH AFRICAN MARKET, ECONOMICS AND IMPACTS

According to SAPA, **the Poultry Industry is the largest single contributor to the agricultural sector in South Africa**. In 2021, approximately 16.6% of the total agricultural gross value and 39.9% of animal product gross value stemmed from poultry production. The 16.6% contribution from poultry products breaks down into 13.6% from poultry meat and 3.05% from eggs. [44]The gross value of egg production for 2021 was recorded at R11.44 billion (+ 0.9 %).[45]

There are numerous actors involved which vary greatly: from single small-scale rural farmers to international and multinational corporations selling eggs as products in global networks. There is an informal sector and formal, commercialised sector. [46]

The Egg Industry's nearest competitor, the beef industry, contributed 11.5% to turnover of all agricultural production and 27.5 % of animal products. The total gross value of animal products was R156.51 billion and the total gross value of agricultural products was R374.81 billion in 2021. Total animal products contributed 41.8 % to the gross value of total agricultural products.[47]

LOCAL MARKET: PRODUCTION AND CONSUMPTION

There is a significant number of producers spread across most provinces. **About 50% or more of the eggs produced are channelled through the formal markets, with 40% to 50% being sold on the informal markets.[48]**

South African per capita consumption of eggs reached the highest level ever during 2020, the first year of the COVID-19 pandemic (159 eggs per person). [49]

[44] South African Poultry Association 2021 Industry Profile. https://www.sapoultry.co.za/wp-content/uploads/2023/01/2021-Industry-Profile.pdf.
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] https://www.farmersweekly.co.za/agri-business/agribusinesses/the-future-of-sas-egg-producers/.
[49] South African Poultry Association 2021 Industry Profile. https://www.sapoultry.co.za/wp-content/uploads/2023/01/2021-Industry-Profile.pdf.

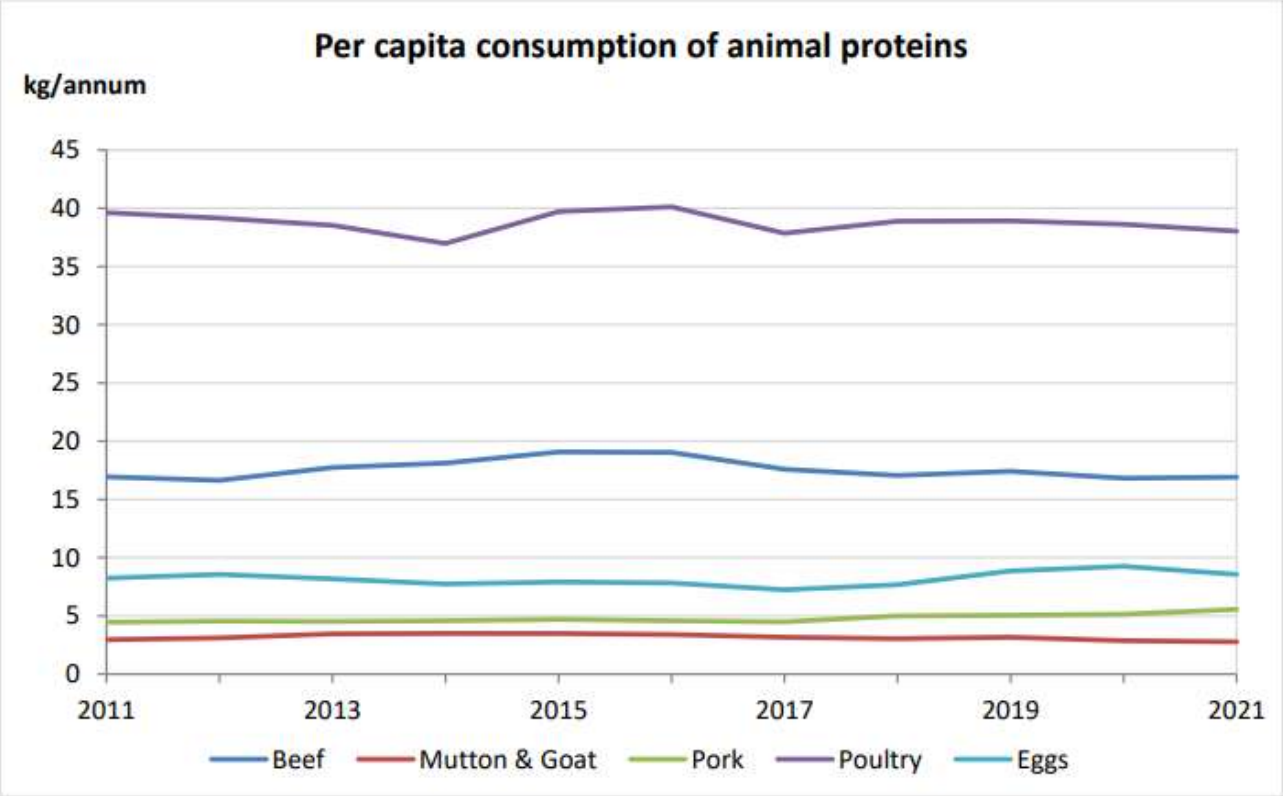


Figure 1. *Per capita consumption of protein sources from 2011 to 2021 (DALRRD)*

[50]

In terms of tonnage, more eggs and poultry products were consumed in 2019 than the combined total tons of beef, pork, mutton and goat meat products consumed for the same period (2.9 million tons, compared to 1.5 million). [51]

South Africa is one of the largest producers of eggs in Africa, producing just under 66% of the eggs out of the SADC region in 2020. [52]

[50] South African Poultry Association 2021 Industry Profile. https://www.sapoultry.co.za/wp-content/uploads/2023/01/2021-Industry-Profile.pdf.
[51] Ibid.
[52] SAPA Annual Report 2021.

Table 2: *The production of chicken eggs in the SADC member countries in 2020* (FAOstats).

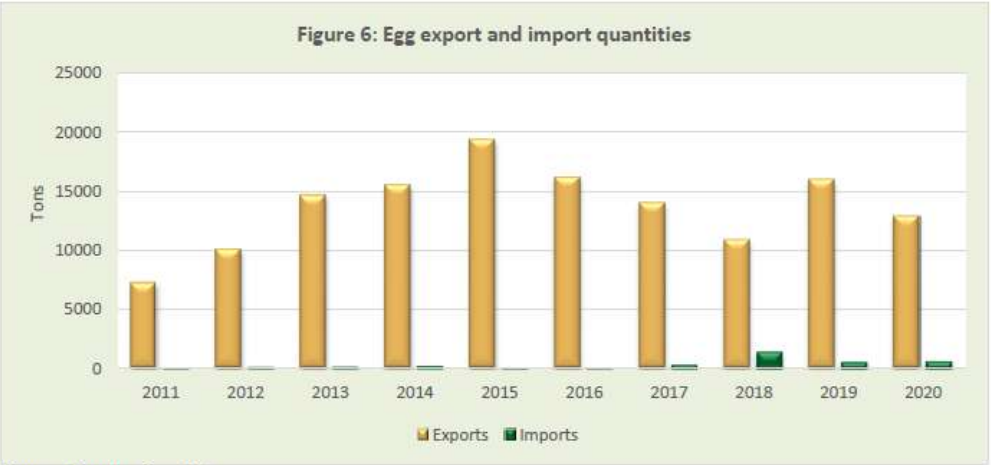
	Production		% Growth	% Total production		Population
SADC Country	**2010**	**2020**	**(10 yr)**	**2010**	**2020**	**2020**
Unit	Tonnes	Tonnes	%			M
Angola	4 950	5 150	4.0	0.7	0.6	33.4
Botswana	4 500	3 400	-24.4	0.7	0.4	2.5
Dem. Republic Congo	8 900	8 859	-0.5	1.3	1.0	92.9
eSwatini (Swaziland)	1 160	1 344	15.9	0.2	0.1	1.2
Lesotho	1 700	1 396	-17.9	0.3	0.2	2.3
Madagascar	16 297	17 661	8.4	2.4	2.0	28.2
Malawi	20 650	23 146	12.1	3.1	2.6	19.4
Mauritius	10 200	12 435	21.9	1.5	1.4	1.3
Mozambique	27 138	48 333	78.1	4.0	5.4	31.2
Namibia	3 360	2 647	-21.2	0.5	0.3	2.5
Seychelles	1 135	1 163	2.5	0.2	0.1	0.1
South Africa	413 000	593 526	43.7	61.1	66.0	58.8
United Rep. of Tanzania	83 384	89 967	7.9	12.3	10.0	61.7
Zambia	49 500	66 222	33.8	7.3	7.4	18.9
Zimbabwe	29 760	24 320	-18.3	4.4	2.7	15.7
Total for SADC	**675 634**	**899 569**				**370.0**

[53]

EXPORT MARKET

South Africa is required to meet standards for the export of its products outside of the country. Imports in South Africa are largely exchange rate driven while exports are mainly affected by sanitary rules that the European Union ("**EU**"), United States of America ("**USA**"), and others apply.

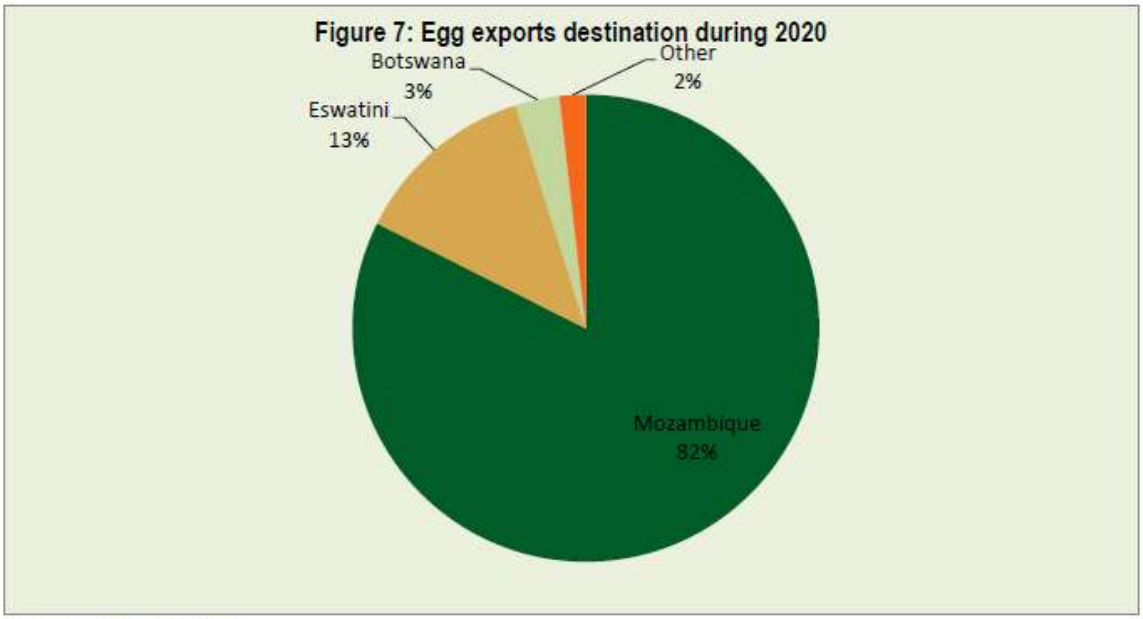
53 SAPA Annual Report 2021.



Source: Quantec Easydata

[54]

Generally, South Africa's egg exports are much higher than its imports, which makes the country a net exporter of eggs. Approximately 90% of the exports were of eggs in shell, whilst highest imports are mainly dried eggs (90%). Most of South Africa's eggs are exported to Mozambique.[55]



Source: Trade map, 2020

[56]

[54] South African Poultry Association 2021 Industry Profile. https://www.sapoultry.co.za/wp-content/uploads/2023/01/2021-Industry-Profile.pdf.

[55] Ibid.

[56] Ibid.

JOBS

It is estimated that the Egg Industry provides direct and indirect employment to over 110 000 people; is the second largest consumer of maize in the country; and supports many peripheral businesses (including the feed industry) and those downstream in the value chain.[57] Worker's rights are further discussed in Social Issues and Rights Pillar in Section III below.

COST / ECONOMICS

The average producer price of eggs in 2021 was R22.75 per kg (R16.68 per dozen; all sizes; SAPA). In 2021 the egg producer price increased by 14.1 % compared to the 2020 price (R19.93). [58]

Feed accounts for approximately 70% of an egg producer's input costs. [59]

According to SAPA, eggs remain the cheapest animal protein available to consumers, with per capita consumption of 159 eggs per person in 2020.[60]

"Externalities" are not factored into these calculations around price. An externality is a side effect or consequence of an industrial or commercial activity that affects other parties without this being reflected in the cost of the goods or services involved, for example the environmental costs.[61]

With the promotion and progressive move by commercial poultry producers towards the adoption of industrialised farming methods, the commercial Egg Industry operates at scales only possible through intensive Layer Hen farming.[62]

In the 2019/20 production period, the gross value of commercial egg production in South Africa was just above R10.4 billion.[63] In that period, three egg producers (Eggbert, Nulaid and Highveld) dominated the market, commanding around 51% collectively.[64]

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57 South African Poultry Association 2021 Industry Profile. https://www.sapoultry.co.za/wp-content/uploads/2023/01/2021-Industry-Profile.pdf.

58 Ibid.

59 Ibid.

60 Ibid.

61 Rocío Abín, Amanda Laca, Adriana Laca, Mario Díaz. **Environmental assessment of intensive egg production: A Spanish case study**. *Journal of Cleaner Production*, 2018; 179: 160 DOI: 10.1016/j.jclepro.2018.01.067.

62 https://www.animallawreform.org/wp-content/uploads/2021/12/LiveKinder-Farm-Animal-SA-Report-1.pdf.

63 A Profile of the South African Egg Market Value Chain 2021 Annual Report published by the DALRRD. https://www.dalrrd.gov.za/doaDev/sideMenu/Marketing/Annual%20Publications/Egg%20Market%20Value%20Chain%20Profile%202021.pdf.

64 A Profile of the South African Egg Market Value Chain 2021 Annual Report published by the DALRRD. https://www.dalrrd.gov.za/doaDev/sideMenu/Marketing/Annual%20Publications/Egg%20Market%20Value%20Chain%20Profile%202021.pdf.

INDUSTRY CHALLENGES AND THREATS

Challenges identified by SAPA in the recent profile include: "bird welfare legislation, plant-based alternatives to eggs and broiler meat, regulations governing the use of antibiotics in production, and environmental sustainability issues".[65]

Additional challenges are highlighted in Section III of this Initial Report, including in relation to the cost of feed, load shedding, zoonotic diseases and others.

Threats identified in the Who Owns Whom Industry Report: The Poultry and Egg Industry in South Africa 2021 ("**WOW Report**") include: competition from cheap imports; diseases and losses; increasing production costs, including rising electricity costs; statutory compliance costs; and increasing foreign competition for local export markets.

[65] South African Poultry Association 2021 Industry Profile. https://www.sapoultry.co.za/wp-content/uploads/2023/01/2021-Industry-Profile.pdf.

SECTION III

REVEALING THE CRACKS: RESEARCH COMPONENT

ANIMAL LAW REFORM
SOUTH AFRICA

"From the ancient Khoisan reverence of the eland
to the contemporary conception of the dog
as "man's best friend",
humans and animals have a storied relationship,
one that is a part of the fabric of our society,
homes and lives.

Animals have shifted from being
"mere brutes or beasts"
to "fellow beasts, fellow mortals or fellow creatures"
and finally to "companions, friends and brothers."

To protect these voiceless companions,
individuals have time and again
stepped in when animals are mistreated."

– Justice Khampepe
Constitutional Court Judge

National Society for the Prevention of Cruelty to Animals
v Minister of Justice and Constitutional Development
and Another [2016] ZACC 46

ANIMAL LAW REFORM
SOUTH AFRICA

SECTION III: REVEALING THE CRACKS: RESEARCH COMPONENT

INTRODUCTION

This Section III contains the Research Component of this Initial Report and provides context about the Egg Supply Chain in practice including its impacts and its regulation. Research conducted for this component assisted with the identification of the Pillars, and informed the Stakeholder Component as further set out in Section IV. Specifically, the Pillars and matters identified within them, informed the PAIA Requests sent to the Selected Stakeholders as well as the rating Criteria and Indicators, with a focus on animal welfare.

The Egg Industry in South Africa impacts on various areas of importance and relevance to the South African public and their rights. After researching these impacts, they were categorised into six main Pillars being: Animal Welfare; Environment; Food Safety and Health; Social Issues and Rights, Consumer Protection, and Corporate and Business. Each of these Pillars is expanded on in further detail in this Section III below, with the Animal Welfare Pillar being the focus for purposes of this Initial Report. Each Pillar introduces the relevant issue in broad terms, explores some ways in which the issue intersects with the Egg Industry, and sets out at a high level the regulatory framework applicable to the issue in South Africa. Some Pillars also contain examples of the issue in practice.

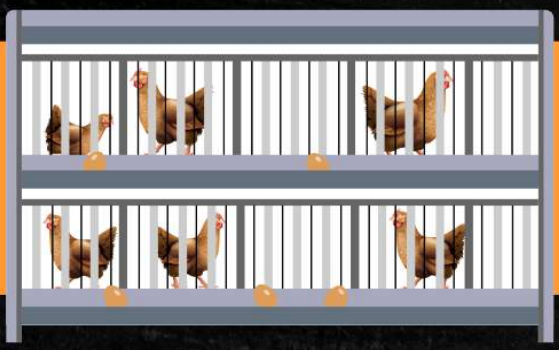
One of the aims of the Project is to foster public interest in the South African regulatory regime as it pertains to the Egg Industry. This benefits the public generally as well as other animal advocacy organisations, who conduct important work in areas outside of the law. Many such organisations are not fully aware of the legal framework including all of the relevant laws, policies, standards, etc.) and are therefore not able to draw on relevant legal materials in their engagements whether it be with government, Corporations, or the public more generally. Governance measures, including the law, are important tools to understand and can assist in important animal advocacy efforts.

Accordingly, by laying the foundations, laying out the facts, and laying down the law in respect of each of the aforementioned Pillars, members of the public, animal advocacy groups, and others may begin to understand their rights and interests as well as the areas in which they can pursue Corporate Accountability.

LIFE IN PRISON FOR COMMITTING NO CRIME

ANIMAL LAW REFORM SOUTH AFRICA

OPEN WING ALLIANCE®

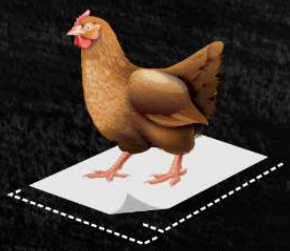


DID YOU KNOW?

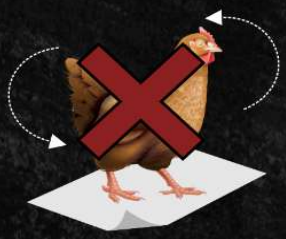
MORE THAN 86% of egg-laying hens in SA's egg industry are kept in battery cages.[1]

WHAT IS IT LIKE LIVING IN A CAGE?

Similar to **wired prison cells** for these animals



Each hen has less living space than a standard **A4 page** of paper



Unable to turn around, stretch their wings or **move freely**

Crammed tightly with other chickens

Forced to stand, sleep, and stick their head through the wire structure of the battery cage

Restricted biological functions

Accumulation of **excretion and waste**

Failure to meet **nutritional needs**

DENIAL OF BASIC BEHAVIOURS CRITICAL TO THEIR WELFARE:

No foraging | No preening | No dust bathes | No exercise | No perching

1. NSPCA Refutes Layer Hen Cage Sizes in South Africa available at https://nspca.co.za/nspca-refutes-layer-hen-cage-sizes-in-south-africa/ (accessed on 13 April 2023)

PILLAR 1: FREE AS A BIRD?

ANIMAL WELFARE: THE CAGED MOTHER AND THE PERSECUTED CHICK

According to reports, over 86% of egg-laying hens in South Africa are confined to live in Battery Cages.

"Across the globe there is mounting pressure on poultry farmers to change to more humane housing systems for hens." – South African Poultry Association 2021 Annual Report[66]

PART A: LAYING THE FOUNDATIONS

I. INTRODUCTION

This Animal Welfare Pillar contains a high-level summary of some of the animal welfare and well-being issues applicable to the Egg Industry in South Africa, as well as the regulation thereof. It is intended to provide an overview of selected matters and is non-exhaustive of all of the relevant animal welfare and well-being considerations and law and policy relevant to the Egg Industry. [67]

For this Pillar, this Part A seeks to lay the foundations on animal welfare and well-being, more specifically the constitutional foundations as to how these matters intersect with several guaranteed human rights and how the courts have interpreted these issues (such as the right to have the environment protected; the right to access to information and the right to freedom of expression), and discusses the constitutional and legislative competencies of relevant government entities. Part B sets out background information as to how the Pillar connects with the Egg Industry by highlighting important capacities and capabilities and qualities of chickens, including but not limited to their sentience. It further highlights globally accepted markers of welfare, including the Five Freedoms and Five Domains, and contrasts these against Cruel Practices within the Egg Industry. Part C provides an overview of selected governance issues associated with this Pillar in the context of the Egg Supply Chain, including in terms of national policies; national legislation; provincial legislation; local legislation; industry standards and international law. Part D provides examples of the other Parts in

66 https://www.sapoultry.co.za/wp-content/uploads/2022/06/SAPA-ANNUAL-REPORT-2021.pdf.

67 For a more detailed analysis of Animal Welfare matters applicable to animal agriculture in South Africa, please refer to ALRSA's Food System Working Paper https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf and White Paper (October 2022) https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf respectively.

practice, specifically when it comes to the enforcement of existing animal protection legislation, and the primary entity responsible for animal welfare in South Africa, the NSPCA (more on this is set out in Appendix I).

Our research reveals that South Africa is trailing behind other countries, both in the Global North and South, its region and even neighbouring countries regarding its position on animal welfare. Evidence of this derives from among others, the Animal Protection Index ("API") composed by World Animal Protection. The API conducts assessments of various countries' animal protection standards and assigns a ranking to each country according to their legislation and policy commitments to protecting animals[68] with their four main rating criteria being: recognition of animal sentience and prohibition of animal suffering; presence of animal welfare legislation; establishment of supportive government bodies; support for international animal welfare standards.[69] This is done in an effort to support lobbying efforts for the promotion of stronger laws to better protect animals.[70] South Africa was awarded the ranking of "**E**" in 2020 (A rating of "A" represents the highest results and "G" identifies countries with the most room for improvement).

In its executive summary, the API states:

> "*The self-regulation of industries using animals in South Africa is also an obstacle to progress in animal welfare. The confinement of farm animals, including farrowing crates for sows and cages for broiler chicken and Egg-Laying Hens, is allowed in the country.*"

It further provides:

> "*The Government of South Africa is urged to ban the worst forms of confinement for animals reared in farming and to mandate humane slaughter for all livestock animal species… Overall, the Government of South Africa is strongly encouraged to align its current legislation with OIE*".[71]

As a starting point, South African animal law generally, including agricultural animal law, is fragmented and scattered across various laws regulated by different government departments.[72] The focus of this Pillar is primarily on issues which impact the welfare and well-being of animals utilised in the Egg Industry (as opposed to environmental, food health and safety, and consumer protection which are dealt with under different Pillars). The Egg Industry in South Africa is regulated through a combination of several sources of hard and soft laws across national, provincial and local levels. There

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68 Animal Protection Index Indicators available at https://api.worldanimalprotection.org/methodology.

69 https://api.worldanimalprotection.org/indicators.

70 https://api.worldanimalprotection.org/about.

71 Animal Protection Index 2020 – South-_africa---_0.pdf available at https://api.worldanimalprotection.org/country/south-africa.

72 For more information on animal law: A.P Wilson Animal Law in South Africa: "Until the lions have their own lawyers, the law will continue to protect the hunter" dA. Derecho Animal (Forum of Animal Law Studies) 10/1 (2019) - DOI https://doi.org/10.5565/rev/da.399 ; and Centre for Environmental Rights & Endangered Wildlife Trust: Fair Game. Available at https://cer.org.za/wp-content/uploads/2018/06/CER-EWT-Regulation-of-Wildlife-Welfare-Report-25-June-2018.pdf and Bilchitz D and Wilson A 'Key Animal Law in South Africa' in Routledge Handbook of Animal Welfare 1 ed (2022) 433.

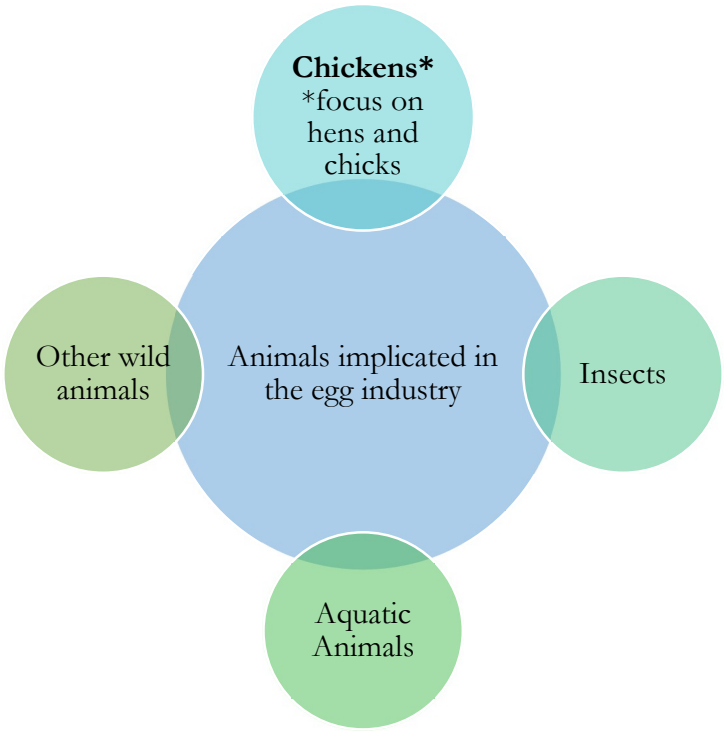
is a plethora of legislation that regulates foodstuffs and agriculture in the country, as well as other incidental matters relating to this industry (ranging across areas from occupational health and safety to consumer protection). For purposes of this Initial Report, only the most significant will be highlighted.

The focus for this section is on "Cruel Practices" as defined in our Glossary as: "Practices involved in the Egg Supply Chain that cause suffering and pain to layer-hens including, but not limited to the use of Battery Cages, beak trimming, de-toeing, and/or overstocking within cages and in relation to male Chicks - culling. Many of these practices have been banned or are being phased out elsewhere in the world due to their cruel nature". More specifically, we place emphasis on the cruel use of Battery Cages.

The below section highlights that Cruel Practices done to Egg Laying Hens and Chicks in the Egg Supply Chain are arguably in contravention of some statutes, including for example the Animals Protection Act ("**APA**"),[73]but this question would need to be brought before a court for proper adjudication. In the interim, it appears as if Cruel Practices, which are routinely utilised by the Egg Industry, are largely accepted as lawful, and not challenged. Even by those enforcing relevant legislation, such as the NSPCA and individual SPCAs, reporting on animal welfare issues does not routinely report in its inspections on all Cruel Practices. See more in Part D "Enforcement".

Before delving into this Animal Welfare Pillar, and while the focus of this Initial Report is predominantly on Egg-Laying Hens and Chicks, it is important to note that numerous animals are implicated by the Egg Industry. Fishes and other aquatic species are utilised in some animal feeds; insects are also utilised in feed; insects are killed through the use of pesticides; and wild animals are impacted (including through the killing of predators and impacts on wild animals utilised in the production of feed and for clearing of facilities, among others). Therefore, in addition to the over 1 billion animals killed directly in the Egg Industry, unquantifiable numbers of other animal lives are lost for the production of eggs. While these are important matters that warrant further research, these issues are not further discussed for purposes of this Section nor Report more broadly.

[73] Act 71 of 1962 https://www.gov.za/documents/animals-protection-act-22-jun-1963-0000.



II. CONSTITUTIONAL FRAMING

1. INTRODUCTION

This section provides a framing for animal protection and welfare and corporate accountability within the Constitution. The Constitution is the supreme law of the land. It is often referred to as the "birth certificate" of the new democracy of the country, following the Interim Constitution. It was officially adopted in 1996, and is one of the most progressive and transformative constitutional texts in the world. It seeks to advance social justice, human dignity, equality and freedom. To be valid, all law and conduct must be consistent with it, and it is enforced and upheld, by among others, the courts, including the Constitutional Court, the highest court in the country.

In terms of section 8, Application of the Constitution (emphasis added):

> "A provision of the Bill of Rights binds a natural or **a juristic person** if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right."

This means that the Constitution applies **horizontally,** including to "juristic persons" such as corporations. This is important as many constitutional rights only prevent interference by the state with persons and entities in a country, and do not impose obligations within the private sphere – such that non-state actors (e.g. Corporations) are not responsible for the fulfilment of human rights. BUT this is not the case under the Constitution: the state and Corporations **must** respect, protect, promote and fulfil many of the rights enshrined in the Bill of Rights, including the environmental right and the right of access to information.

Animals are not explicitly mentioned in the Bill of Rights of the Constitution, but only in the Schedules dealing with which spheres of government have legislative and executive competence over various matters. However, recent jurisprudence has shown that human rights in the Constitution can and are being interpreted to apply to animals, which are part of "the environment" as defined in the National Environmental Management Act 107 of 1998 ("**NEMA**"), South Africa's framework environmental legislation. This shows an expansion of the law beyond its application to humans, and that increasingly, duties may be owed outside of the human species. Relevant constitutional rights include: the right to have the environment protected (section 24); the right to access to information (section 32) and the right to freedom of expression (section 16).

The transformative nature of South Africa's robust Constitution presents many opportunities to challenge the harsh realities of the Egg Industry and test relevant provisions, including those in the Bill of Rights, against such realities. In theory, all of the laws discussed in this Initial Report ought to be aligned with the Constitution's vision of a caring and egalitarian society, including towards animals. However, as discussed below, there is still much need for animal law reform.

A. THE RIGHT TO ENVIRONMENT

The right to have the environment protected as contained in section 24 of the Constitution provides:

> 24. Environment
> Everyone has the right
> a. to an environment that is not harmful to their health or well-being; and
> b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
> i. prevent pollution and ecological degradation;
> ii. promote conservation; and
> iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

In interpreting this right and legislation aimed at animal protection, the courts in South Africa have increasingly shown support for animal welfare and for the view that the prevention of animal cruelty be carefully considered as required by the environmental right. A few examples of judicial pronouncements are discussed below.

NSPCA Case

In the *National Society for Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another*[74] *(the "**NSPCA Case**")*, **the court interpreted the right to the environment to include animal welfare**. It said that

> "[t]*his integrative approach correctly links the suffering of individual animals to conservation, and illustrates the extent to which showing respect and concern for individual animals reinforces broader environmental protection efforts. Animal welfare and animal conservation together reflect two intertwined values*".[75]

In this judgment, the court was seized with the issue of whether the NSPCA had the power to privately prosecute cruelty towards camels. In finding that relevant legislation should be interpreted to confer such power on the NSPCA, the Constitutional Court also referenced, with approval, several earlier judgments, incorporating them into its reasoning, including (emphasis added):

Referencing the ***Lemthongthai* case (2015)**[76] the Constitutional Court in the *NSPCA* Case stated (emphasis added):

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74 *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCT1/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016).

75 Ibid at para 58.

76 *S v Lemthongthai* [2014] ZASCA 131; 2015 (1) SACR 353 (SCA).

> "*The Supreme Court of Appeal in* ***Lemthongthai*** *explained in the context of rhino poaching, that '****[c]onstitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general****'. The Court concluded further that this obligation was especially pertinent because of our history. Therefore, the* ***rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals****. The court further stated that* ***animal welfare is connected with the constitutional right to have the 'environment protected through legislative and other means***".

Referencing the ***Openshaw*** **case (2008)**[77] the Constitutional Court in the *NSPCA* Case stated (emphasis added):

> "*Cameron JA's minority judgment in* ***Openshaw*** *recognised that animals are worthy of protection not only because of the reflection that this has on human values, but because* ***animals 'are sentient beings that are capable of suffering and of experiencing pain***".

Notably, the *Openshaw* case was the first time South African courts expressly acknowledged the sentience of animals.

Referencing the ***South African Predator Breeders Association*** **case (2009),**[78] the Constitutional Court in the *NSPCA* Case stated (emphasis added)

> "*The High Court in [****South African Predator Breeders Association****] championed this view. A unanimous Full Bench found that canned hunting of lions is 'abhorrent and repulsive'* ***due to the animals' suffering****. On appeal, the Supreme Court of Appeal did not dispute this finding*".

Additional older cases (before the new constitutional dispensation) were also referenced by the Constitutional Court in recognising that our courts now afford increasingly robust protection to animal welfare.

Referencing the ***Masow*** **Case (1940)**[79] the Constitutional Court in the *NSPCA* Case stated (emphasis added):

> "*The Court explained that this was an ethical decision on behalf of the Legislature to entrench the need to protect animals against cruel treatment*".

Referencing the ***Smit*** **Case (1929)**[80] the Constitutional Court in the *NSPCA* Case stated (emphasis added):

> "*In the 1929 decision of R v Smit illustrates the emergence of this approach. The offender, convicted of an animal cruelty offence, had beaten a dog for half an hour with a pole and spade, before pelting it with stones, and finally shooting it in*

77 *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw (2008) (5) SA 339 (SCA).*
78 *South African Predator Breeders Association v Minister of Environmental Affairs and Tourism* [2009] ZAFSHC 68.
79 *Ex Parte: The Minister of Justice: In re Rex v Masow 1940 AD 75* at 81.
80 *R v Smit 1929 TPD 397.*

its kennel. The Court found that, even if the dog had legal status as the man's property, which he was entitled to destroy, the man was compelled to do so "humanely" while causing "as little suffering as possible'"".

Referencing the ***Moato* Case (1947)**[81] the Constitutional Court in the *NSPCA* Case stated (emphasis added):

"*Underscoring the conclusions in Smit and Masow, the Court in Moato found that "[t]he object [of the APA] was plainly to prohibit one legal subject behaving so cruelly to animals that he offends the finer feelings and sensibilities of his fellow humans'*"".

Referencing the ***Edmunds* Case (1968)**[82] the Constitutional Court in the *NSPCA* Case stated (emphasis added)

"*This approach was endorsed with increased fervour by Miller J in Edmunds, who held that cruelty was prohibited so as to "prevent degeneration of the finer human values in the sphere of treatment of animals'*"".

Lion Bones Case

In *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others*[83] (the "***Lion Bones* Case**") the North Gauteng High Court further built on the ***NSPCA Case***. This case concerned a government decision for the export quotas of lion skeletons. Several statements by the court are notable: [84]

"*in dealing with the powers of the NSPCA in instituting a private prosecution had the* ***opportunity to consider the matter of cruelty to animals within the broader context of the constitutional values that stood at the doorway of our society as well as the connection between animal welfare and the right to have the environment protected****. Its views are located in the recognition that* ***animal cruelty was prohibited both because of the intrinsic values we place on animals as individuals but also to safeguard and prevent the degeneration of the moral status of humans***." The court noted that: "*These unambiguous and compelling sentiments require careful consideration in that not only do they provide guidance in terms of the legal conduct that is expected of us but rather that it also speaks to the kind of custodial care we are enjoined to show to the environment for the benefit of this and future generations".*

"*When one then has regard to the connection between welfare interests of animals and conservation as reflected in the judgments of both the Supreme Court of Appeal and the Constitutional Court in Lemthongthai and NSPCA respectively,* ***then it is inconceivable that the State Respondents could have ignored welfare considerations of lions in captivity in setting the annual export quota****. What in essence occurs is that the quota is a signalling to the world at large and the captive lion industry in particular that the state will allow exports in a determined quantity of lion bone. It cannot be correct to assert that such signalling can occur at the*

81 *R v Moato 1947 (1) SA 490 (O).*
82 *S v Edmunds 1968 (2) PH H398 (N).*
83 *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* [2019] ZAGPPHC 337. Available at http://www.saflii.org/za/cases/ZAGPPHC/2019/337.html.
84 *Lion Bones Case* at para 74.

> *same time as indicating to the world at large and to the same industry that the manner in which lions in captivity are kept will remain an irrelevant consideration in how the quota is set.* ***It is illogical, irrational and against the spirit of Section 24 and how our courts have included animal welfare concerns in the interpretation of Section 24****. Simply put if as a country we have decided to engage in trade in lion bone, which appears to be the case for now,* ***then at the very least our constitutional and legal obligations that arise from Section 24, NEMBA and the Plan require the consideration of animal welfare issues***".

The environmental right in the context of the Project is important as it is the foundation on which PAIA Requests were based. Given the interconnected nature of the environmental right and animal welfare as set out above, we believe that information in respect of animal welfare could be requested because it impacts on the environmental right. This is particularly so in the Egg Industry, which not only has known impacts on the environment, but also implicates the welfare and well-being of the millions of chickens utilised in the Egg Industry. Environmental protection and animal welfare are intertwined in the Egg Industry. When animals suffer, the environment suffers.

B. The Right to Access to Information

The Right to Access to Information as contained in Section 32 of the Bill of Rights in the Constitution provides:

> 32. Access to information
> 1. Everyone has the right of access to
> a. any information held by the state; and
> b. any information that is held by another person and that is required for the exercise or protection of any rights.
> 2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

National legislation giving effect to section 32 includes the **PAIA,** which empowers the public to make requests for access to records to public bodies and private bodies, and imposes duties on those bodies to provide access (subject to a number of grounds of refusal listed in PAIA) in fulfilment of the right.

PAIA and the right to access to information were important for purposes of the Project, as it was in terms thereof that ALRSA was able to request information from Corporations within the Egg Industry, for the purposes of protecting the environmental right discussed above. ALRSA sent PAIA Requests to 36 (or 3 dozen) Selected Stakeholders, as well as the NSPCA. Several judgments have grappled with the interpretation of the right to access to information and PAIA.

Smuts v MEX ECDEDEAT Case

The case of *Smuts v MEC ECDEDEAT*,[85] concerned requests in terms of PAIA for access to permits from a governmental entity in relation to activities which were being done to wild animals. These PAIA Requests were refused on the basis that granting access would entail the unreasonable disclosure of personal information of third parties. The refusal was challenged in court.

The court stated that:

> "*Access to information is also inevitably linked to the realisation of other rights guaranteed in the Bill of Rights. In this instance, the information required is related to the constitutional right to a healthy environment. This right encompasses the broad notions of 'animal welfare' and 'conservation'. There are various reasons for this, including the relationship between animal protection, the environment, and human values. Animal welfare is related to questions of biodiversity and thereby connected with the constitutional right 'to have the environment protected, for the benefit of present and future generations, through legislative and other measures… that promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development".*

The court stated that:

> "*The right to access to information is directly related to the cultivation of an accountable, responsive, and open society, as promised by the founding provisions of the Constitution. One of the basic values and principles governing public administration is transparency, which 'must be fostered by providing the public with timely, accessible and accurate information'*".

Further stating that:[86]

> "*The subject matter of the application for access to information involved permits issued in relation to a vulnerable indigenous species facing a high risk of extinction in the medium-term. The application was brought by the Foundation for purposes of obtaining information relevant to the management and conservation of the leopard species. It is accepted that state management in conservation of threatened and protected species invokes a public interest dimension. The right of access to information is closely linked to the cultivation of an accountable, responsive and open society and to the realisation of other constitutional rights, including the right to a healthy environment. Animal welfare and conservation form part of this right. Access to information is the norm, rather than the exception*".[87]

The court ordered that access to the records must be granted to the requestor. Importantly, the court acknowledged that the right to access to information includes the right to an environment, which includes animal welfare.

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85 *Smuts N.O. and Others v Member of the Executive Council: Eastern Cape Department of Economic Development Environmental Affairs and Tourism and Others* (1199/2021) [2022] ZAECMKHC 42 (26 July 2022).

86 At para 12.

87 At para 38.

NPC Number 2017/330930/08 | NPO Number 208-234 NPO
www.animallawreform.org

ArcelorMittal Case

The case of *Arcelormittal v Vaal Environmental Justice Alliance*[88] concerned a refusal by ArcelorMittal South Africa, one of South Africa's major industrial corporations producing 90 percent of the country's steel products, to grant access to records to Vaal Environmental Justice Alliance (VEJA), a non-profit voluntary association in terms of a PAIA request.[89] The records requested by VEJA related to ArcelorMittal's past and present activities, including documented historical operational and strategic approach to the protection of the environment in the areas which they operate major steel plants.[90] In the court of first instance, the High Court referred to *Biowatch Trust v Registrar, Genetic Resources & others*[91] and stated that a refusal of VEJA's application would hamper the organisation in championing the preservation and protection of the environment and further stated "*it has clearly been established that the participation of public interests groups is vital for the protection of the environment.*"[92] The High Court held inter alia that the refusal by ArcelorMittal South Africa to grant access to the records requested by VEJA was invalid and set aside and ordered the steel corporation to provide VEJA with copies of all records requested in terms of PAIA.[93] The matter was then taken on appeal to the SCA. In deciding this appeal, the court stated:

> "*[c]orporations operating within our borders, whether local or international, must be left in no doubt that in relation to the environment in circumstances such as those under discussion, there is no room for secrecy and that constitutional values will be enforced*".[94]

The SCA held that there was no material flaw in the essential reasoning of the High Court and dismissed the appeal brought by ArcelorMittal South Africa.[95]

88 *Company Secretary of Arcelormittal South Africa* v *Vaal Environmental Justice Alliance* (69/2014) {2014} ZASCA 184 (26 November 2014).
89 At para 2.
90 At para 2.
91 *Biowatch Trust* v *Registrar, Genetic Resources & Others* 2009 (6) SA 323 (CC).
92 At para 42.
93 At para 48.
94 At para 82.
95 At para 85.

C. The Right to Freedom of Expression

The right to freedom of expression as contained in Section 16 of the Constitution provides:

> 16. Freedom of expression
> 1. Everyone has the right to freedom of expression, which includes
> a. freedom of the press and other media;
> b. freedom to receive or impart information or ideas;
> c. freedom of artistic creativity; and
> d. academic freedom and freedom of scientific research.
> 2. The right in subsection (1) does not extend to
> a. propaganda for war;
> b. incitement of imminent violence; or
> c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Smuts and Another v Botha Case

The 2022 case *Smuts and Another v Botha*[96] involved two conflicting human rights in relation to animals – the first being Botha's right to privacy as adjudicated against Smut's freedom of expression. The case involved the publication of photographs by Smuts and the Landmark Leopard and Predator Project-South Africa (Landmark Leopard) on Facebook of cages containing dead animals, namely a baboon and porcupine and information of animal cruelty occurring on a farm owned by Botha. Botha instituted an urgent interdict to prohibit Smuts and Landmark Leopard from publishing defamatory statements about him.[97] Initially, the High Court ruled in favour of Botha, however, upon appeal, the Supreme Court of Appeal ("**SCA**") held inter alia that "the effect of limitation which the high court imposed in this case is substantial, affecting as it does, the right of *activists* such as Smut and that of the public to receive, information, views and opinions. It cannot be denied that the public has a right to be informed about the animal practices at Mr Botha's farm".[98] The SCA found in favour of the right to freedom of expression of Smuts, and made several important statements about animal protection, the rights of activists to express information, and the rights of the public to receive information.

96 *Smuts and Another v Botha* (887/2020) [2022] ZASCA 3; 2022 (2) SA 425 (SCA) (10 January 2022).
97 At para 4 and 5.
98 At para 22.

Key statements and conclusions of the Supreme Court of Appeal are highlighted below: [99]

1. The right to freedom of expression in s 16 of the Bill of Rights protects every citizen to express himself or herself and to receive information and ideas. The same right is accorded to activists to disseminate information to the public;
2. The Constitution recognises that individuals in our society need to be able to hear, form and express opinions freely, on a wide range of topics;
3. Honest information and publication of animal trappings (the trapping of animals) is no exception;
4. In this case, the animal activist [Mr Smuts] had a right to expose what he considered to be the cruel and inhumane treatment of animals at the farm [Mr Botha's];
5. This was fair comment and the public interest was best served by publicising the truth rather than suppressing it;
6. The public has a right to be informed of the humane or inhumane treatment of animals at the farm [Mr Botha];
7. Members of the public have the freedom to decide which commercial enterprise they support and which they do not; and
8. That freedom of choice can only be exercised if activities happening at the farm [Mr Botha's] are laid bare for the public.

The statements by the Supreme Court of Appeal have several positive implications for activists attempting to expose animal cruelty in the public domain and exercising their right to freedom of expression.

This right is important in the context of the Project, as in the publication of this Initial Report, ALRSA is exercising its right to freedom of expression. It is doing so in the public interest in pursuit of the aforementioned other rights, the right to have the environment protected and the right to access to information.

D. Other

Notably, several other rights are also implicated by intensive animal agriculture, including the Egg Industry and hold the potential to further expand the jurisprudence of human rights beyond humans. These are further discussed under the Social Issues and Rights Pillar.

I. Constitutional and Legal Mandates for Animal Welfare and Well-being

Functional Areas of Legislative Competence

The Schedules to the Constitution set out functional areas in respect of national, provincial and municipal (local) government competence. Animal issues, including those impacted by the Egg

[99] At para 25.

Industry span across national, provincial and local government. For example, Schedule 4 sets out functional areas of concurrent national and provincial legislative competence and includes: agriculture; animal control and diseases; consumer protection; environment; nature conservation; pollution control; soil conservation; trade (Part A); and the following local government matters as applicable: air pollution; water & sanitation services (Part B).

Schedule 5 sets out Functional areas of Exclusive Provincial Legislative Competence, including: abattoirs and veterinary services, excluding regulation of the profession (Part A) and control of public nuisances; licensing and control of undertakings that sell food to the public; and municipal abattoirs (Part B). The competencies listed in Part B are municipal or local government competencies.

Provincial legislation is not discussed for purposes of this Initial Report as no provincial legislation impacts directly on animal welfare and well-being (besides provincial biodiversity legislation mentioned in the Environmental Pillar) although there are some competencies which indirectly impact on animal welfare which should be further explored. Provincial departments are implementing authorities in respect of some of the national legislation discussed in this Pillar.

National and Provincial Government Department Mandates

Given the above competencies, since 1997, the mandate to implement animal welfare legislation falls primarily under the national DALRRD (it was transferred from the Department of Justice in 1997). One of the major barriers to protecting animals in South Africa, specifically farmed animals, is that the mandate of animal welfare falls under DALRRD, since animal welfare sits uncomfortably with other roles of DALRRD. Other departments at national, provincial and municipal levels have mandates relating to certain animal matters which inevitably impact on their welfare.

For instance, DALRRD's mandates include increasing food security and creating employment in the agricultural sector and improving agriculture production and food safety. Unfortunately, this has generally meant increased animal agriculture and the expansion of various animal enterprises, with little regard for animal welfare (see for example the Poultry Master Plan). As increasing animal production through industrialised animal operations generally and historically equates to lower animal welfare, there appears to be an inherent conflict. Over the 26 years that DALRRD has held this animal welfare mandate, they have done little to improve it or ensure it is a priority. This can be seen from various actions and inactions, for example: despite having powers to do so (in terms of section 10 of the APA), the Minister of Agriculture, Land Reform and Rural Development has failed to promulgate any specific animal regulations (which has led to a proliferation of non-enforceable, voluntary soft law); and elected not to ban Cruel Practices largely agreed to be the most abhorrent and cruel (including many Cruel Practices banned by other jurisdictions). In addition, DALRRD officials rarely engage with the animal protection and animal welfare sector, as compared to animal use-industries, and tend to implement policies that increase animal use. It would appear that if any positive progress is to be made for animals in South Africa in terms of improved welfare and well-being, DALRRD needs to either make a drastic change to its stance on animal welfare and animal production or the

mandate for animal welfare needs to be moved to a more suitable department that seeks justice for sentient beings.

The Department of Environment, Forestry and Fisheries ("**DFFE**") is mandated to implement environmental laws, several of which impact directly on animals, their welfare and well-being, such as the National Environmental Management: Biodiversity Act 10 of 2004 ("**NEM:BA**"). Problematically, despite its constitutional competence in respect of the environment, which includes animals, the DFFE has repeatedly denied having any mandate (including a legislative mandate) to protect animal welfare, indicating that this is an issue for DALRRD. This has led to many governance loopholes and gaps. With the promulgation of National Environmental Management Laws Amendment Act 2 of 2022 ("**NEMLAA**") in 2023, it is now clear that DFFE has a legislative mandate for animal well-being.

This issue of the DFFE's mandate and how the courts have interpreted it can be seen from the ***Lion Bones* Case**, which dealt with DFFE's process relating to the setting of annual export quotas for trade in lion bone for commercial purposes derived from captive breeding operations in South Africa.[100] The NSPCA had expressed concerns about the welfare of lions and the process followed given that the welfare of animals had not been considered by the DFFE. In their written submission, the NSPCA noted the DFFE's position in respect of establishing the quota, to only consider concerns of a scientific nature (to the exclusion of animal welfare). The DFFE's attempt to dissociate themselves from the welfare considerations of lions in captivity was found to be implausible by the court, as further set out below.[101]

The DFFE contended that it did not have the responsibility in law for regulating and enforcing welfare standards for wild animals and that accordingly, the welfare of these animals was not a factor regarded as relevant in determining these quotas. They pointed out that the responsibility for the administration of the APA fell within the legislative mandate of the (now) DALRRD.[102] They further contended that the NSPCA and DALRRD had the power and the authority in terms of the APA to investigate conditions under which captive wild animals were kept, to carry out arrests if necessary and to make regulations for the manner in which these animals should be kept.[103]

In deciding whether animal welfare considerations relating to lions in captivity were relevant in the determination of the annual export quotas for lion bone, the court cited the Constitutional Court in the above ***2016 NSPCA* Case**. The court held that this judgment recognised that animal cruelty was prohibited both because of the intrinsic value we place on animals as individuals, but also to safeguard and prevent the degeneration of the moral status of humans.[104]

100 At para 1.
101 At para 24-25.
102 At para 26.
103 At para 27.
104 At para 64.

The court further reasoned that even though the welfare mandate **may substantially reside** with the DALRRD, the court noted the difference in law which existed between the legal mandate and responsibility for animal welfare, and taking animal welfare into account.[105] It stated that the latter did not depend on the legal responsibility to set and enforce standards and did not preclude a decision maker from considering them if they were indeed relevant.[106]

The court stated:

> "*It would then be artificial and hierarchical to argue that while we should share a collective concern about lions in the wild our concern for the well-being of lions in captivity must rest on a different footing. Even if they are ultimately bred for trophy hunting and for commercial purposes, their suffering, the conditions under which they are kept and the like remain a matter of public concern and are inextricably linked to how we instil respect for animals and the environment of which lions in captivity are an integral part of. Certainly in South Africa their numbers are double those of lions in the wild and it would constitute a contradiction if we are to suggest that different standards and considerations should apply to our treatment of lions (depending on whether they were in the wild or in captivity)*".[107]

The lion bone industry and the Poultry Industry are similar in nature as both deal with the issues including but not limited to the farming of animals in captivity, cruelty towards animals and the consumption of animals. As such, applying the sentiments expressed by the court in the *Lion Bones* Case to the Egg Industry, even if animals (including chickens) are ultimately bred for consumption or production of products, "their suffering, the conditions under which they are kept and the like remain a matter of public concern and are inextricably linked to how we instil respect for animals and the environment" of which animals are a part of.

Ultimately, the court decided that the exclusion of animal welfare considerations by the DFFE was irrational and would have to be reviewed on the basis that all relevant considerations were not taken into account.[108]

Now with the promulgation of the National Environmental Management Amendment Act, NEMLAA, specific reference is made to animal "well-being" thereby creating a legislative mandate for the DFFE in this respect. NEMLAA came into force on 30 June 2023. This is discussed in further detail in the Environmental Pillar.

105 At para 67.
106 At para 67.
107 At para 71.
108 At para 75.

PART B: LAYING DOWN THE FACTS

AN INTRODUCTION TO ANIMAL WELFARE AND WELL-BEING IN THE EGG INDUSTRY

I. Introduction

Against the constitutional foundations established in Part A, this Part B sets out background information as to how animal welfare is connected with the Egg Industry. It starts by discussing concepts of sentience and suffering in the context of industrial farming, as well as the capacities and capabilities of chickens. It then expands on concepts of animal welfare (as well as well-being and flourishing) and how animal welfare is commonly captured in principles such as the Five Freedoms and the Five Domains, which are commonly referenced by role-players in the Egg Industry, including in industry standards. In the final component of this Part, Cruel Practices within the Egg Industry are highlighted. Part C will delve into how these are captured in national law and policy in South Africa as well as bylaws. Provincial legislation is not discussed for purposes of this Pillar, as no provincial legislation impacts directly on animal welfare and well-being (provincial biodiversity legislation is mentioned in the Environmental Pillar). Provincial departments are nevertheless implementing authorities in respect of some of the national legislation discussed in this Pillar. Part D will highlight enforcement issues in practice.

II. The Rise of Factory Farms and the Fall of Protecting Animal Interests: Sentience and Animal Suffering

This discussion should be viewed with reference to the Industry Component of the Report in Section II above. The terms "intensive farming" and "factory farming" describe a method of commercially producing animals often known as "livestock" through the use of, among other things, Battery Cages. These cages restrict movement to allow for a higher packing density,[109] and selective breeding of animals to increase yield with reduced inputs. In the Egg Industry, these practices are aimed at producing more eggs and maximising profits.[110]

In this form of farming, the Layer Hen is generally perceived as a commodity rather than a living being, with wilful disregard of her most basic and natural behaviours, which results in the ineluctable

109 Packing density refers to the number of hens kept in a certain amount of space.

110 https://www.fairr.org/article/intensive-factory-farming/; https://ffacoalition.org/articles/intensive-agriculture/; and https://www.animallawreform.org/wp-content/uploads/2021/12/LiveKinder-Farm-Animal-SA-Report-1.pdf.

abuse of animals.[111] This is problematic as chickens, including Layer Hens, are sentient beings, and accordingly should benefit from prohibitions and restrictions on their suffering as well as requirements to provide for certain positive experiences including to express natural behaviours.

Sentience refers to the capacity to have subjective experiences with positive or negative emotions, namely that of feeling good or bad on the part of the individual animal.[112] Examples of such feelings include the ability to feel pain, pleasure, anxiety, distress, boredom, hunger, thirst, excitement, joy, comfort, and pleasure.[113]

A global shift towards the express recognition of animal sentience has begun to take place, not only by animal welfare and animal rights organisations, but also by states and the general public. An example of this is the decided ***N.R. Nair and Ors***[114]case in India in which it was held that no person has a right to carry on a trade or business that results in infliction of unnecessary pain or suffering of animals.

The court noted that (emphasis added):

> "*It was then contended that the impugned notification invades the fundamental right of the petitioners to carry on their trade or business under Article 19(1)(g) of the Constitution of India. This argument, in our opinion, proceeds on a fallacious premise which cannot be countenanced in the eyes of the law…* ***the words 'trade' or 'business' as used in Article 19(1)(g) do not permit carrying on of an activity whether commercial or otherwise, if it results in infliction of unnecessary pain and suffering on the specified animals***. ***No person has any right, much less a fundamental right to carry on a trade or business which results in infliction of unnecessary pain or suffering nor a right to carry on a trade or business in an activity which has been declared by law as an offence.*** *Neither the owners nor the employees of circus have a fundamental right to carry on trade or business in training and exhibiting endangered animals as the said trade is of such an obnoxious and pernicious activity geared towards mere entertainment which cannot be taken in the interest of general public to be a trade or business in the sense in which it is used in Article 19(1)(g) of the Constitution of India*".

India's Prevention of Cruelty to Animals Act 1960[115] recognises the ability of animals to suffer physically and mentally, and therefore provides partial recognition of sentience.[116] The recognition of

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111 M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa's Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at: http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf

112 Singer, P. (1979) Practical ethics *Cambridge University Press*. Also Browning H & Birch J (2020) Animal Sentience *Philosophy compass* 2022-05, Vol.17 (5).

113 Available at http://nspca.co.za/?s=five+freedoms (accessed on 26 May 2021) and https://cer.org.za/reports/fair-game (accessed on 26 May 2021).

114 *N.R. Nair And Ors. Etc. vs Union Of India (Uoi) And Ors.* on 6 June, 2000. https://indiankanoon.org/doc/936999/

115 https://www.indiacode.nic.in/bitstream/123456789/11237/1/the_prevention_of_cruelty_to_animals_act%2C_1960.pdf.

116 Animal Protection Index 2020 Report, available at https://api.worldanimalprotection.org/sites/default/files/2020-India-UPLOADED.pdf.

sentience is an important foundation for the recognition of suffering of animals, prohibition of such suffering occurring unjustifiably, as well as positive experiences of an animal, which should accordingly be reflected in law, as is the case with human rights.

Given the importance of sentience in respect of animal protection, the law should recognise animal sentience in animal law and policy with specific regulations made in respect of upholding this concept. Such legislation is important to ensure that animals are treated with care, respect, and dignity.[117]

According to Bilchitz:

> *"The historical context of the Constitution provides strong reasons why the protection of human dignity was included as a core value: the appellation "human" was not designed, however, to exclude the recognition of other forms of dignity or worth. The fundamental grund-norm of non-discrimination would entail that the Constitution must be taken to recognize that all sentient creatures have worth rather than focusing only on those who belong to a particular grouping – namely, homo sapiens".*[118]

According to World Animal Protection, the recognition of sentience in law and policy is "a simple recognition of scientific evidence and fact".[119] The explicit recognition of sentience of animals is not captured directly in legislation for animals in South Africa, with the exception of elephants.[120]

Hens also have other capacities which are important in ensuring their welfare and well-being. If one refers to protecting the welfare and the well-being of an animal, due regard must be given to that animal's sentience, specific capacities and needs.

According to Marino,[121] chickens have the following capacities or the potential for the following capacities based on scientific evidence (the evidence from peer-reviewed applied and basic comparative studies of chicken cognition, emotion, and sociality): sensory abilities; visual cognition and spatial orientation; recognizing partly occluded objects; Recognizing completely occluded objects; numerical abilities; time perception/anticipation of future events; perception of time intervals; episodic memory; self-control; reasoning and logical inference; self-awareness; communication; self-assessment; referential communication; social cognition and complexity; discriminating among individuals; perspective-taking and social manipulation; social learning; emotion; fear responses; emotional response during anticipation; emotions and cognitive bias; emotions and decision making;

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117 https://www.worldanimalprotection.org/blogs/encouraging-animal-sentience-laws-around-world#:~:text=Encouraging%20animal%20sentience%20bills%20and,of%20scientific%20evidence%20and%20fact.

118 Bilchitz, D. Does transformative constitutionalism require the recognition of animal rights? *Southern African Public Law,* 25(2), 2-3 (2010).

119 https://www.worldanimalprotection.org/blogs/encouraging-animal-sentience-laws-around-world#:~:text=Encouraging%20animal%20sentience%20bills%20and,of%20scientific%20evidence%20and%20fact.

120 Norms and Standards for the Management of Elephants in South Africa, 2008.

121 Marino, L. Thinking chickens: a review of cognition, emotion, and behavior in the domestic chicken. *Anim Cogn* **20**, 127–147 (2017). https://doi.org/10.1007/s10071-016-1064-4.

emotional contagion and empathy; and personality. In her paper, she identifies a wide range of scientifically documented examples of complex cognitive, emotional, communicative, and social behaviour in domestic chickens which should be the focus of further study. These capacities are, compellingly similar to what we see in other animals regarded as highly intelligent.

III. Defining and Contextualising Animal Welfare, Well-being and Flourishing

For any animals utilised in agricultural operations, their welfare, well-being, and flourishing is impacted and there should be and are duties imposed on those who are in control of, or own, such animals (among others). In the context of large-scale industrialised animal agriculture, these become more important as the focus is on production and less on animal interests and ensuring the elimination or minimising of suffering and positive experiences throughout their lifetime. Below, we conceptualise these terms in the context of the Egg Supply Chains.

While the term "animal welfare" is not specifically defined in South African law, according to the World Organisation for Animal Health ("**WOAH**" formerly OIE) Terrestrial Code, animal welfare means "the physical and mental state of an animal in relation to the conditions in which it lives and dies".[122]

Animal "well-being" has recently been defined in South African law in NEMLAA, as: "the holistic circumstances and conditions of an animal, which are conducive to its physical, physiological and mental health and quality of life, including the ability to cope with its environment". NEMLAA came into force on 30 June 2023.

Similarly, animal flourishing is not defined in law but is one of ALRSA's three core pillars. Broadly, flourishing means to thrive, to grow, to develop successfully, to be healthy and to be strong. It is a stronger requirement than simply requiring that animals are free from harm (such as in the Five Freedoms and as reflected in animal cruelty legislation such as the APA), and requires more than just circumstances and conditions being conducive, or that an animal is able to cope (such as in the definition of well-being). It means allowing animals to thrive and setting out duties on those who impact on them to ensure that flourishing is possible. ALRSA believes that all animals, including humans, as well as the environment ought to be permitted to flourish. This is the ideal state that any sentient being could hope to achieve, and similarly, it is one we hope for all animals, including those utilised in and impacted by the Egg Industry and beyond.

[122] Chapter 7.1. WOAH https://www.woah.org/fileadmin/Home/eng/Health_standards/tahc/2018/en_chapitre_aw_introduction.htm#:~:text=Animal%20welfare%20means%20the%20physical,which%20it%20lives%20and%20dies.

Welfare issues arise throughout the entirety of the lives of the animals utilised in factory farming and industrialised operations, including (*note these are dependent on the species, the "products", the facilities, the region and several other factors):

- **Breeding**

  Examples include: Collection of genetic materials | genetic manipulation | artificial insemination | birth / laying | post-birth / laying | care of young | weaning | early maternal separation

- **Rearing**

  Nutrition (food, water) | space | veterinary care | antibiotics | environmental (shelter, ventilation, air, water, conditions of confinement) | natural behaviours | mutilations | unnatural growth | injuries

- **Transportation**

  Rest | access to food / water | shelter | space | length of time | temperature (hot / cold / rain) | ventilation

- **Slaughter**

  Stunning | rendering unconscious | methodologies | timing

Two predominant models have emerged in relation to consideration of the welfare and well-being of animals (and specifically for the Five Domains, could apply to their flourishing too), being the "**Five Freedoms**" more traditionally, and the "**Five Domains**", more recently. These are set out at a high level below and are included in this Initial Report for several reasons. The first is that the Five Freedoms represent a minimum globally recognised standard against which the welfare of animals used in the Egg Industry should be tested. They thus provide some understanding of what is viewed as acceptable or unacceptable treatment of these beings at a basic level. The Five Freedoms, while not explicitly mentioned in legislation, are included in several of the governance tools referenced below, including certain industry standards. However, it is often unclear whether these are included in a genuine manner or whether they are included in a manner that can be construed as Humane-washing. This is particularly relevant when one considers that the same governance measure can mention the promotion of the Five Freedoms while simultaneously allowing for several Cruel Practices. The final reason these have been included is to inform potential law reform and recommendations going forward.

Five Freedoms

The Five Freedoms are internationally accepted standards of minimum care for animals, as developed by Britain's Farm Animal Welfare Council in 1965 which include:

1. Freedom from Hunger and Thirst;
2. Freedom from Discomfort;
3. Freedom from Pain, Injury or Disease;
4. Freedom to Express Normal Behaviour; and
5. Freedom from Fear and Distress.

Despite frequently referencing these Five Freedoms in industry standards, many animals in industrial animal agriculture are not guaranteed these minimum standards. This is true for Layer Hens in the commercial Egg Industry in South Africa who, despite the recommendations contained in the SAPA COP (as mentioned below), do not experience these freedoms. The vague wording of the Five Freedoms sets no measurable targets for the achievement of welfare and has no positive obligations or standards to compel producers. A significant aspect of livestock farming, especially that of Layer Hens not addressed by the Five Freedoms, is the practice of intensive confinement.

Due to several criticisms with the Five Freedoms, a more modern concept of the Five Domains is becoming increasingly prevalent. In the below section on Cruel Practices, we demonstrate that animals utilised in the Egg Industry, particularly Egg-Laying Hens, are not granted the Five Freedoms.

Five Domains

An emerging form of welfare thinking is that of the more modern animal welfare concept of the Five Domains.[123] The Five Domains were developed as a tool for assessing the welfare of animals by considering both physical considerations and mental state, resulting in the following domains: nutrition, the environment, health, behaviour and mental state. These domains allow for the assessment of positive as well as negative experiences to encourage more opportunities for animals to experience positive states whilst minimising negative states,[124] thus ensuring the highest welfare throughout an animal's life.[125] To simplify, the Five Domains of animal welfare aim to bolster

[123] For a brief history on the Five Domains Model available at https://www.sciencedirect.com/science/article/pii/S1751731121002214.
[124] https://www.tandfonline.com/doi/full/10.1017/S0043933917000812.
[125] Available at https://www.spcacertified.nz/learn-more/article/five-freedoms-vs-five-domains. Also https://www.worldanimalprotection.us/blogs/five-domains-vs-five-freedoms-animal-welfare.

conditions for animals under human control, while the Five Freedoms merely aimed at preventing negative conditions from taking place.[126] This thinking is found in some international standards on welfare which will be discussed in more detail below. The Five Domains of animal welfare are:

1. **Nutrition**: factors that involve the animal's access to sufficient, balanced, varied, and clean food and water.

2. **Environment:** factors that enable comfort through temperature substrate, space, air, odour, noise, and predictability.

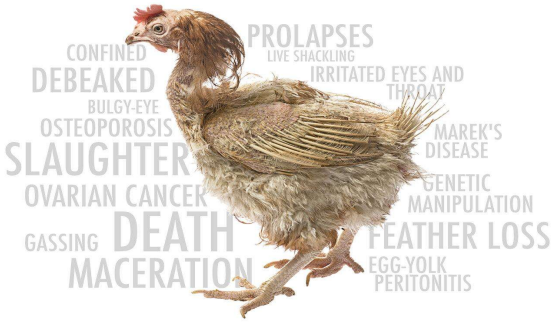
3. **Health:** factors that enable good health through the absence of disease, injury, impairment with a good fitness level.

4. **Behaviour:** factors that provide varied, novel, and engaging environmental challenges through sensory inputs, exploration, foraging, bonding, playing retreating, and others.[127]

5. **Mental state:** the mental state of the animal should benefit from predominantly positive states, such as pleasure, comfort, or vitality while reducing negative states such as fear, frustration, hunger, pain, or boredom.[128]

IV. Cruelty and Cruel Practices Within in the Egg Industry

Against the background of the sentience and capacities of chickens, as well as the concepts of animal welfare (well-being and flourishing) and how these are reflected in the Five Freedoms and Five Domains respectively, under this heading we explore common-place Cruel Practices occurring in the production of eggs.



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126 https://kb.rspca.org.au/knowledge-base/what-are-the-five-domains-and-how-do-they-differ-from-the-five-freedoms/.
127 https://www.worldanimalprotection.us/blogs/five-domains-vs-five-freedoms-animal-welfare.
128 https://www.worldanimalprotection.us/blogs/five-domains-vs-five-freedoms-animal-welfare.
129 https://www.egg-truth.com/.

These Cruel Practices occur across species in commercial farming systems and involve forms of mutilations, genetic manipulation (such as selective breeding practices), and harmful environments.[130] In respect of chickens, we believe that Cruel Practices (as defined in our Glossary which includes Battery Cages, beak trimming, de-toeing, and/or overstocking within cages and in relation to male Chicks – culling) which occur within the Egg Industry are in contravention of the APA. Against the background of the sentience of chickens and the various other capacities they have, as well as considering welfare and well-being as read with the Five Freedoms and the Five Domains, we will now explore how the Egg Supply Chain involves routinely conducting or participating in several Cruel Practices.[131]

BATTERY CAGES

The use of cages is extremely harmful to Layer Hens' welfare for a range of reasons, a few of which are highlighted below. This includes Battery Cages as well as enriched cages. Enriched cages afford limited freedom to layer hens in respect of access to more cage space compared to Battery Cages, access to a nest, litter and perches.[132] However, use of the enriched colony cage for the productive lifetime of commercial hens impedes the performance of locomotion, exploring, dust bathing, foraging, wing flapping and stretching, which can lead to "sham" behaviours and feather pecking".[133]

The section below focuses on the former, Battery Cages, which should be considered against the background of the capacities of capabilities of chickens as set out above, as well as the provisions of the Five Freedoms and the Five Domains.

1. Physical Harm as a Result of Battery Cage Structure

A Layer Hen is forced to stand, sleep, and stick her head through the wire structure of the Battery Cage, and this causes her inevitable physical harm.

The wire mesh floors of Battery Cages can cause a host of foot disorders, including toe pad hyperkeratosis, which develops due to pressure on certain areas of the feet thanks to the sloping floors of cages. This condition can lead to painful open lesions on their feet. Overgrown claws are also common, since chickens cannot engage in ground-scratching behaviours that keep nails short naturally.[134]

130 https://thehumaneleague.org/article/factory-farming-animal-cruelty.
131 Egg Truth Website: https://www.egg-truth.com/.
132 See further specifications of enriched cages in Appendix 6 of South African Poultry Association, Code of Practice June 2022. https://www.sapoultry.co.za/wp-content/uploads/2022/06/2022-SAPA-COP.pdf.
133 https://www.thepoultrysite.com/articles/enriched-cages-do-not-provide-a-life-worth-living-for-laying-hens.
134 https://thehumaneleague.org/article/battery-cages.

2. Restricted biological function due to extreme confinement & osteoporosis

Battery Cage confinement also affects hen welfare and causes increased frustration, the development of "disuse osteoporosis" in their wings and metabolic disorders. Restrictions on movement within a cage cause frustration and prevent normal bone maintenance, particularly in the legs and wings.[135]

According to research conducted by the Humane League:

> *"Osteoporosis can be caused by a lack of adequate movement and exercise, and it's a common ailment among many species of captive animals, including elephants. In caged hens, this degenerative disease is a widespread problem. The inability to walk more than a few paces, to run, or even to properly stretch their wings leads to bone fragility and fractures, especially during transport".*[136]

3. Harm caused to hens by accumulation of excretion

In large-scale industrialised operations involving Battery Cages, the presence of ammonia and other toxic products from hen faeces accumulates in the animal housing, and negatively impacts the hens' health by causing chemical burns and contributing to toxic air quality.[137]

4. Failure to meet nutritional needs

Hens in Battery Cages often do not have access to clean drinking water or feeds that meet their reasonable nutritional needs.[138]

5. Inability to Express Natural Behaviours

Layer hens are driven by their biological function to perform behaviours like dustbathing, perching and nesting.[139] These natural behaviours are crucial as they assist in, *inter alia*, maintaining hygiene and are self-soothing for the hens. The limited cage space makes it impossible for hens to spread their wings, maintain personal hygiene or to self-soothe. Deprived of litter, caged hens are prevented from

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135 Baxter MR. The welfare problems of laying hens in Battery Cages. Vet Rec. 1994 Jun 11;134(24):614-9. doi: 10.1136/vr.134.24.614. PMID: 7941260.

136 https://thehumaneleague.org/article/battery-cages.

137 Goran Gržinić, Agnieszka Piotrowicz-Cieślak, Agnieszka Klimkowicz-Pawlas, Rafał L. Górny, Anna Ławniczek-Wałczyk, Lidia Piechowicz, Ewa Olkowska, Marta Potrykus, Maciej Tankiewicz, Magdalena Krupka, Grzegorz Siebielec, Lidia Wolska, Intensive poultry farming: A review of the impact on the environment and human health, Science of The Total Environment, Volume 858, Part 3, 2023, 160014, ISSN 0048-9697, https://doi.org/10.1016/j.scitotenv.2022.160014. (https://www.sciencedirect.com/science/article/pii/S0048969722071145).

138 M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa's Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at: http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf.

139 K.M. Hartcher & B. Jones (2017) The welfare of Layer Hens in cage and cage-free housing systems, World's Poultry Science Journal, 73:4, 767-782, DOI: 10.1017/S0043933917000812.

dust bathing and foraging. Without access to a nest site, nesting motivation is frustrated and without a perch, roosting is prevented.

6. **Inability to Move and Move Away**

Battery cages do not allow birds to move away from each other properly.[140]

7. **Inability to Rest**

Battery Cages mean that chickens are not given the opportunity to rest undisturbed.[141]

8. **Reduced Life Span**

Depending on the particular type of chicken or bird, they can generally live between 3 – 7 years. Layer Hens live to be about 18 to 24 months old before the industry considers them "spent"—unable to lay more eggs—and sends them to slaughter.[142]

9. **Increased / Unnatural Egg Production**

Due to genetic engineering and selective breeding, the bodies of Layer Hens are compelled to produce unnaturally high volumes of eggs as compared with populations in the wild, or those living in extensive agricultural conditions. This frequency leeches high levels of calcium from the skeletal system in order to produce eggshells, leading to bone fragility. In extreme cases, a syndrome called cage layer fatigue may develop, whereby birds can become paralyzed by calcium depletion combined with spinal collapse from their inability to properly stretch, walk, or stand up. Unable to reach waterspouts, they slowly die from thirst.[143]

Wild jungle fowl naturally lay 10-14 eggs yearly, but their domesticated descendants are forced to pump out a staggering average of **300 eggs annually**.[144]

10. **Injurious Feather Pecking**

Feather pecking is where hens peck and pull at the feathers of other hens, sometimes leading to serious injuries and even cannibalism. It can affect hens in any system and outbreaks can happen suddenly. Injurious pecking is believed to be a redirected foraging behaviour. The reasons behind it can vary but

140 https://nspca.co.za/nspca-refutes-layer-hen-cage-sizes-in-south-africa/.
141 Four Paws Live Kinder Report 2021 available at https://www.animallawreform.org/wp-content/uploads/2021/12/LiveKinder-Farm-Animal-SA-Report-1.pdf.
142 https://thehumaneleague.org/article/how-long-do-chickens-live.
143 The Humane League: https://thehumaneleague.org/article/battery-cages.
144 The Humane League: https://thehumaneleague.org/article/battery-cages.

include: environment; breed; nutrition; poor health and diseases; the way hens were reared before they began laying eggs; sudden changes in things such as their feed or environment.[145]

11. Forced Molting

According to research conducted by the Humane League:

> "*Molting is a natural, seasonal process occurring once a year with the onset of winter, when chickens consume less food, replace their feathers, and produce fewer eggs. This decrease in egg production is unacceptable to industrial producers, so birds are either killed and sold as meat, or a forced molt is conducted. Hens are denied food and water to force them to produce more eggs. Forced molting involves withholding food, water, or both from chickens for a period of time, along with decreasing the hours of light within the barn. This starvation period halts the reproductive cycle, reduces body mass, and causes feathers to fall out. After the starvation period, chickens begin to produce eggs at even higher rates. Though intended to replicate natural processes, forced molting causes stress and discomfort to chickens*".[146]

12. Light Manipulation

The Humane League highlights:

> "*Because the number of daylight hours affects egg production in laying hens, light can be manipulated to artificially induce birds into ramping up production. Hens' bodies are attuned to reach maximum egg-laying capability when there are 16 hours of daylight during summer, and in springtime at 14 hours per day. Industrial egg production facilities often provide artificial light in order to mimic a full 16 hours of daylight for as much of the hen's life as possible*".[147]

BEAK TRIMMING AND DE-BEAKING

Hens use their beaks to explore and preen in nature, yet it is seen by commercial Layer Hen farmers as a behaviour that could cause damage within the flock. The act of pecking at other birds, particularly when confined to cages, is known as injurious pecking. To avoid this, the beaks of Chicks younger than 10 days are trimmed using the hot blade method. This action is incredibly cruel and harmful to the bird and causes unreasonable pain. The beak is a sensitive organ used in exploration of the environment, and trimming it hinders this natural behaviour.[148]

Beak trimming, sometimes called "beak tipping", is often carried out on Chicks to reduce the risk of feather pecking injuries in later life.[149]

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145 RSPCA: https://www.rspca.org.uk/adviceandwelfare/farm/layinghens/keyissues.
146 The Humane League: https://thehumaneleague.org/article/battery-cages.
147 The Humane League: https://thehumaneleague.org/article/battery-cages.
148 Ben-Mabrouk J, Mateos GG, de Juan AF, Aguirre L, Cámara L. Effect of beak trimming at hatch and the inclusion of oat hulls in the diet on growth performance, feed preference, exploratory pecking behavior, and gastrointestinal tract traits of brown-egg pullets from hatch to 15 weeks of age. Poult Sci. 2022 Sep;101(9):102044. doi: 10.1016/j.psj.2022.102044. Epub 2022 Jul 3. PMID: 35926352; PMCID: PMC9356171.
149 RSPCA: https://www.rspca.org.uk/adviceandwelfare/farm/layinghens/keyissues.

Egg-Truth.com reports:

> "*De-beaking is often done by using heated guillotines or infra-red laser operated blades utilizing temperatures up to 1500 degrees F. A chick's beak is known to have an extensive nerve supply and are a complex, functional organ. Some physiological changes can occur in these cut nerves and damaged tissue that can lead to acute and long-term pain. This in turn can lead to behavioural issues, reduced social activity, lethargy and changes to guarding behavior. It can also result in reduced feed and water intake and thus dehydration and illness due to a weakened immune system*".[150]

DE-TOEING OR TOE CLIPPING

Toe trimming, also called toe clipping, is the amputation of the ends of a bird's toes to eliminate the toenails. This is done to reduce carcass scratching.[151] While it is prevalent in the broiler industry it is also sometimes practiced in the Egg Industry. Toe clipping may cause neuromas (a benign tumour of nerve tissue that is often associated with pain or specific types of various other symptoms).[152]

OVERSTOCKING

Due to the requirements to produce as many animals and products as possible with the least amount of resources, many animals are often overstocked in spaces unsuitable to house so many animals. Overstocking of animals leads to a plethora of welfare issues and can increase injury, diseases, mortality rates and cause other issues.

MALE CHICK CULLING

Since male chickens cannot lay eggs, they are considered useless by the Egg Industry and often killed in the most horrific ways, often on the day that they are born. Up to eight billion male Chicks born in the Egg Industry are killed worldwide every year. In the US alone, 30,000 freshly hatched male Chicks are killed every hour; approximately 300 million each year.[153] It is unclear how many male Chicks are killed in South Africa each year.

At commercial hatcheries, professional chicken sexers are trained to distinguish between the male Chicks, called "Cockerels" and the female Chicks, the "Pullets" or hens. These male Chicks are often a different breed of chickens than those used for meat, and therefore not suitable to be used as "broilers".

150 Egg Truth: https://www.egg-truth.com/life-of-a-hen.

151 https://ohio4h.org/sites/ohio4h/files/imce/animal_science/Poultry/Toe%20Trimming%20of%20Turkeys%20or%20ChickNens%20in%20Small%20and%20Backyard%20Poultry%20Flocks%20-%20eXtension.pdf.

152 National Library of Medicine: https://www.ncbi.nlm.nih.gov/books/NBK549838/.

153 https://corporatesocialresponsibility.us/in-ov do-sexing.

The ways in which these male Chicks are killed can include suffocation; maceration; dumping; electrocution; cervical dislocation and gassing and are elaborated on in the table below.[154]

- **SUFFOCATION:**
  - **trapped inside plastic bags, the Chicks are left to gasp for air—a fate many would consider unimaginable for newborn kittens or puppies.**
- **ELECTROCUTION:**
  - **subjected to electric currents, the tiny Chicks are shocked to death.**
- **CERVICAL DISLOCATION:**
  - **in the hands of factory workers, the baby Chicks are decapitated one at a time, their delicate necks stretched to breaking.**
- **GASSING:**
  - **subjected to high quantities of carbon dioxide, a gas extremely painful to birds, the newborn Chicks feel their lungs burn until they lose consciousness and die.**
- **MACERATION:**
  - **Tossed onto conveyor belts, the innocent Chicks fall into a grinder, which shreds the baby birds alive with sharp metal blades.**
- **DUMPING:**
  - **Male Chicks have also been found dumped at refuse sites whilst still alive.**

OTHERS

There are various other Cruel Practices involved in the Egg Industry not further discussed, such as forced vaccinations.[155] There are several undercover investigations showing the cruelty inherent in the Egg Industry, including a recent example from Zimbabwe from a farm that allegedly supplies to Pick n Pay.[156]

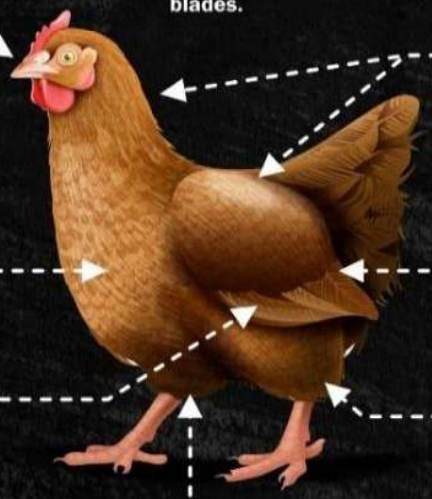
154 https://thehumaneleague.org/article/chick-culling.
155 https://www.egg-truth.com/life-of-a-hen.
156 https://www.tiktok.com/@eaaw_organisation/video/7230729917258812678.

ANATOMY OF SUFFERING:
CRUELTY IS PART OF THE EGG INDUSTRY

ANIMAL LAW REFORM
SOUTH AFRICA

OPEN WING ALLIANCE®

Today, modern day "factory farms": breed animals with the use of modern industrial methods are aimed at optimising use of space and other resources expedite animals natural growth cycle minimise spending to maximise production and output.[1] = harmful practices and welfare concerns including:



DEBEAKING

Removal of parts of the hens' beaks, often done without any anaesthesia or pain killers including using hot blades.

STOCKING DENSITY

Many hens in tiny battery cages stacked on top of one another in a massive, enclosed building. In South Africa, a single layer hen is permitted to only be afforded 450cm3 space inside a cage.[2]

INJURIES

Chicken's combs and wattles can be injured and damaged by other chickens or due to nutritional deficiencies, parasites, human handling and even diseases.

HORMONES

The release of stress hormones such as corticosterone or cortisol (CORT).

FEATHER PLUCKING AND CANNIBALISM

Harmful behaviours such as feather pecking (pulling feathers causing injury) and even cannibalism (flesh eating).

ANTIBIOTICS

Chickens are given antibiotics to minimise the risk of sickness and to assist production and growth.

ARTIFICIAL INSEMINATION

In order for a hen to lay a fertile egg, she either has to mate with a rooster or be artificially inseminated with the sperm of a male, usually using an "inseminating syringe".

FORCED VACCINATIONS

Due to the prevalence of diseases in chickens used in factory farms, they are forced to get a variety of vaccinations.

DISEASES

Susceptibility to a broad range of illnesses and diseases including: Mycoplasma gallisepticum; Mycoplasma synoviae; Salmonella Pullorum; S. Gallinarum; S. Enteritides and S. Typhimurium; Avian Influenza Leucosis; Avian encephalomyelitis; Egg Drop Syndrome; Newcastle disease and others including Avian Flu!

HIGH STRESS LEVELS

Exposure to a range of potentially stressful procedures during their first day of life including hatching in noisy incubators, manual sex sorting, vaccination and transport to the rearing farms.[3]

THESE ARE ONLY SOME OF THE WELFARE ISSUES EXPERIENCED BY CHICKENS AND HENS.

WE NEED TO DO BETTER!

1. Department of Agriculture Forestry & Fisheries Annual Report 2017/18 https://www.dalrrd.gov.za/Portals/0/Annual%20Report/AR_Final_28%20September.pdf (accessed on 21 January 2022)
2. The South African Poultry Association Abridged Code of Practice: Commercial Layers available at: https://www.sapoultry.co.za/pdf-docs/code-practice-commercial-layers.pdf
3. Hedlund, L., Whittle, R. & Jensen, P. Effects of commercial hatchery processing on short- and long-term stress responses in laying hens. Sci Rep 9, 2367 (2019). https://doi.org/10.1038/s41598-019-38817-y https://www.nature.com/articles/s41598-019-38817-y

PART C: LAYING DOWN THE LAW

REGULATION OF THE EGG INDUSTRY: THROUGH AN ANIMAL WELFARE LENS

I. INTRODUCTION

This Part C sets out the regulation of the Egg Industry in South Africa, specifically through an animal welfare and well-being lens. It sets out national policies, national laws, provincial laws, local laws, industry standards and international regulation. Regulations dealt with in other Pillars are not included here. As part of our Stakeholder Component (as contained in Section IV), information was requested from the Selected Stakeholders with regard to compliance with Relevant Legislation. This informed the development of main Criteria 3 (Non-compliance)[157] for purposes of the rating of Selected Stakeholders. In addition, information was requested from Selected Stakeholders with regard to any Adverse Findings. This informed the development of main Criteria 4 (Adverse Findings)[158] for purposes of the rating of Selected Stakeholders. In addition, recommendations have been made with regard to legal governance measures to ensure greater corporate accountability as further set out in Section V.

Although South Africa is home to some of the largest populations of unique and indigenous animals;[159] is ranked the third most biodiverse country in the world,[160] and houses hundreds of millions of farmed terrestrial animals, animal law as a separate distinct field of law remains largely underdeveloped.[161] This is beginning to change, propelled by the transformative constitutional regime discussed above. The country faces issues in respect of animal welfare including a lack of clear and specific legislation on animal welfare standards; governmental departments passing the buck on responsibility in respect of animal welfare; a lack of transparent and effective enforcement; insufficient education and judicial training for animal law, among other issues. Further issues in respect of animal welfare in the country include the recent developments in the Poultry and Agriculture Industry with initiatives such as the Poultry Master Plan. This initiative seeks to exponentially increase the production of animals including through the intensification of production methods, yet contains no parallel objective on ensuring or promoting animal welfare. In addition, this is to be considered against the context of a lack of existing

157 Main Criteria 3 relates to Selected Stakeholders presenting evidence of (non) compliance in respect of Animal Legislation, Environmental Legislation and related matters.

158 Main Criteria 4 relates to Selected Stakeholders presenting evidence of Adverse Findings.

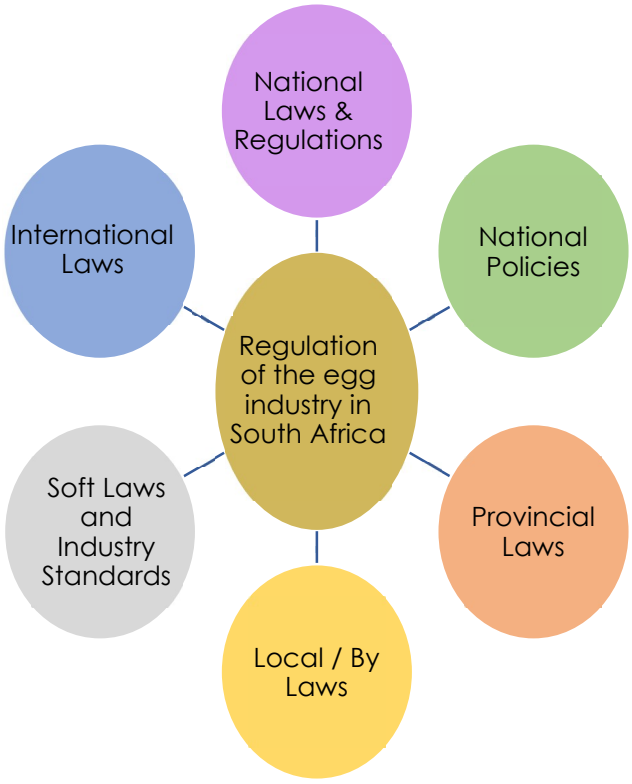
159 South Africa houses the largest population of rhino and ostriches in the world with large populations of elephants and lions. Many of which is due to continued intensive farming occurring in the country.

160 According to the Biodiversity Finance Initiative Website available at https://www.biodiversityfinance.net/south-africa.

161 A.P Wilson Animal Law in South Africa: "*Until the lions have their own lawyers, the law will continue to protect the hunter*" dA. Derecho Animal (Forum of Animal Law Studies) 10/1 (2019) - DOI https://doi.org/10.5565/rev/da.399.

uniform and accessible set of legally enforceable standards for animal welfare in the country and enforcement challenges, as further set out in Part D read with Appendix I.

The absence of clear recognition of animal law as a field more broadly as well as specifically relating to animal protection issues (such as those referenced above) extends across all areas of government (including the executive, legislature and the judiciary), in the animal protection sector as well as in the legal profession. This is illustrated through the general lack of animal law practitioners, animal law courses at universities, animal law organisations and work, as compared to the rest of the world. This situation presents a barrier for the proper development, implementation and enforcement of animal welfare standards, specifically in realms where animals are confined and reared for human use, such as the poultry and Egg Industry.



Representation of regulation of the Egg Industry in South Africa

Next, some of the most relevant governance tools are discussed in further detail. These should be understood against the backdrop of the Constitution.

II. NATIONAL POLICIES

1. THE POULTRY SECTOR MASTER PLAN

South Africa does not currently produce enough poultry products to meet the demand of its consumers within the country.[162] As a result, South Africa has resorted to the importation of poultry from other countries, often at a cheaper price than local competitors.[163] On this basis, the Poultry Sector Master Plan (more commonly known as the Poultry Master Plan) was adopted by the Ministers of **DTIC** and the **DALRRD** respectively.[164]

The Poultry Sector Master Plan aims to "provide a framework for the determined effort to grow the output (and jobs) in the industry through a number of measures that will be implemented over a number of years.".[165] It contains various objectives, namely the stimulation of local demand, the increase in poultry production, the boosting of poultry exports and the protection of the domestic chicken industry.

The Plan further aspires to transform the sector by increasing the number of new and emerging commercial farmers who will be contracted by bigger players in the industry to supply chickens.[166] Attainable targets of the Poultry Sector Master Plan include the increasing of broiler production by 1.7 million by 2023, which is roughly 9% within the three year period from publication of the plan.[167]

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162 According to the Land Banks May 2022 Poultry Industry Insight Report, South African poultry producers are unable to meet the demand for poultry products by the local consumer. As a result, the country has imported from various countries. Amongst these countries is Australia, which imports chicken thighs at a rate of R6.89/kg. 'Cheap poultry imports damage local industry'.

163 The South African International Administration Commission (ITAC) imposed Provisional Anti-Dumping Duties Against bone-in Chicken imports from Brazil, Denmark, Ireland, Poland and Spain. This anti-dumping duty is provisional from January 2022 until June 2022. South Africa has previously made announcements of this nature. In August 2021, anti-dumping duties were announced for bone-in chicken imports from the Netherlands, Germany and the United Kingdom. With these announcements, South Africa is now applying anti-dumping duties to nine countries which collectively represent all exporters of bone-in chicken portions to South Africa. South Africa's imports of poultry have declined by 63 percent in the past three years with these duties threatening to lower these imports even further. As a result of this, consumer prices may further increase resulting in economically disadvantaged South African consumers either spending more income on food or making an alternative choice. Summarised from South Africa Imposes Provisional Anti-Dumping Duties Against Bone-in Chicken Imports from Brazil Denmark Ireland Poland and Spain.

164 Various stakeholders contributed to the Poultry Sector Master Plan namely, the DTIC and DALRRD, local poultry producers through the South African Poultry Association (SAPA), poultry traders through the Association of Meat Importers and Exporters (AMIE) and Emerging Black Importers and Exporters of South Africa (EBIESA), organised labour through the Food and Allied Workers Union (FAWU), interested parties including the South African Association of Meat Processors as well as Government entities, namely the Department of Health; The Trade and Industry Policy Secretariat (TIPS), the Industrial Development Corporation (IDC); the Land Bank; and the International Trade Administration Commission (ITAC).

165 Available at https://www.dalrrd.gov.za/docs/media/SA%20Poultry%20Sector%20Master%20Plan%201.pdf.

166 This is however contested by the proponents of the plan itself who argue that the best way to bring these emerging players into the industry is with a subsidy of R1 billion to develop local producers. Available at https://www.iol.co.za/business-report/economy/farmers-in-the-country-call-for-an-overhaul-of-the-poultry-master-plan-68759583-bb59-4b52-aef5-5784ea8d962a.

167 DTI, 2019. The South African Poultry Sector Master Plan.

Overall, this Plan seeks to develop and facilitate a massive increase in local poultry production along with a decrease in poultry and poultry product prices, which will result in even further increase of poultry consumption locally.[168] Most notably, animal welfare organisations, Non-Profit Organisations ("**NPOs**") and the NSPCA were not listed as contributors in the Poultry Sector Master Plan.[169] This omission is evident throughout this Plan as the concept of animal welfare is not included, highlighted or emphasised. Despite this, the state is moving forward on the implementation of this Plan in an effort to meet the growing demand of poultry products and further lower its overall cost for the consumers.

Recently, the high cost and unreliability of electricity supply has been highlighted as a key challenge to the implementation of the Poultry Sector Master Plan.[170] The severe loadshedding challenges have caused a ripple effect on the poultry supply chain that has resulted in the unfortunate culling of millions of one-day old chickens.[171] These sobering numbers again demonstrate the general lack of animal welfare considerations in existing legislation and regulations which permits the culling of chickens without consideration of more humane alternative options, or accountability for such practices.

EGG MASTER PLAN

Reference is made in several different statements and reports by SAPA to an "Egg Master Plan". Despite conducting searches online, this policy document could not be found, and it is unclear whether it has been finalised at this stage. The most recent information found from the SAPA 2021 Annual Report appears to indicate that this is still in progress:

> "*SAPA partnered with the DTIC in the development of a master plan for the egg sector value chain, which would provide strategic intervention areas for the Egg Industry. The further development of this plan now falls under DALRRD*".

AGRICULTURE AND AGRO-PROCESSING MASTER PLAN

The Egg Industry must further be considered against overarching national policies such as the Agriculture and Agro-Processing Master Plan ("**AAMP**") signed in May 2022.[172] In the first multi-stakeholder process and strategy plan, commodity-specific transformation targets, jobs, exports and

168 Page 21 of M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa's Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at: http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf.

169 Available at https://www.dalrrd.gov.za/docs/media/SA%20Poultry%20Sector%20Master%20Plan%201.pdf.

170 Page 24 of the DTIC Engagement with Stakeholders Presentation of 29 November 2022, available at http://www.thedtic.gov.za/wp-content/uploads/Poultry-Master-Plan.pdf.

171 See https://www.citizen.co.za/business/10-million-chickens-dumped-load-shedding/.

172 According to the Department of Agriculture, Land Reform and Rural Development's official newsletter for May 2022, the AAMP builds on the work that has been done since 2001 when the department first developed the Strategic Plan for South Africa's agricultural sector, the Sector Plan, Operation Phakisa and the National Development Plan. Retrieved from https://www.dalrrd.gov.za/docs/agrinews/May%202022.pdf.

investments, growth rates are included.[173] The AAMP has the vision of a globally competitive agricultural and agro-processing sector driving inclusive production to develop rural economies, ensure food-security and create employment.[174] The objectives of the AAMP provides for various ambitions;[175] however, fails to provide any objectives in relation to livestock animal welfare nor the recognition of sentience or intrinsic value of these animals.

OTHER

Additional government strategies seek to increase other animal sourced foods, including from game animals, as can be seen through the Draft Game Meat Strategy released in 2022 by the DFFE.[176]

There are several other important and relevant national policies and plans that are not discussed further in this Initial Report, but which implicate the Egg Industry in South Africa. These must be considered in further detail in further iterations. These include, but are not limited to, the National Development Plan (NDP)[177] and Agricultural Policy Action Plan (APAP).

These strategies and plans illustrate an overarching intent by the government to increase animal sourced foods as a solution to several of its goals as well as the country's challenges (such as in relation to food insecurity and unemployment). This background is pertinent when considering the future of the Egg Industry in the country and what this intensification means for animal welfare.

III. NATIONAL LEGISLATION

This section sets out the relevant legislation in respect of animal welfare in South Africa. This section elaborates on the Animal Protection Act 71 of 1962[178] (APA), the Agricultural Products Standards Act 119 of 1990,[179] the Veterinary and Para Veterinary Professions Act 19 of 1982 ("**VPPA**"),[180] the Animal Improvement Act 62 of 1998[181] ("**AIA**") as well as relevant provincial legislation and by-laws.

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173 Page 33 of M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa's Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at: http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf.

174 Vision retrieved from https://www.namc.co.za/aamp/.

175 The AAMP lists the objectives of the master plan to include the promotion of transformation in agriculture and agro-processing sectors; increasing food security in South Africa; accelerating the opening of markets with better access conditions; inclusive employment, improved working conditions and decent pay for those in the sector; increasing farming community safety and reduce stock theft and enhance resilience to climate change and management of natural resources. Full list available at https://www.namc.co.za/aamp/.

176 On the 18th of July 2022, The Department of Forestry, Fisheries, and the Environment published the Draft Game Meat Strategy for public comment. As stated by the Minister of DFFE, Barbara Creecy, 'The strategy and implementation plan are aimed at creating a formalised, thriving and transformed game meat industry in South Africa that contributes to food security and sustainable socio-economic growth' available at https://www.dffe.gov.za/mediarelease/creecy_gamemeatstrategy_publiccomments.

177 https://www.gov.za/issues/national-development-plan-2030.

178 https://www.gov.za/documents/animals-protection-act-22-jun-1963-0000.

179 Available at: https://www.gov.za/documents/agricultural-product-standards-act-6-mar-2015-1127.

180 Available at: https://www.gov.za/sites/default/files/gcis_document/201503/act-19-1982.pdf.

181 Available at: https://www.gov.za/documents/animal-improvement-act.

The Societies for the Prevention of Cruelty to Animals Act 169 of 1993[182] ("**SPCA Act**") is mentioned in Part D on enforcement below. The Animal Diseases Act 35 of 1984,[183] the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 ("**FCD Act**"),[184] and the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act No. 36 of 1947[185] are discussed under the Food Health and Safety Pillar.

For purposes of this Section, due to scope, several acts have not been discussed which are applicable to farmed animal regulation including but not limited to, the Animal Identification Act 6 of 2002,[186] and the Conservation of Agricultural Resources Act 43 of 1983.[187]

The University of Witwatersrand maintains a complete list of agricultural legislation including past legislation.[188]

ANIMALS PROTECTION ACT

The main legislation relating to animal welfare in South Africa is the 60-year-old APA. The APA has the purpose of consolidating and amending the laws relating to the prevention of cruelty to animals. It is applicable to animals **including chickens** and it defines "animals" as "any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal, wild bird or reptile which is in captivity or under the control of any person".[189]

The APA is a criminal statute in that it provides for a list of offences in respect of animals including, among others, [190] cruelly overloading, beating, kicking, ill-treating, neglecting, infuriating, torturing or maiming of any animal;[191] confining any animal unnecessarily or under conditions that causes the animal unnecessary suffering, or results in the placement of animals with inadequate space, ventilation, light, protection or shelter from heat, cold or weather;[192] and in instances of owners of any animal, deliberately or negligently keeping the animal in dirty, parasitic conditions or allowing the animal to become infested with external parasites.[193] These provisions extend to Layer Hens as well as male Chicks.

182 Available at: https://www.gov.za/documents/societies-prevention-cruelty-animals-act.
183 Available at: https://www.gov.za/sites/default/files/gcis_document/201503/act-35-1984.pdf.
184 Available at: https://www.gov.za/documents/foodstuffs-cosmetics-and-disinfectants-act-2-jun-1972-0000.
185 Available at: https://www.gov.za/documents/fertilizers-farm-feeds-seeds-and-remedies-act-28-may-2015-1101.
186 Available at: https://www.gov.za/documents/animal-identification-act.
187 Available at: https://www.gov.za/documents/conservation-agricultural-resources-act-1-apr-2015-0926.
188 Available at: https://libguides.wits.ac.za/c.php?g=145268&p=952475.
189 Section 1(i) of the APA.
190 The other offences listed in the APA include unnecessary starvation, underfeeding, exposing any animal to poison or poisoned fluid or edible matter except for the destruction of vermin; conveying or carrying any animal that would cause unnecessary suffering, animal fighting and abandoning of the animal.
191 Section 2(1)(a) of the APA.
192 Section 2(1)(b) of the APA.
193 Section 2(1)(e) of the APA.

The APA was enacted during the apartheid regime when racial and segregation laws were in force. With the advent of constitutional democracy, many apartheid era laws were repealed, amended or completely replaced in order to be brought in alignment with the Constitution.[194] However, this is not the case with the APA. There are many criticisms with the APA[195] which are not expanded on, but discussed elsewhere.[196]

Section 24 of the Constitution, which provides for the environmental right[197] and, as discussed above, has since been interpreted to link animal conservation to the intrinsic value of animals. Unfortunately, this extraordinary constitutional recognition of intrinsic value has not yet influenced how the APA is interpreted and applied by Relevant Authorities. Furthermore, the recognition of the Five Freedoms and the subsequent Five Domains has not influenced the interpretation and application of the APA. In addition, the terms "well-being", "welfare", "intrinsic value" and "sentience" are absent from the APA. The APA continues to be largely predicated on viewing animals as property and a commodity: a problematic stance in relation to our relationship with animals and the level of protection afforded to them. Despite being outdated, the APA remains the benchmark of animal protection law, with enforcement measures focused largely on upholding its provision.[198]

Although the APA offences are relatively comprehensive and have been generally supported by various animal organisations and activists, the outdated understanding of the APA and its vagueness in relation to several key terms enable harmful treatment of animals to continue. Crucially, one of the main questions which would arise in a discussion around the potential commission of an offence is

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194 Section 2 of the Constitution of the Republic of South Africa, 1996 ("Constitution") provides for the supremacy clause which states "This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled".

195 A.P Wilson Animal Law in South Africa: "Until the lions have their own lawyers, the law will continue to protect the hunter" dA. Derecho Animal (Forum of Animal Law Studies) 10/1 (2019) - DOI https://doi.org/10.5565/rev/da.399; and Centre for Environmental Rights & Endangered Wildlife Trust: Fair Game. Available at https://cer.org.za/wp-content/uploads/2018/06/CER-EWT-Regulation-of-Wildlife-Welfare-Report-25-June-2018.pdf. and Bilchitz D and Wilson A 'Key Animal Law in South Africa' in Routledge Handbook of Animal Welfare 1 ed (2022) 433.
https://nspca.co.za/meadow-feeds-assists-nspca/.

196 For more information on animal law A.P Wilson Animal Law in South Africa: "Until the lions have their own lawyers, the law will continue to protect the hunter" dA. Derecho Animal (Forum of Animal Law Studies) 10/1 (2019) - DOI https://doi.org/10.5565/rev/da.399 ; and Centre for Environmental Rights & Endangered Wildlife Trust: Fair Game. Available at https://cer.org.za/wp-content/uploads/2018/06/CER-EWT-Regulation-of-Wildlife-Welfare-Report-25-June-2018.pdf. and Bilchitz D and Wilson A 'Key Animal Law in South Africa' in Routledge Handbook of Animal Welfare 1 ed (2022) 433.

197 Section 24 of the constitution provides:
Everyone has the right -
a. to an environment that is not harmful to their health or well-being; and
b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
i. prevent pollution and ecological degradation;
ii. promote conservation; and
iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

198 This will be further elaborated here: The Role of Non-Profit Organisations (NPOs) and the NSPCA.

(problematically) not necessarily whether there is suffering, but rather whether such suffering is "unnecessary" or in some cases whether the activities are "reasonable" or have "reasonable cause". While there is not sufficient legal certainty around what "necessary" suffering is, given the availability of alternatives, Cruel Practices utilised in the Egg Industry are arguably not necessary and are not justifiable.[199] This is further exacerbated by the lack of enforcement measures, education and training in the judiciary regarding animal welfare.

In respect of offences, notably, section 2(2) of the APA states that for the purposes of subsection 2(1), namely the list of offences, the owner of any animal shall be deemed to have permitted or procured the commission or omission of any act in relation to that animal if by the exercise of reasonable care and supervision in respect of that animal he could have prevented the commission or omission of such act.

In addition to the offences mentioned, the APA, in section 10, also empowers the Minister to make regulations with respect to *inter alia* the method and form of confinement and accommodation of any animal or class, species, or variety of animals, whether travelling or stationary; and any other reasonable requirements which may be necessary to prevent cruelty to or suffering of any animal. To date, the Minister has not made any regulations in this regard, although this empowering provision is potentially useful for some of the proposed Recommendations in Section V of this Initial Report.

Testing the APA Against Cruel Practices Involved in the Egg Industry

It is arguable that many of the common practices or rather, Cruel Practices (as defined in our Glossary which includes Battery Cages, beak trimming, de-toeing, and/or overstocking within cages and in relation to male Chicks – culling) which occur within the Egg Industry are in contravention of the APA. This argument has however, not been specifically tested and leading the industry to believe that such practices are acceptable.

The below table contains various offences listed in the APA, and which could theoretically be viewed as offences having been committed in the Egg Industry as a result of Cruel Practices.

[199] David Bilchitz, *When is Animal Suffering 'Necessary'?* (2012) (27) Southern African Public Law 3-27, Available at SSRN: https://ssrn.com/abstract=2319419.

Notes to accompany the below table:

This theoretical position would, however, need to be tested in the court system as currently, Cruel Practices are widely utilised and not generally reported as "unnecessary cruelty", "unreasonable" or "without reasonable cause" by the NSPCA, SPCAs or other Relevant Authorities.

Additional Cruel Practices, outside of those defined which occur in the Egg Industry also arguably could also be considered as offences in terms of the APA. However, these common agricultural practices would need to be tested in the court system to determine with certainty whether they are in contravention of the APA.

*To be read in conjunction with other legislation, as required by the wording of the APA: "shall, subject to the provisions of this Act and any other law." For example, the VPPA and the rules in respect thereof.

RELEVANT SECTION OF THE APA	LISTED OFFENCE IN APA (Section 2) Extracted from Act and Emphasis added in each instance Relevant surrounding wording: "Any person who….[X] shall, subject to the provisions of this Act and any other law, be guilty of an offence…"	CRUEL PRACTICES (AS DEFINED) ARGUABLY A POSSIBLE CONTRAVENTION OF THE APA
2(a)	overloads, overdrives, overrides, illtreats, neglects, infuriates, tortures or maims or cruelly beats, kicks, goads or terrifies any animal	Battery Cages Male Chick Culling De-beaking De-toeing
2(b)	confines, chains, tethers or secures any animal unnecessarily or under such conditions or in such a manner or position as to cause that animal unnecessary suffering or in any place which affords inadequate space, ventilation, light, protection or shelter from heat, cold or weather	Battery Cages
2(c)	unnecessarily starves or underfeeds or denies water or food to any animal	Battery Cages
2(e)	being the owner of any animal, deliberately or negligently keeps such animal in a **dirty or parasitic condition** or allows it to become infested with external parasites or **fails to render or procure veterinary or other medical treatment or attention** which he is able to render or procure for any such animal in need of such treatment or attention, whether through disease, injury, **delivery of young** or any other cause, or fails to destroy or cause to be destroyed any such	Battery Cages

RELEVANT SECTION OF THE APA	LISTED OFFENCE IN APA (Section 2) Extracted from Act and Emphasis added in each instance Relevant surrounding wording: "Any person who….[X] shall, subject to the provisions of this Act and any other law, be guilty of an offence…"	CRUEL PRACTICES (AS DEFINED) ARGUABLY A POSSIBLE CONTRAVENTION OF THE APA
	animal which is so seriously injured or diseased or in such a physical condition that to prolong its life would be cruel and would cause such animal unnecessary suffering	
2(f)	uses on or attaches to any animal any equipment, appliance or vehicle which causes or will cause injury to such animal or which is loaded, used or attached in such a manner as will cause such animal to be injured or to become diseased or to suffer unnecessarily	Battery Cages Male Chick Culling De-beaking De-toeing
S2(i)	drives or uses any animal which is so diseased or so injured or in such a physical condition that it is unfit to be driven or to do any work	Battery Cages
S2(m)	conveys, carries, confines, secures, restrains or tethers any animal(i) under such conditions or in such a manner or position or for such a period of time or over such a distance as to cause that animal unnecessary suffering; or (ii) in conditions affording inadequate shelter, light or ventilation or in which such animal is excessively exposed to heat, cold, weather, sun, rain, dust, exhaust gases or noxious fumes; or (iii) without making adequate provision for suitable food, potable water and rest for such animal in circumstances where it is necessary	Battery Cages Male Chick Culling

RELEVANT SECTION OF THE APA	LISTED OFFENCE IN APA (Section 2) Extracted from Act and Emphasis added in each instance Relevant surrounding wording: "Any person who….[X] shall, subject to the provisions of this Act and any other law, be guilty of an offence…"	CRUEL PRACTICES (AS DEFINED) ARGUABLY A POSSIBLE CONTRAVENTION OF THE APA
S2(n)	without reasonable cause administers to any animal any poisonous or injurious drug or substance	Battery Cages Male Chick Culling
S2(q)	causes, procures or assists in the commission or omission of any of the aforesaid acts or, being the owner of any animal, permits the commission or omission of any such act	Battery Cages Male Chick Culling De-beaking De-toeing
S2(r)	by wantonly or unreasonably or negligently doing or omitting to do any act or causing or procuring the commission or omission of any act, causes any unnecessary suffering to any animal	Battery Cages Male Chick Culling De-beaking De-toeing

One example of a particular practice undertaken in respect of chickens (though not in the Egg Industry) did arise in a case from 2016, namely that of "dubbing". In *Eastern Cape Poultry Club v National Council of Societies for the Prevention of Cruelty to Animals*,[200] the legality of dubbing in show birds was in dispute. The practice of dubbing entails the removal of a chicken's combs, wattle and earlobes for show purposes, and is a harmful and mutilating, but common practice in the industry. A dispute arose regarding the legality of the practice, with the NSPCA opposing the practice, while the Eastern Cape Poultry Club (the "**Poultry Club**") sought to have the practice declared lawful.[201] The Poultry Club argued that if dubbing equated to maiming (the latter act being an APA offence), then many practices approved by the NSPCA, including dehorning, would also be considered maiming (and therefore unlawful). In response, the NSPCA relied on the South African Veterinary Council ("**SAVC**") rules[202] which expressly permitted the dubbing of day-old Chicks only and submitted that the act of dubbing which the Poultry Club sought to declare lawful, would constitute maiming (and was therefore contrary to what was permitted by the SAVC rules). The Poultry Club further argued that the practice was necessary for the health and welfare of the animals, to avoid injuries during fights and prevent frostbite.[203]

Ultimately, the court refused to declare dubbing either lawful or unlawful on three grounds.[204] The first was that the National Prosecuting Authority ("**NPA**") should have been a party to this case, and the second was that the relief sought by the Poultry Club was too wide and would require the court to comb through every potentially criminalising provision of the APA in determining whether dubbing was lawful. Lastly, the court reasoned that expert evidence would be required to analyse whether dubbing was in fact necessary for the health and well-being of these chickens.[205] On this basis, the application failed.[206] This resulted in an amendment to the Southern African Show Poultry Organisation rules regarding dubbing in show birds.[207] Although successful in respect of dubbing, other practices, such as many mentioned above, ought to also be regarded as "maiming". Similarly, cage confinement would arguably, when properly interpreted, be regarded as unnecessary confinement resulting in unnecessary suffering.[208]

This case is useful as it illustrates an example in terms of which an interested party may apply to the court for a declaratory order to get certainty on the law. Specifically, to approach the court to ask it to adjudicate in terms of a declaratory order, whether a common practice constitutes an offence in terms

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200 *Eastern Cape Poultry Club v National Council of Societies for the Prevention of Cruelty to Animals* (44057/2016) [2017] ZAGPJHC 283 (11 August 2017) ("*Eastern Cape Poultry Club*"). Available at https://www.saflii.org/za/cases/ZAGPJHC/2017/283.html.

201 At para 5.

202 Rule 4.B.1(4).

203 At para 11.

204 At para 12.

205 At para 13-15.

206 At para 16.

207 https://www.timeslive.co.za/news/south-africa/2017-08-23-lots-to-crow-about-for-sas-show-chickens/.

208 Section 2(1)(b) of the APA.

of the APA. In the above case, the interested party or applicant was the Eastern Cape Poultry Club who approached the court for a declaration that the practice of dubbing of poultry show birds does not contravene any provision of the APA.

Until legal certainty, for instance, through legislative reform, is provided as to exactly which practices are offences in terms of the APA in law, there is a need for more jurisprudence. Legal certainty would, hopefully, improve corporate accountability in respect of animal welfare issues - and ultimately serve to deter Corporations from acting with impunity for harms routinely committed as well as blatant disregard for the lives and suffering of sentient beings. This would strengthen accountability for related issues, such as environmental crimes in terms of NEMA. Enforcement in terms of the APA is discussed further in Part D below and the intersection between the APA and NEMA is discussed further in the Environmental Pillar.

UPDATES TO THE APA: A NEW ANIMAL WELFARE BILL

DALRRD has announced that a complete overhaul of the South African animal protection regime is underway in terms of a new proposed Animal Welfare Bill. The impetus for the development of the Bill was a 2018 Socio-economic Impact Assessment (SEIAS)[209] which mentions the following national strategic benefits expected to be derived from the modernised animal welfare legislation in the country:

- better animal productivity and health;
- better food safety and security;
- better ability to access international markets for animals and animal products, which are desired outcomes of the National Development Plan (NDP) and Agricultural Policy Action Plan (APAP).

A working group has been appointed to draft a new "Animal Welfare Bill" aimed at updating and consolidating all existing animal regulation into a single statute. Further, the appointed working group is constituted almost entirely of veterinarian representatives including from DALRRD and the provinces.[210]

However, despite these concerns, the drafting of the new Animal Welfare Bill presents the opportunity to include greater protection for animals and to rectify some of the current issues and challenges with the regulatory regime. Depending on the content and the ultimate form of the new legislation, some of the Recommendations included in Section V of this Initial Report could potentially be implemented.

209 https://static.pmg.org.za/RNW798-2021-03-24-Annexure_A.pdf.
210 https://pmg.org.za/committee-question/17570/.

SOUTH AFRICAN LAW FAILS CHICKENS

ANIMAL LAW REFORM SOUTH AFRICA

OPEN WING ALLIANCE

There are insufficient laws to protect chickens used for eggs and food in South Africa.

There are very few enforceable positive legal standards relating to chickens, other than before they are killed.

There is no specific ban on keeping chickens in tiny cages. Some industry standards exist, but these are voluntary and unenforceable.

Chickens are covered by the Animals Protection Act, 1962 (APA)

IN TERMS OF THE APA, IT IS AN OFFENCE TO:

...confine any animal unnecessarily or under such conditions or in such a manner or position as to cause that animal unnecessary suffering or in any place which affords inadequate space, ventilation, light, protection or shelter from heat, cold or weather.

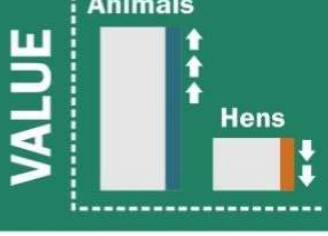
Yet egg laying hens are confined to tiny cages that cause them tremendous suffering – can we say this is 'necessary'? They do not have adequate space, light, ventilation or protection or shelter from heat, cold or weather.

...deliberately or negligently keep an animal in a dirty or parasitic condition / allow an animal to become infested with external parasites / fail to render or procure veterinary or other medical treatment or attention which an owner is able to render or procure for any such animal in need of such treatment or attention, whether through disease, injury, delivery of young or any other cause.

YET egg laying hens are often kept in dirty conditions, and do not receive the necessary veterinary and medical treatment.

...cruelly ill-treat, neglect, infuriate, terrify, torture or maim any animal.

YET chickens in the egg industry are often ill-treated and even maimed through practices such as de-beaking and suffer from terrifying experiences in order to produce eggs.



The South African Constitutional Court has recognised the intrinsic value and sentience of animals YET hens are treated as commodities and live and suffer in cages.

A number of countries have banned the use of cruel cages including Mexico, the United Kingdom; most of Europe, Israel and Canada with other countries such as Australia phasing out the use of battery cages in egg production.

IT IS TIME FOR SOUTH AFRICA TO DO THE SAME!

AGRICULTURAL PRODUCTS STANDARDS ACT

The purpose of the Agricultural Product Standards Act[211] is to provide for control over the sale and export of certain agricultural products and other related products; and for matters connected therewith.

In terms of section 3 of the Act, the Minister may prohibit the sale of a prescribed product:

(i) unless that product is sold according to the prescribed class or grade;
(ii) unless that product complies with the prescribed standards regarding the quality thereof, or a class or grade thereof;
(iii) unless the prescribed requirements in connection with the packing, marking and labelling of that product are complied with;
(iv) if that product contains a prescribed prohibited substance or does not contain a prescribed substance; and
(v) unless that product is packed, marked and labelled in the prescribed manner or with the prescribed particulars.

Class or grade, in relation to a product, means a class of that product determined according to the size, mass, measure, number, measurements, colour, appearance, purity, or chemical, physical or micro-biological composition, or another feature or characteristic, of the product concerned, or a unit or quantity thereof. This could include the method of manufacturing. This becomes relevant when one considers the methods of animal agriculture (such as the use of Battery Cages) to produce certain products (such as eggs). Accordingly, based on this reading, the Minister could prohibit the sale of eggs produced via Battery Cages.

While many aspects of this legislation could be discussed, one regulation in terms of this Act is of particular importance and relevance to the Egg Industry. This is because it sets out labelling requirements for eggs which include the method of production.

1. REGULATION R345 GRADING, PACKAGING AND MARKING OF EGGS*

*** Information contained in the following paragraphs insofar as they relate to Egg Lahave been amended in Version 3 of this Initial Report.**

The Regulations Regarding the Grading, Packing and Marking of Eggs Intended for Sale in the Republic of South Africa (the "**Egg Labelling Regulations**")[212] were published in 2020. In many respects, these Regulations are progressive and impose various restrictions on the sale of eggs,

211 Act 119 of 1990, https://www.gov.za/documents/agricultural-product-standards-act-6-mar-2015-1127.

212 Regulations Regarding the Grading, Packing and Marking of Eggs Intended for Sale in the Republic of South Africa published in Government Gazette No. 43108 of Notice R.345 on 20 March 2020, available at https://www.gov.za/sites/default/files/gcis_document/202003/43108rg11055gon345.pdf.

including significant requirements regarding the marking of egg containers. They serve as an important link between consumer protection and animal welfare, particularly for Layer Hens.

Although the Egg Labelling Regulations differentiate between Barn Eggs, Cage Eggs, and Free-range Eggs, displaying the production method on containers is optional. When producers choose to display this information, the label must clearly specify whether the eggs were produced by Layer Hens housed in a 'cage,' 'barn,' or were 'free range.' These inclusions help increase consumer awareness and support informed purchasing decisions, although they may still be misleading for consumers unfamiliar with the precise definitions and requirements for each term. However, making the egg production method labelling mandatory would ensure transparency and foster greater accountability in production practices, allowing consumers to make fully informed choices.[213]

Under regulations 8 to 11, all egg containers must still be marked with certain required particulars in the specified manner for sale within South Africa.

BARN EGGS

According to the Regulations, "barn eggs" means eggs which are produced by poultry as set out in regulation 8(3).

Regulation 8(3) states that eggs shall only be marked with the expression "barn eggs" if such eggs are produced by poultry that are not caged but are confined to a shed/ barn indoors, with a stocking density not exceeding 10 adult hens per square meter of available floor space.

BARN EGGS: Barn hens, although not living in Battery Cages, they receive only 0.1 m² of space per adult chicken.

CAGE EGGS

According to the Regulations, "cage eggs" means eggs which are produced by poultry as set out in regulation 8(4).

Regulation 8(4) states that eggs shall only be marked with the expression "cage eggs" if such eggs are produced by poultry that are **kept in cages** throughout their laying period: Provided that –

(a) cages shall be within a shed and may include a nest box, perch and a dust bath; and

(b) birds shall have adequate space to feed and lay.

213 Globally, countries like Taiwan have also started to mandate the disclosure of production methods on egg packaging. https://www.poultryworld.net/poultry/taiwan-mandates-conventional-cage-systems-label-on-eggs/.

CAGE EGGS: There is no requirement that cages must have a nest box, perch and a dust bath. There are no minimum space requirement set out for caged hens (as is set out for hens producing free range eggs or barn eggs). The term "adequate" is vague and problematic.

FREE RANGE EGGS

According to the Regulations, "free range eggs" means eggs which are produced by poultry as set out in regulation 8(2).

Regulation 8(2) sets out the requirements for Free Range eggs which includes that

(a) Eggs shall only be marked with the expression "free range" if such eggs are produced by poultry which:

(i) are not caged and are housed in a shed/ barn with a stocking density not exceeding **10 adult hens per square meter** of available floor space; and

Each adult hen receives only 0.1 m² of space on average!

(ii) have daily access to an outdoor range area not exceeding 5 adult hens per square meter.

Each adult hen receives only 0.2 m² of space outdoors on average!

Provided that:

(aa) such outdoor range shall:

(aaa) be accessible through openings in the side of the shed/ barn;

(bbb) be maintained in a manner that allows for a minimum of 50% living vegetation present at all times; and

(ccc) have adequate shade by way of trees or artificial structures at the rate of 4 square meters per 1000 adult hens; and

(bb) egg producers may during the high risk period for Highly Pathogenic Avian Influenza (HPAI) or during an outbreak of Virulent Newcastle disease (vND), house free range flocks indoors for a maximum continuous period of 24 weeks during a year: Provided further that–

(aaa) the commencement of the 24 week period shall start on the date on which the flock concerned is confined to the shed/barn;

(bbb) the producers shall on or before the first day of commencement inform the designated assignee that the flock is/will be confined indoors; and (ccc) each producer shall keep accurate records about the dates on which the flock is confined to the shed/barn and allowed to roam outdoors again. (b) If the 24 week confinement period referred to paragraph (a)(ii)(bb) above is exceeded, all eggs produced thereafter shall be marked and presented for sale as "barn eggs".

(c) Egg producers shall, on or before the first day of commencement of confinement, inform the channels of distribution used and their customers, that the flock concerned is being confined to the shed/barn under veterinary instruction, and shall advise their distribution channels and their customers to display notices advising the consumers of the confinement of the flock.

FREE RANGE EGGS:

Each adult hen receives only 0.1 m² of space on average in a shed or barn.

Each adult hen receives only 0.2 m² of space outdoors on average.

During outbreaks of diseases, free range flocks may be housed indoors for a maximum continuous period of 24 weeks during a year – close to half of the year!

Note that the Regulation also deals with several other aspects relating to eggs not further discussed herein.

Another important aspect of this Act is other prohibitions contained in Section 13: "Restricted particulars on containers and outer containers" which sets out a number of restrictions regarding what can be included on the outer container of the eggs. These are very progressive in terms of preventing Humane-washing and Greenwashing and are dealt with further in the Consumer Protection Pillar below.

Transparent labelling helps consumers become more aware of the welfare considerations of Layer Hens on the part of producers and retailers. This, in turn, may encourage consumers to change their purchases from cage systems to better welfare systems and similarly, encourage Corporations to change their sourcing from cage systems to better welfare systems, that not only improve Layer Hen welfare, but will concomitantly protect Corporation's commercial and reputational interests, and demonstrate their commitment to corporate accountability.

However, the existing regulation should provide a more appropriate reflection of what is regarded as "free range" so as to avoid potentially deceiving consumers into believing that they are making purchasing choices that are different to what they are in reality. For example, the regulation currently considers the placement of 10 adult hens per square metre as "free range". This description could be misleading to consumers who might believe that this term allows appropriate space. However, 1 square metre is incredibly small for this number of birds, and should not be regarded as "free range".[214] Furthermore, the period required for daily outdoor access is not specified, and even when these hens are outdoors, the outdoor range area cannot exceed 5 adult hens per square meter.

While these definitions of critical terms and other requirements such as in relation to what can be labelled as free-range, are problematic, the inclusion of requirements for labelling are progressive, particularly having requirements to label eggs as "caged eggs". It remains to be seen whether its implementation and enforcement by the DALRRD will be consistent.[215]

Several animal protection organisations were involved in the process to pass these regulations and commented on several iterations of the Regulations. Submissions made by the ALRSA[216] and Humane Society International Africa ("**HSI**"),[217] called for better conditions for Layer Hens, including more humane and hygienic housing conditions, improved labelling transparency and a policy decision to phase out the use of cages. Some of our recommendations were included in the final regulations.

MEAT SAFETY ACT AND POULTRY REGULATIONS

The Meat Safety Act ("**MSA**") does not apply to chickens utilised in the Egg Industry as it applies only to animals utilised for meat or animal products (from a carcass). Some provisions from this Act are discussed further under the Food Health and Safety Pillar. In the Poultry Regulations promulgated under the MSA, there are welfare provisions for birds utilised in the meat industry governing how they are to be treated before they die (such as during transportation and pre-slaughter). Given our focus on the Egg Supply Chain (i.e. egg production as opposed to meat production), these provisions are not discussed further.

VETERINARY AND PARA VETERINARY PROFESSIONS ACT (VPPA) AND RULES

The VPPA provides for the establishment, powers and functions of the SAVC; the registration of persons practising as veterinary and para veterinary; the control over the professions within the

214 Comments at https://www.animallawreform.org/wp-content/uploads/2019/08/13.-ALRSA-Comments-on-Egg-Labeling-Standards.pdf.

215 Despite the Egg Labelling Regulations being in force since 2020, we were unable to find any reporting from the DALRRD's website regarding the level of compliance thereof, or any indication of the enforcement actions that have been taken by the Department to date.

216 https://www.animallawreform.org/wp-content/uploads/2019/08/13.-ALRSA-Comments-on-Egg-Labeling-Standards.pdf.

217 https://www.hsi.org/our-work/.

practice and related matters.[218] The SAVC and the professionals governed by the VPPA have been stated to play a critical role in various animal regulations and laws in ensuring animal health and welfare.[219]

The VPPA extends the APA definition of "animal" to mean any vertebrate other than man,[220] and the Rules published in terms of the VPPA further expands upon the definition to mean "any living organisation, except humans, having sensation and the power of voluntary movement and requiring oxygen and organic nutrients for its existence".[221] These definitions are more inclusive than those contained in the APA, and offer a precedent to expand the application of animal welfare legislation to a wider category of being subjected to human use and abuse. For example, in contrast with the APA, the VPPA definition of "animal" specifically includes all aquatic species and all wild animals regardless of whether they are in captivity or in the control of another person.

The Animal Health Technician Rules in terms of the VPPA lists various services applicable to an animal health technician, including inspecting and reporting animal diseases,[222] formulating and implementing measures to prevent or control animal diseases,[223] formulating and implementing parasite control programmes in animals,[224] carrying out inspections on abattoirs and meat (and reporting accordingly),[225] and performing extension services (including training and education) to protect and promote the health and well-being of animals and humans.[226] These services are necessary for maintaining animal welfare and ensuring compliance with the APA and other applicable legislation. A Layer Hen farm, for example, would need to engage the services of a VPPA professional to prevent hens from living in parasitic conditions, failure of which would result in an offence under the APA. A VPPA professional would, in turn, be obligated to report on unfavourable conditions witnessed during inspections on site. A greater emphasis could be placed on the significant role that could be played by VPPA professionals in maintaining animal welfare on commercial egg farms, through the active and mandatory reporting of unfavourable conditions witnessed during inspections (including for example to the NSPCA or SPCAs, or potentially other bodies be it animal protection organisations and/or government and public bodies). This could arguably contribute to increased enforcement actions being taken by such entities,

218 https://savc.org.za/wp-content/uploads/2021/07/Integrated-Act-19-of-1982-Updated-22-Feb-2019.pdf.

219 M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa's Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at: http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf.

220 Section 1(i) of the VPPA.

221 Notice 1493 of 2022, published on 9 December 2022, available at https://savc.org.za/wp-content/uploads/2022/12/AHT-rules-9-Dec-2022.pdf (the "Animal Health Technician Rules"); and GNR. 1082 of 9 November 2015: Rules Relating to the Practising of Veterinary Professions, available at https://savc.org.za/wp-content/uploads/2021/07/Rules-9-Nov-2015.pdf (the "Practising Rules").

222 Section 2(1)(a).

223 Section 2(1)(b).

224 Section 2(1)(c).

225 Sections 2(1)(d) and (g).

226 Section 2(1)(i).

and result in better accountability from farmers, abattoirs and other role-players in the Egg Supply Chain dealing directly with animals.

Relatedly, the Animal Health Technician Rules[227] specifically require the professional to "protect and promote the health and well-being of animals and humans",[228] and to "adhere to animal welfare principles".[229] These provisions emphasise the significant role of a VPPA professional in the promotion for better animal welfare. Similarly, the Practising Rules[230] describes professional care as giving "due importance to the welfare of the patient"[231] and the failure to "attend to patient welfare while under the veterinarian's care without valid reason" is regarded as unprofessional conduct.[232] These references to the VPPA professional duty to act in a manner that respects animal welfare further reinforces the important role of the VPPA professional in the protection of animal welfare.

Notably, several practices are mentioned in the animal technician rules which can be carried out by an animal technician without a veterinarian, including practices in relation to cattle, sheep, and pigs, however chickens are not specifically mentioned in the Rules. However, several general practices mentioned could apply to chickens such as vaccination, artificial insemination, parasite control, etc.

Despite the inclusion of a few promising provisions, the VPPA faces the same criticism levied against the APA in that it is outdated legislation and was enacted prior to the current constitutional dispensation, with a lack of development in relation to global shifts in respect of animals and the recognition of their intrinsic worth. Furthermore, although the Animal Health Technician Rules expressly reference the WOAH (formerly OIE) guidelines in respect of diseases, it fails to record the WOAH standards on welfare of animals. In addition, as "animal welfare principles" are not specifically described in the Animal Health Technician Rules, it would be difficult to implement and enforce such obligations.

The Rules contain requirements for animal welfare specifically, for example: they require that an animal health technician shall at all times adhere to animal welfare principles; that "unprofessional conduct" includes *inter alia* neglecting to give proper attention to his/her clients and/or patients or in any way failing to attend or refer to patient welfare while under the animal health technician's care without valid reason; they require that personnel must be trained in the basics of aseptic technique, animal handling and welfare and such training must be relevant to the scope of practice; and have reporting requirements in respect of welfare.

ANIMAL IMPROVEMENT ACT ("AIA")

227 https://savc.org.za/wp-content/uploads/2022/12/AHT-rules-9-Dec-2022.pdf.
228 Section 2(1)(i).
229 Section 4(5)(d)(viii).
230 https://savc.org.za/wp-content/uploads/2021/05/034_Rules-Final.pdf.
231 Section 4(3)(c).
232 Section 1.

The AIA[233] governs the breeding, identification and utilisation of genetically superior animals in an effort to improve the production and performance of animals. It applies to any kind of animal, or an animal of a specified breed as declared by the Minister.[234] The AIA restricts certain actions in respect of animals and their genetic material. These include the prohibition on the collection, evaluation, processing, packing, storing or importing of embryos, ova or genetic material unless registered in terms of the AIA.[235] It further prohibits various administrative acts for the importation of animals and genetic material,[236] and false or misleading advertisements (including in respect of the performance or an animal and the sale or an animal or genetic material).[237] Lastly, the AIA empowers the Minister to prescribe requirements for the registration of a semen collector, inseminator, embryo collector, embryo transferor or import agent,[238] the administration of certificates and authorizations,[239] and the manner in which technical operations relating to the care and state of health of an animal kept in animal breeder society's centres during the harvesting of their genetic material may take place.[240] Contravention of the AIA regulations may result in a fine or imprisonment not exceeding six months.[241]

While the AIA includes some references to animal health, it is principally aimed at improving the production or performance ability of various animal populations. It is therefore not well-suited for promoting animal protection and welfare, as many of the animal improvement approaches contained in the AIA are contrary to acceptable international animal welfare principles, such as artificial insemination.

It is worth further considering and researching this Act against the context of the Poultry Industry in South Africa, specifically due to the fact that the Egg Industry is highly reliant on genetics for its existence. A few genetic breeds of chickens essentially maintain and control the supply of all other chickens used in the Egg Industry being: 1. Lohmann (from Europe imported by Lohmann SA) and 2. Hy-Line (from America imported by Hy-Line SA).[242]

The Egg Industry begins with the supply of chickens – either as Chicks generally one day old (Pullets) or at Point of Lay. In the latter case, these Hens are sourced from layer replacement rearing farms. In the case of Chicks, this begins with breeders and hatcheries who work exclusively with patented, imported breeds. Government reports indicate that there are **37 breeders** in South Africa.[243] In the

233 Act 62 of 1998.
234 Section 2(1) of the AIA.
235 Section 13(1) of the AIA.
236 Section16 of the AIA.
237 Section 18 of the AIA.
238 Section 28(1)(d) of the AIA.
239 Section 28(1)(a),(b) and (c) of the AIA.
240 Section 28(1)(e) of the AIA.
241 Section 28(3) of the AIA.
242 http://webapps1.daff.gov.za/AmisAdmin/upload/Egg%20Market%20Value%20Chain%20Profile%202021.pdf.
243 WOW Report.

Egg Industry, the preferred breeds are: Lohmann, Dekalb Amberlink and Hy-Line. South African regulations prohibit importing day old Chicks and fertilised eggs and therefore "grandparent" and "parent" purebred lines are imported and then subsequently provided to the hatcheries from which these Chicks are produced (see more in the DALRRD Breakdown below).

According to the WOW Report, "[*t]he Centre for Competition, Regulation and Economic Development says that only three poultry producers (Astral, Quantum Foods and Country Bird Holdings) are licensed by the international breed technology owners to import new breeding stock while all other producers have to source their genetics from these three companies*".[244] According to DALRRD however, in South Africa, there are two genetic breeds of chickens that lay eggs for the commercial market, Lohmann and Hy-Line. Both breeds are imported (by Lohmann SA and Hy-Line SA respectively).[245]

In many cases, broiler breeding operations are integrated with egg production, meaning in-house breeding operations supply eggs to an in-house hatchery where eggs are hatched. [246]

According to the WOW Report:

> *"In addition to being vertically integrated, dominant companies are also exclusive distributors and suppliers of the preferred genetic stock for both broiler and egg industries in South Africa. Astral Foods is the sole supplier of Ross 308 parent breeding stock while RCL is the source for Cobb 500 breed and Country Bird distributes Abor Acres genetic stock. High quality grandparent and parent layer genetic stock is also exclusively supplied and distributed by a few companies. Quantum Foods exclusively imports the Lohmann breed from Europe while Serfontein Poultry imports Dekalb Amberlink and Hy-Line SA distributes Hy-Line" breeds".*[247]

IV. BY-LAWS

Several issues relating to the Egg Industry are regulated at a local government level. Many of these are addressed in various municipal by-laws, depending on where an egg production facility is located. One representative example of issues regulated at a local level stems from Johannesburg By-laws, which we discuss below.[248]

244 WOW Report.
245 DALRRD, A Profile of the Egg Industry Value Chain 2021: http://webapps1.daff.gov.za/AmisAdmin/upload/Egg%20Market%20Value%20Chain%20Profile%202021.pdf.
246 WOW Report.
247 WOW Report.
248 A full list of the Johannesburg Bylaws can be accessed here: https://www.joburg.org.za/documents_/By-Laws/Pages/By-Laws.aspx.

Part 4 of the City of Johannesburg Metropolitan Municipality Public Health By-Laws,[249] with the "Keeping of Poultry" which includes permit requirements;[250] requirements for the premises;[251] and duties of the poultry keeper.[252]

The term "battery system" is referenced throughout the By-laws and is defined as "*the method of keeping poultry or rabbits in cages in either single rows or tier formation within a building or structure*". Thus, the By-laws normalise rather than restrict the Cruel Practice of Battery Cages, and associated harms discussed above.

Section 118 provides for the general provisions relating to the keeping of animals and states that:

> "*If at any time it appears to an authorized official that the keeping of poultry or rabbits on an erf or agricultural holding, in respect of which a permit has been granted, is likely to constitute a nuisance or danger to the public health, that official may - (a) cancel the permit; or (b) prohibit the keeping of such poultry or rabbits*".

In respect of the requirements for the sizing and keeping of poultry, this By-law prohibits any person from keeping poultry in premises not compliant with section 126 which sets out the requirements for a premises, certain provisions of which are included below for reference. In relation to a poultry house, section 126 prescribes the material to be used in the construction of the house walls, floors, upper floor, roofed platform, minimum size of floor area per grown fowl (of 0.20 m^2), and minimum aggregate floor area (of 4 m^2). In relation to a building or structure housing a battery system, it provides the specifications related to the walls, specifically that it be at least 2.4 m high and constructed with concrete, stone, brick, or other impervious material and must have a smooth internal surface. Furthermore, the building must be ventilated and lighted by means of mechanical ventilation and artificial lighting or natural ventilation and light through opening windows of an area not less than 15% of the floor area of the building or structure.

Specifically in respect of cages, the By-law provides "the cages of battery systems must be made of an impervious material; and if required by an environmental health officer, a tray of an impervious material must be fitted under every cage for the collection of manure". The By-law further addresses aspects including but not limited to water and feed.

Other By-laws in Johannesburg which may be applicable to the Egg Industry include, but are not limited to, Air Pollution Control By-laws; Waste Management By-laws; Water Services By-laws.

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249 (Published Under Notice No 830 In Gauteng Provincial Gazette Extraordinary No 179 Dated 21 May 2004) https://www.joburg.org.za/documents_/Documents/By-Laws/prom%20health%20by-laws%20as%20amended%202007%202008%202011.pdf.

250 Section 125 of the City of Johannesburg Metropolitan Municipality Public Health By-Laws.

251 Section 126 of the City of Johannesburg Metropolitan Municipality Public Health By-Laws.

252 Section 127 of the City of Johannesburg Metropolitan Municipality Public Health By-Laws.

There are several other By-laws for different areas which should be reviewed for specific provisions relating to animal agriculture including in the production of eggs. For example, the Cape Town Animal Keeping By-law, 2021[253] sets out general hygiene requirements for keeping of animals and poultry, but does not specify space requirements.

V. SOFT LAWS

Having highlighted some of the most significant "hard law" in relation to the welfare of chickens involved in the Egg Supply Chain, in this part we discuss non-binding standards, guidelines and regulations ("**soft laws**"). We consider the role of the SABS and Industry Association standards that operate as voluntary governance measures in the Egg Supply Chain. In relation to Industry Association Standards, we focus on the South African Poultry Association, Code of Practice of 2022 ("**SAPA COP**").[254] We then consider the significance of non-binding international laws, foreign laws, and third party certifications and standards.

I. SOUTH AFRICAN BUREAU OF STANDARDS

SABS is an agency of the DTIC established by the Standards Act 24 of 1945[255] to develop, promote and maintain South African National Standards (referred to as "**SANS**"); promote quality in connection with commodities, products and services; and render conformity assessment services and matters connected therewith. It develops in various industries. Industry compliance with SANS is regarded as a measure of quality. While non-compliance could be indicative of a lack of quality, there is not generally any form of penalty for non-compliance (unless a standard is incorporated into a law or permit condition, rendering it "hard law").

A series of animal welfare standards (known as the SABS standards) were developed for various types of animals ranging from wildlife to land farmed animals. Apart from SABS Standards that have been incorporated into law or in permit conditions,[256] the standards are voluntary in nature.

Although some SABS standards are freely available on their website,[257] the vast majority are only accessible to the public through the payment of a fee. The lack of public accessibility of these standards presents a serious barrier in terms of accessibility and wider public awareness. It further provides a barrier for advancing, maintaining and improvement of animal welfare in the country by promoting compliance with the standards.

253 https://openbylaws.org.za/za-cpt/act/by-law/2021/animal-keeping/eng/.
254 https://www.sapoultry.co.za/wp-content/uploads/2022/06/2022-SAPA-COP.pdf.
255 It continues to exist as a public entity, notwithstanding the repeal of the previous Act, and is currently governed by the Standards Act 8 of 2008.
256 Section 28(1) of the Standards Act.
257 SABS Website: https://store.sabs.co.za/.

In addition to accessibility, there are several issues with the SABS Standards. These include that they are voluntary and non-binding unless they are subsequently incorporated into legislation or into permit requirements. To date, none of the "welfare" SABS SANS for animals' welfare have been incorporated into legislation and according to the USA International Trade Association, only 53 of SABS's approximately 5,000 standards are mandatory.[258] The SABS SANS are drafted by technical committees, of which there is one for animal welfare, however, the majority of the committee is composed of industry representatives and only a few animal protection organisations are members.

While there are numerous codes for farmed animals including livestock, it was only recently that the SABS released Draft Standards of the Welfare of Chicken[259] (SANS 1758 Welfare of chicken (Gallus Gallus domesticus) in 2020 (the "**Draft Standards**"). Following the public comment period, the draft was withdrawn and is therefore not in force.

The Draft Standards clearly set out the industry's limited intention to advance the welfare of chickens in the Poultry Industry. Several NGOs (including ALRSA and HSI-Africa) made submissions[260] in respect of the Draft Standards including that they would further normalise cruelty to animals including through the use of Battery Cages;[261] that they are not aligned with scientific literature relating to chicken welfare; that they go against the global trend of moving away from certain Cruel Practices such as the culling of male Chicks through maceration, beak trimming, dubbing, toe trimming, and de-spurring.; and are generally regressive.

Several other non-welfare related standards are mentioned in the SAPA COP applicable to the Poultry Industry that are not further discussed.[262]

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258 International Trade Association: https://www.trade.gov/country-commercial-guides/south-africa-standards-trade.

259 SANS 1758ED21.

260 These submissions are not publicly available due to SABS copyright restrictions.

261 The Draft Standards allowed for the use of Battery Cages until 2039, and potentially thereafter. As of 1 January 2039, a minimum cage floor area of 550cm2 per bird will apply to all cage systems irrespective of the year of installation. The proposed floor allowance per hen of 450cm2 or 550cm2 does not allow for the "movement and expression of natural behavior" as set out in SANS 1758:201X. Even a floor allowance of 750cm2 per hen in enriched cage systems (SAPA Code of Practice 12.6 Appendix 6), does not properly allow for the "movement and expression of natural behavior". In addition to the space requirements hens also have other welfare needs, including for example access to litter, perches and nest boxes if they are to be able to express their core natural behaviours as identified by scientific research. Among other things, the stocking density requirements were wholly inadequate.

262 These include: Water Treatment Chemicals for Use in the Food Industry (SANS 1827); Cleaning Chemicals for Use in the Food Industry (SANS 1828); Disinfections and Detergent – Disinfections for use in the Food Industry (SANS 1853); Application of Pesticides in Food-Handling, Food-Processing and Catering Establishments (SANS 10133); Food Hygiene Management (SANS 1049); Food Safety Management Systems – Requirements for Organizations throughout the Food Chain (ISO 22000); Requirement for HACCP Systems (SANS 10330) mentioned in SAPA COP 22. https://www.sapoultry.co.za/wp-content/uploads/2022/06/2022-SAPA-COP.pdf.

II. INDUSTRY ASSOCIATION STANDARDS

As per our Glossary, an "Industry Association" is:

> "*[a]ny relevant association regulating any aspect of the Egg Supply Chain that supports and protects the rights of companies and employers and requires adherence to relevant welfare standards of the South African Bureau of Standards ("**SABS**") and/or other voluntary compliance measures, including, but not limited to, the South African Poultry Association ("**SAPA**") (both the SAPA Egg Association and SAPA Broiler Association), the Livestock Welfare Coordinating Committee ("**LWCC**"), the Sustainable Retailer Forum, the Animal Feed Manufacturer Association or any other poultry, egg or chicken organisation or association that may be relevant to animal welfare*".

As part of our Stakeholder Component (as contained in Section IV), information was requested from the Selected Stakeholders regarding Industry Associations. This informed the development of main Criteria 7 (Industry Associations)[263] for purposes of the rating of Selected Stakeholders.

The most significant Industry Association for purposes of this Initial Report is SAPA, a representative association which serves the interest of the Poultry Industry and acts as a medium and catalyst for any matter the Poultry Industry wishes to collectively address. SAPA further acts as the face of the Poultry Industry, addressing and maintaining a presence in society in relation to the Poultry Industry.[264]

SAPA has developed the 2022 SAPA COP, which sets out minimum standards for the well-being of poultry in commercial operations, research and educational facilities; and takes cognisance of the Five Freedoms[265] It is intended to "*serve as a guide for people responsible for the welfare and husbandry of domestic poultry and recognizes that the basic requirement for welfare of poultry is a husbandry system appropriate for their physiological needs*".[266] The SAPA COP is only applicable to members of SAPA and even then, only contains recommendations that are not binding or enforceable. As aforementioned, as industry standards, these are non-binding and voluntary. Previously, SAPA had several separate codes including: Code Broiler Production; Code Poultry Breeders and Day Old Chick Production; and Code Pullet Rearing and Table Egg Production. These appear to have been consolidated and replaced by the SAPA COP.

While welfare considerations are mentioned throughout the document (albeit superficially), various farming practices that are contrary to acceptable international animal welfare principles (such as the use of cruel culling methods including maceration, cervical dislocation of chicks, beak treatment, and artificial insemination), continue to be viewed as acceptable practices.

263 Main Criteria 7 relates to Selected Stakeholders presenting evidence of membership and compliance with an Industry Association.
264 South African Poultry Association 'Our mission' available at https://www.sapoultry.co.za/.
265 Page 5 of the 2022 SAPA COP.
266 Page 5 of the 2022 SAPA COP.

For example, the SAPA COP state that: "*The practice of professionally performed beak-treatment is internationally recognized as being a humane alternative to the appalling effects of cannibalism and feather pecking which is associated with intensive poultry production systems be they cage or any of the alternate systems being used*".[267] Additionally that: "*Gassing of chicks with CO2 or a mixture of CO2 and Argon gas is accepted in the process of disposal of nonsaleable chicks*".[268] And that "*High speed maceration of chicks using properly designed macerators is a practical and accepted method of euthanasia and the disposal of non-saleable chicks as well as live embryos and unhatched chicks that are still within the egg at the time of removing the rest of the chicks from the chick trays*".[269]

In relation to Battery Cages, SAPA notes that:

> "*A resolution was passed at Congress in June 2018 to keep cage floor space at 450 cm2 per hen and feed trough space at 8.5 cm per hen until 1 January 2039. For new cage installations after 1 January 2019, the feed trough space should be increased to 10 cm per hen and the floor space to 550 cm2. The decision to extend the deadline was based primarily on the prohibitive cost implications of adapting existing layer facilities. These recommendations have been incorporated in the Code of Practice document dated June 2018*".[270]

The SAPA COP does acknowledge the growing international pressure to move to more humane housing systems, and that countries like France have banned the gassing and crushing of male Chicks.[271] However, as indicated above, the culling of male Chicks continues to be promoted by SAPA and these Cruel Practices result in South Africa failing to enact and implement more progressive, humane practices that have already been implemented in countries such as Germany,[272] France,[273] Italy[274] and Switzerland,[275] and expected to be implemented in other countries like Brazil.[276]

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267 Section 8.1 of the SAPA COP.
268 Section 6.2.1 of the SAPA COP.
269 Section 6.2.2 of the SAPA COP.
270 SAPA 2021 Industry Profile.
271 Page 34 of SAPA's Egg Organisation Chairman's Report 2021, available at https://www.sapoultry.co.za/wp-content/uploads/2022/06/2022-SAPA-COP.pdf.
272 https://poultry.network/5318-germany-approves-law-to-ban-male-chick-culling-in-2022/.
273 https://www.agri-at.com/en/press/19-press-releases-in-ovo/204-france-passes-decree-banning-the-killing-of-chicks-from-2023-onwards.
274 https://www.eurogroupforanimals.org/news/italy-moves-forward-ban-selective-culling-male-chicks#:~:text=On%20the%2016th%20of%20December,campaign%20and%20outreach%20to%20policymakers.
275 https://corporatesocialresponsibility.us/in-ovo-sexing.
276 There is currently a draft law that hasn't been voted on yet in the state of Sao Paulo in Brazil to ban male chick culling. https://corporatesocialresponsibility.us/in-ovo-sexing. See also https://www.pashudhanpraharee.com/in-ovo-sexing-technologies-in-hatching-eggs-new-technology-could-prevent-the-mass-cull-of-male-chicks/.

The SAPA COP provides for specific density and space guidelines regarding the various housing systems for commercial Layer Hens, including cage systems,[277] enriched systems,[278] barn systems[279] and free range systems.[280] The cage density requirements for commercial Layer Hens in caged systems specifically distinguish between those installed before 1 January 2019, and those installed after this date. Pre-2019 cages may provide less space per bird and producers are given until 2039 to consider introducing larger space suggestions for cages installed post-2019.[281] The 30-year grace period is significantly long and it is submitted that it will contribute to delays in aligning with internationally accepted practices.

An important recent development in the cage free movement in South Africa is a recent communication sent out by the Consumer Goods Council of South Africa ("**CGSA**"),[282] whereby they indicate that: "South Africa is not yet ready for 100% cage-free systems". This statement is based on a study the SAPA Egg Board commissioned the National Agricultural Marketing Council (NAMC)

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277 Appendix 5.

278 Appendix 6 reads that:

- Each laying hen must have:
  - At least 750 cm2 of cage space
  - Access to a nest o Access to litter
  - Appropriate perches of at least 15 cm
- A feed trough that may be used by the birds without restriction must be provided. Its length must provide for feeder space of at least 12 cm per bird.
- The cages must have an appropriate drinker system
- There must be a minimum aisle width of 90 cm between tiers of cages and a space of at least 35 cm must be provided between the floor and the bottom tier of cages.
- Cages should be fitted with appropriate claw shortening devices".

279 Appendix 7 provides for 10 birds per square metre, 5 birds per feed trough, 40 birds per tube feeder, 1.25 birds per water trough, 100 birds per bell drinker, and 10 birds per water nipple.

280 Appendix 8 provides for similar internal space requirements as barn systems.

281 Appendix 5 reads:

"The cage density shall be as follows in accordance with the year of installation:

- For Cage Systems installed after 1 January 2019 the minimum cage floor area will be 550 cm^2 per bird in addition the minimum feed space allowed shall be 8.5cm per bird.
- For Cages Systems installed prior to 1 January 2019 the minimum cage floor area will be 450 cm^2 per bird and this will apply until January 2039.
- As of 1 January 2039, a minimum cage floor area of 550 cm^2 per bird will apply to all cage system irrespective of the year of installation.
- For cages installed prior to 1 January 2019 the minimum feed trough space shall be 8.5 cm per bird and this will apply until 1 January 2039.
- As of 1 January 2039 the minimum feed space allowed shall be 10 cm per bird irrespective of year of installation.
- As of 1 January 2039, Birds shall have access to at least two drinker points and manufacturer recommendations should be referred to and not be exceeded in this respect. The slope of the cage floor in cages installed after 1 January 2019 shall not exceed 8°".

282 The Consumer Goods Council of South Africa (CGCSA) is an industry association that represents Retail and Manufacturing member companies in a sector that is one of the largest sources of employment in South Africa. https://www.cgcsa.co.za/.

for, in order to assess the viability of the South African egg industry if a policy is introduced to introduce a cage-free system (the "**NAMC Study**").[283]

While a summary of a few pages was issued with the above statement, the entire study has not been made accessible to the animal protection sector. ALRSA requested the output of the NAMC Study as well as all reference materials and consultation records utilised in compiling the NAMC Study and on which reliance was placed, in terms of a PAIA request dated 25 January 2023. SAPA refused access to this document on 20 February 2023. SAPA relied on various grounds of refusal provided for in PAIA, stating that it refused to grant access for the protection of research information,[284] commercial information of a private body,[285] confidential information of third parties,[286] and commercial information of third parties. SAPA further stated "there is also no environmental risk or risk to public safety in any way relevant to the requested information". These refusals however were unsubstantiated as required in terms of PAIA and confirmed by the judiciary.[287]

On 7 March 2023, ALRSA requested such justification, noting that the disclosure of information in respect of a PAIA Request ought to be the default position, while exemption from disclosure is to be fully justified, with the onus falling on the body refusing access to prove that the relevant grounds of refusal apply. On 20 March 2023, SAPA's lawyers stated that:

> "*the information contained in the Reference Materials and Consultation Records was supplied on a confidential basis. Resultantly, the disclosure thereof would put the third parties whose information is contained therein at a disadvantage in contractual or other negotiations and would prejudice such third parties in commercial competition as contemplated in section 64 of PAIA*".

SAPA went on to state:

> "*the NAMC Study contains sensitive commercial information which, if disclosed, would place our client at a disadvantage in contractual and other negotiations and would prejudice the commercial competition of our Client as contemplated in section 68 of PAIA, this is particularly so as our client is currently engaging and working with, amongst others, the Minister of Agriculture, Land Reform and Rural Development in relation to the NAMC Study*".

Given that there are many organisations working towards better welfare standards for Egg Laying Hens, and that the CGSA in this communication has now stated that: "[*i*]*n the case of member companies not ready to economically ban cage eggs as part of their business, we urge them to share the attached letter and report (authorised by SAPA) with lobby groups coercing them to make/adopt this change*", the entirety of the NAMC Study should be made available for review. Furthermore, as millions of rands of money spent by the

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283 See "New regulations could sot the egg industry dearly" in Farmers Weekly, 19th August 2022 in https://www.farmersweekly.co.za/subscribe-to-our-magazine/attachment/fw22-08-19/.

284 Section 69 of PAIA.

285 Section 68 of PAIA.

286 Section 65 of PAIA.

287 *Company Secretary of Arcelormittal South Africa and Another v Vaal Environmental Justice Alliance* (69/2014) [2014] ZASCA 184; 2015 (1) SA 515 (SCA); [2015] 1 All SA 261 (SCA) (26 November 2014).

public on eggs are utilised by SAPA for research purposes by SAPA in terms of a statutory levy imposed by the Marketing of Agricultural Products Act, such a study impacts on matters in the public interest.

VI. INTERNAL POLICIES AND CORPORATE COMMITMENTS

A useful tool in the pursuit of mitigating many of the harmful impacts of industrialised animal agriculture, including the Cruel Practice of Battery Cages, is for Corporations to commit / sign on to "Cage Free Commitments". This is an important step by a Corporation confirming its intention, including to consumers, that it will do better for chickens within their supply chains. Few Selected Stakeholders provided evidence that they have done so.

According to ALRSA's definition, a Cage-free Commitment is a formal statement in which a private body pledges to eliminate the specific Cruel Practice of cage-confinement, primarily of Layer Hens, either immediately or through Progressive Measures.

Two commitments have been growing in recognition and popularity amongst animal welfare organisations and various stakeholders are the "Better Chicken Commitment" and "Cage-Free Commitment". These commitments arose from consumers becoming increasingly concerned about animal protection and where their food came from, with reports finding that consumers in the US were willing to pay at least one US dollar more for a "more ethical poultry product".[288]

Globally, thousands of Corporations have already made animal welfare commitments to end the use of Battery Cages.[289] This is largely due to the continued efforts of the OWA.[290] Founded in 2016, the OWA is a global coalition of organisations around the world working together to end the abuse of chickens worldwide. The first step of the OWA is to eliminate the use of Battery Cages by the industry. It aims to achieve this by engaging with various stakeholders and working with these stakeholders to develop, release and enforce their respective cage-free policy.[291] Currently, the OWA consists of over 90 member organisations in 67 countries worldwide[292] and thanks to their continued work, more than 2000 companies have announced corporate welfare policies to go cage-free.[293]

288 https://betterchickencommitment.com/why/.
289 https://safcei.org/2022-cage-free-egg-fulfilment-report/.
290 https://openwingalliance.org/organizations.
291 https://openwingalliance.org/organizations.
292 https://openwingalliance.org/impact.
293 https://drive.google.com/file/d/1wF_5T9u-rBA79ehMtrt3PUFPF6P920wy/view.

An up to date list of Cage-free Commitments is maintained by Chicken Watch.[294] Examples of this include global Cage-free Commitments from Toridoll,[295] Chatrium Hotels & Residence,[296] Planato Ovos,[297] Pague Menos Group,[298] RIU Hotels & Resorts,[299] and Green Me.[300] Other major companies such as Subway, Burger King, Sodexo, Compass Group, Accor Hotels, Metro AG and Marriott International have also made global cage-free pledges.[301] Metro, Canada's 5th largest retailer, became the first major retailer in the country to publicly recognise the Better Chicken Commitment and report progress toward its attainment.[302] The Better Chicken Commitment[303] was originally a set of welfare standards developed by animal organisations in the USA. This commitment is regarded as the leading set of welfare standards driving the food industry towards higher welfare practices. In time, this commitment has become an increasingly global commitment with the development of a European version and the "Australian-New Zealand Better Chicken Commitment".[304]

Although these commitments vary slightly from region to region, they share the same basic requirements: namely a shift to healthier and more natural breeds of chickens; more space afforded to chicken inside sheds; the improvement to chicken environment, with the inclusion of natural light, perches to rest on and objects to play with; less handling and stress at slaughter; and public accountability and transparency through reporting. The envisioned outcome of the Better Chicken Commitment is to ensure that chickens have more space to move around, are not placed in dirty litter, are able to rest on perches, and also able to be exposed to natural light (instead of spending 20 hours

294 Chicken Watch Website https://chickenwatch.org/progress-tracker/.

295 Toridoll is a Japanese Holdings Company that operates restaurants including Wok to Walk, Marugame Udon, and Boat Noodle. Toridoll has committed to sourcing 100% cage-free eggs in all its locations around the world by 2030, except for in Japan, where it will begin with transitioning 10 stores to cage-free by the end of 2022, 3% of stores by 2023, with subsequent annual increases thereafter. https://www.toridoll.com/en/csr/environment/animal-welfare/index.html.

296 Chatrium Hotels & Residences is a hospitality company with 7 locations across 3 countries, has announced a cage free commitment for all owned and franchised operations. This commitment is in alignment with Chatrium's 'Think First Think Earth' initiative to contribute to communities where they are located. Commitment available at https://www.chatrium.com/media/chatrium-hotels-residences-transitions-to-a-cage-free-egg-supply-chain.

297 Planalto Ovos has adopted a commitment to keep their egg farms cage-free and to never make investments in conventional facilities. https://www.planaltoovos.com.br/diferenciais.

298 Pague Menos Group operates with 34 stores and are a high-end market in São Paulo, Brazil. Commitment available at https://www.linkedin.com/posts/paguemenos_supermercadospaguemenos-fazsuavidamelhor-activity6973714874308677634-BrqR/?utm_source=share&utm_medium=member_desktop).

299 RIU Hotels & Resorts is a Spanish hotel chain with recognized national and international success. We estimate that this commitment will impact 375,000 hens and help the cage-free movement build momentum in countries where there are less resources for cage-free work like Bulgaria, Turkey, Tunisia, Morocco, Jamaica, the Bahamas, Aruba, Costa Rica, the Dominican Republic, Panama, Cape Verde, Mauritius, St. Martin and Sri Lanka. Commitment available at https://www.riu.com/riusponsible/en/sustainable-measures/.

300 Green Me, a Mexican company that owns two restaurants, located in Mexico City and Puebla, decided to announce a cage-free egg commitment. Green Me also committed to always have plant-based options available in their menu. https://www.instagram.com/p/CjDeSvpuZyW/?hl=en.

301 https://www.poultryworld.net/poultry/layers/companies-continue-to-meet-cage-freecommitments/.

302 https://corpo.metro.ca/en/corporate-social-responsibility/products-services.html#procurement.

303 https://betterchickencommitment.com.

304 https://betterchickencommitment.com/en-AU/.

daily under artificial lighting). Ultimately, it envisions the breeding of chickens with the health of the birds in mind instead of the stocking of these chickens and their by-products such as eggs as units for profits.[305]

According to SAPA, in November 2016, McDonald's South Africa pledged to transition to sourcing eggs from only cage-free producers by 2025. After pressure from local activists, it is reported that, in December 2021, the Spur Corporation committed to using only cage-free hens eggs in its restaurants by the year 2025.[306]

In 2018, the Famous Brands group agree to transition to sourcing 50 million eggs a year from cage-free egg suppliers by 2025. The Famous Brands' stable includes Wimpy, Mugg & Bean, House of Coffee and Steers. Indications are that this target will be reached several years ahead of target.

ALRSA encourages the Selected Stakeholders who have not yet done so, as well as other stakeholders operating within the Egg Industry in South Africa to make Cage Free Commitments.

For those Corporations who have already made such Animal Welfare Commitments, these must be fulfilled through transparent reporting on their progress and any deviations therefrom. Stakeholder engagement and compliance with PAIA is one way to monitor fulfilment.

III. INTERNATIONAL LAWS AND STANDARDS

International laws and standards, even if not binding, can be significant since the Constitution dictates that when interpreting the Bill of Rights, a court must consider international law.[307] Further, international laws and standards can influence policy and law developments.

South Africa is a member of the World Trade Organization ("**WTO**"); Food and Agriculture Organization of the United Nations ("**FAO**"); and WOAH among many other international body memberships. The export and import of eggs are discussed further in the Industry Component (Section II of this Initial Report).

On 2 March 2022, Member States at UNEA-5 adopted a pioneering resolution recognising the link between animal welfare, environment, and sustainable development.[308] Several important acknowledgements were made in this resolution including that animal welfare can contribute to addressing environmental challenges, promoting the "One Health" approach and achieving the Sustainable Development Goals ("**SDGs**"); that the health and welfare of animals, sustainable development and the environment are connected to human health and well-being; the increasing need

305 https://animalsaotearoa.org/2022/07/07/new-chicken-standards-nz/.
306 2021 SAPA Industry Profile.
307 Section 39(1) of the Constitution.
308 https://wedocs.unep.org/bitstream/handle/20.500.11822/38632/L.10.REV.1%20-%20Draft%20resolution%20on%20the%20animal%20welfare%e2%80%93environment%e2%80%93%20sustainable%20development%20nexus%20-%20English.pdf?sequence=1&isAllowed=y.

to address these connections through the One Health approach, among other holistic approaches, and also that there is a strong body of science supporting animal welfare.

This resolution once again emphasizes that the protection of the environment (and accordingly human rights to have the environment protected) is linked with animal welfare.

A. WOAH (FORMERLY OIE) Standards

DRAFT LAYER CODE

The WOAH has proposed one notable standard relating to the Egg Industry for the keeping of Laying Hens. Below are extracts of comments by SAPA and the NSPCA, respectively, about these draft WOAH Standards.

According to SAPA,

> "*The World Organisation for Animal Health (OIE) has, over the past few years, been drafting welfare standards for the keeping of laying hens. A revised draft of the OIE chapter on Layer Hen housing and welfare was distributed to members of the Egg Organisation Board for their input in early 2021 and, in July, a letter containing eleven proposed amendments was sent to the OIE through the state's Chief Veterinary Officer and the IEC. Although the standards are not legally binding, member countries have agreed in principle to write the standards into domestic law. With increasing global pressure from animal welfare groups for the discontinuation of caged housing systems, it is of vital importance that a compromise is reached. The OIE standard will eventually impact on local producers. Businesses may face negative consequences if they do not recognise, evaluate and respond to global trends effectively and in good time. Some local producers are already restructuring their businesses to take advantage of changes in the global industry and NAMC is involved in investigating the economic impact of transitioning to cage-free production in the South African context*".[309]

> "*Parallel to this, the Egg Organisation is also collaborating with the IEC and the OIE to develop a chapter entitled 'Animal welfare and laying hen production systems'. The first draft was withdrawn by the OIE following fierce criticism by the IEC and its member countries, based on the fact that conventional cages would be virtually outlawed. The recommendation was made that the chapter takes into account the social, economic and cultural diversity of OIE member countries, and issues of food security. A revised version was published in 2019 and egg producing nations were again invited to comment. The OIE had planned to discuss the chapter at the General Session in Paris in May 2020, but this was cancelled owing to the COVID-19 pandemic. Subsequently, the OIE opened a further window for comments. In July 2021, a letter containing eleven proposed amendments was sent by the Egg Organisation to the OIE through the state's Chief Veterinary Officer and the IEC. With increasing global pressure from animal welfare groups for the discontinuation of caged housing systems, it is of vital importance that a compromise is reached*".[310]

These comments arguably demonstrate SAPA's resistance to improved animal welfare standards.

309 SAPA 2021 Industry Profile.
310 SAPA 2021 Industry Profile.

According to the NSPCA's 2020 – 2023 Annual Report:

> "*The development of the guideline for laying hens is discontinued. ICFAW successfully managed with the use of scientific-technical detail to have the OIE technical committee insert language that recognises that chickens need to express natural behaviours. These include dustbathing, locomotion, nesting, perching and foraging. The international Egg Industry objected to this language, and with the help of many governments tried over years to have it removed, despite the draft never even saying that caging hens must be banned. After failing to counter the scientific evidence put forward by ICFAW, the chapter in its entirety was eventually scrapped. This is the first time in its 97-year history, that a standard has not been adopted in some form. It speaks to the low bar set by the OIE (in terms of what eventually passes in these chapters), and the state of the worldwide industry. Anything seen as slightly progressive or revolutionary is fought to the bitter end*".

The NSPCA's stance suggests that it would be in favour of enhanced animal welfare standards. However, its enforcement efforts discussed below do little to invoke existing laws (such as the APA) to apply pressure on industry.

TERRESTRIAL HEALTH CODE

The WOAH (founded as OIE) has developed Terrestrial and Aquatic Animal Health Codes which provide standards for the improvement of animal health and welfare as well as veterinary public health globally.[311] For purposes of this Project, reference will be made to the Terrestrial Animal Health Code (hereafter the "**Terrestrial Code**").[312]

Section 7 of this Terrestrial Code deals specifically with animal welfare.[313] In its general considerations, the Terrestrial Code sets the standard for what an animal experiencing good welfare is, as "healthy, comfortable, well nourished, safe, not suffering from unpleasant states such as pain, fear and distress, and is able to express behaviours important for its physical and mental state".[314] As a guiding principle, the Terrestrial Code recognises the above mentioned Five Freedoms, stating that these freedoms "provide valuable guidance in animal welfare".[315] Additional guiding principles are "that the use of animals carries with it an ethical responsibility to ensure the welfare of such animals to the greatest extent practicable" and "[t]hat improvements in farm animal welfare can often improve productivity and food safety, and hence lead to economic benefits".[316]

In respect of the guiding principles for the welfare of animal livestock production systems, the Terrestrial Code provides numerous noteworthy principles. These include consideration for the physical environment, including walking, standing and resting surfaces, and that these should be suited to the species so as to minimise risk of injury and transmission of diseases or parasites to animals. It further states that the physical environment should allow comfortable resting, safe and comfortable

311 Codes and Manuals - WOAH - World Organisation for Animal Health.
312 Terrestrial Code Online Access - WOAH - World Organisation for Animal Health.
313 Ibid.
314 Article 7.1.1 of the Terrestrial Code.
315 Article 7.1.2 of the Terrestrial Code.
316 Ibid.

movement including normal postural changes, and the opportunity for the performance of naturally-motivated behaviours.

In respect of social groupings and housed animals, the Terrestrial Code provides that "social grouping of animals should be managed to allow positive social behaviour and minimise injury, distress and chronic fear". The Terrestrial Code states that:

> "*for housed animals, air quality, temperature and humidity should support good animal health and not be aversive. Where extreme conditions occur, animals should not be prevented from using their natura hermosods of thermo-regulation…animals should have access to sufficient feed and water, suited to the animals' age and needs, to maintain normal health and productivity and to prevent prolonged hunger, thirst, malnutrition or dehydration*".[317]

Notably, the Terrestrial Code, as a guiding principle, provides that "the handling of animals should foster a positive relationship between humans and animals and should not cause injury, panic, lasting fear or avoidable stress".[318]

Furthermore, the Terrestrial Code contains an article specifically dedicated to animal welfare and broiler chicken production systems.[319] While these relate to broiler chickens specifically, the welfare issues addressed by these standards may similarly be applicable to Layer Hens as they generally experience the same housing. The scope of this section covers the production period from arrival of day-old Chicks to the harvesting of broilers in commercial production systems with reference to completely housed systems,[320] partially housed systems,[321] and completely outdoor systems.[322]

The Terrestrial Code recommends that the welfare of broilers should be assessed using outcome-based measurables with consideration given to the resources provided and the design of the factory farm. It also recommends eleven indicators including mortality, culling and morbidity;[323] gait;[324] contact

317 Article 7.1.5 of the Terrestrial Code.
318 Ibid.
319 Chapter 7.10 of the Terrestrial Code.
320 The Terrestrial Code defines completely housed systems as broilers being completely confined in a poultry house, with or without environmental control.
321 The Terrestrial Code defines partially housed systems as broilers being kept in a poultry house with access to a restricted outdoor area.
322 The Terrestrial Code defines completely outdoors systems as broilers not being confined inside a poultry house at any time during the production period but are confined in a designated outdoor area.
323 The Terrestrial Code recommends that daily, weekly and cumulative mortality, culling and morbidity rates be assessed and should stay within expected ranges. It further provides that any unforeseen increase could reflect an animal welfare issue.
324 The Terrestrial Code notes that broilers are susceptible to developing a variety of infectious and non-infectious musculoskeletal disorders, including gait abnormalities and lameness. These types of disorders the Code attributes to include nutrition, sanitation, lighting and litter quality.

dermatitis;[325] feather condition;[326] incidence of diseases, metabolic disorders and parasitic conditions;[327] behaviour;[328] water and feed consumption;[329] performance; injury rate; eye conditions;[330] and vocalisation.[331][332]

The Terrestrial Code further provides recommendations for aspects of welfare in relation to broilers in these factory farms. These include recommendations in respect of thermal environment; lighting; air quality; noise; nutrition; flooring, bedding, resting surfaces and litter quality.[333]

It is noteworthy that the Terrestrial Code provides a non-binding approach to animal welfare in relation to broiler production dependent on the appropriate national sectoral, or perhaps regional norms for commercial broilers in that area.[334] Members of the WOAH standards are, however, bound to the standards prescribed. Despite being a member, South Africa has not incorporated these WOAH standards into any legislation.[335] This creates a barrier for entry into South African law and policy as this Terrestrial Code remains subject to incorporation into rules and regulations of a region or country.[336]

The absence of local incorporation also results in the lack of legal certainty for corporations operating in the Poultry Industry, and absence of accountability from industry players.

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325 The Terrestrial Code attributes contact dermatitis as affecting skin surfaces that have prolonged contact with wet litter or other wet floor surfaces. If severe, the Code notes that foot and hock lesions may contribute to lameness and possible secondary infections in broilers.

326 The Terrestrial Code recommends the evaluation of feather condition of broilers provide useful indicators of the animals welfare.

327 The Terrestrial Code provides that ill-health, regardless of the cause, is a welfare concern of broilers and will be exacerbated by poor farm practices.

328 The Terrestrial Code lists fear behaviour, spatial distribution, panting and wing spreading, dust bathing, feeding, drinking and foraging and feather pecking and cannibalism as indicators of broiler behaviour relating to their welfare.

329 The Terrestrial Code recommends daily monitoring of water consumption in broilers and notes that problems in consistent, good quality water supply can result in wet litter, diarrhoea, dermatitis and dehydration. It further notes that changes in feed consumption can indicate unsuitability of feed, the presence of diseases or any other welfare problem with the broiler.

330 The Terrestrial Code notes that conjunctivitis in broilers can indicate the presence of dust and ammonia and further notes that high levels of ammonia can result in corneal burns and eventual blindness. It further notes that low light intensity can result in abnormal eye development.

331 The Terrestrial Code noted that vocalisation of groups of broilers can indicate emotional states, either positive or negative and the interpretation of these vocalisations is possible by experienced animal handlers.

332 Article 7.10.3 of the Terrestrial Code.

333 Article 7.10.4 of the Terrestrial Code.

334 Article 7.10.3 of the Terrestrial Code.

335 As noted by the court in *National Council of Societies for the Prevention of Cruelty to Animals v Al Mawashi (Pty) Ltd and Others* (9952020) [2020] ZAECGHC 118 para 15 (15 October 2020).

336 Despite this however, the OIE standards have been incorporated into regional strategies and country policies, including the African Union to which South Africa is a member state.

Animal Welfare Strategy for Africa (AWSA)

Regionally, the African Union ("**AU**") has explicitly recognised the sentience of animals.[337] The AU expressly identifies that most African countries are at different levels with regards to animal welfare laws, legislation, policies and regulatory frameworks, and further observed that these legislative measures are either lacking, inadequate, outdated or inadequately enforced.[338] The AU has developed the Animal Welfare Strategy for Africa ("**AWSA**")[339] recognising and seeking to address animal welfare issues in Africa.[340] This is illustrated by a vision of:

> "*An Africa where animals are treated as sentient beings, as a leading continent in implementation of good animal welfare practices for a competitive and sustainable animal resource sector*".[341]

The AWSA is aligned with UDAW[342] mentioned below, and the WOAH (formerly OIE) standards.[343] The AWSA seeks to enhance collaboration, coordination and partnerships with specialised organisations, and engage in the formulation of a common African position on animal welfare.[344] Although merely a guiding strategy, the AWSA provides an indication of the regional sentiment in relation to animal welfare and the recognition of sentience to animals under human control in Africa.[345]

Proposed International Initiative: Universal Declaration on Animal Welfare

The Universal Declaration on Animal Welfare ("**UDAW**")[346] is a proposed inter-governmental agreement to recognise that animals are sentient, to prevent cruelty and reduce suffering, and to promote standards on the welfare of animals including livestock.[347] The UDAW, if implemented by member states, is intended to benefit animals, people, and the environment, including human health, social development, poverty and hunger reduction, disaster management and environmental

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337 African Union *Animal Welfare Strategy for Africa (AWSA)* retrieved from https://rr-africa.oie.int/wp-content/uploads/2019/05/awsa-executive_summary_layout_eng_2017.pdf.

338 Ibid.

339 Ibid.

340 Wilson A.P. Chronicle on 2018 Africa Animal Welfare Conference and Africa Animal Law Convention, dA. Derecho Animal (Forum of Animal Law Studies) 10/1 (2019) – DOI https://doi.org/10.5565/rev/da.400.

341 African Union AWSA retrieved from https://worldanimal.net/images/stories/documents/Africa/AWSA.pdf.

342 International Fund for Animal Welfare https://www.ifaw.org/united-states/our-work/political-advocacy/udaw-universal-declaration-animal-welfare.

343 World Organisation for Animal Health. https://www.oie.int/en/what-we-do/animal-health-and-welfare/animal-welfare/.

344 African Union AWSA https://worldanimal.net/images/stories/documents/Africa/AWSA.pdf.

345 It should be noted that, while the AWSA was intended to be implemented over a period of 4 years (from 2018 - 2021), it does not appear to have been updated. AS of July 2022, the African Union Inter-African Bureau for Animal Resources was still in the process of appointing an animal welfare expert to provide support for the implementation of the AWSA. https://www.au-ibar.org/au-ibar-jobsconsultanciesprocurements/consultancy-animal-welfare-expert-support-implementation. It appears that various "governments and civil societies in Africa are currently at various stages of domesticating the implementation of Animal Welfare Strategy for Africa." https://www.aawconference.org/index.php/about.

346 Universal Declaration on Animal Welfare.

347 The UDAW at p3.

sustainability.[348] Essentially, the UDAW recognises the many important roles that animals provide and, by advocating for their care and reducing their exposure to suffering, this benefits not only animals but people and the environment, too.[349] This holistic approach of animal welfare as interlinked with humans and the environment can be summed up as humanity living in harmony with nature.[350]

As South Africa has not yet signed onto the UDAW, it is not guided by the agreement and therefore fails to progress animal welfare issues in the same manner and pace as those who have already signed on as members. This lack of commitment to and lack of implementation of the UDAW hinders the proper inclusion and understanding of animal sentience, as well as an appreciation for the benefits that animal welfare commitments provide for humans and the environment, too. It also hinders the development of universal welfare standards regarding animals.

IV. FOREIGN LAW

Foreign law, even though not binding in South Africa, can be significant since the Constitution dictates that when interpreting the Bill of Rights, a court may consider foreign law.[351] Further, foreign law can influence local policy and law developments. Examples of certain progressive foreign laws in relation to animals and chickens have been included in this Section and have informed recommendations made in Section V below.

FARM ANIMAL STANDARDS AND REQUIREMENTS

Globally, various jurisdictions have moved towards more strictly regulating factory farming industries in an effort to improve the welfare standards of livestock.[352] For example, the EU has adopted several directives, setting out the minimum standards for the protection of farmed animals in general, as well as specific animal species, such as the minimum standards for the protection of Layer Hens, the inclusion of welfare indicators for chickens kept for meat production, the creation of minimum standards for the protection of calves and banning the use of confined individual pens for animals other than an age threshold, and setting minimum standards for the protection of pigs.[353] In Australia, nationally consistent standards and guidelines for farm animal welfare have been progressively developed and implemented.[354] In the United States, the Humane Methods of Slaughter Act[355] requires

348 The UDAW at p2.
349 The UDAW at p5.
350 This respect for animals is reminiscent of the UN's "Harmony with Nature" approach. http://www.harmonywithnatureun.org/.
351 Section 39(1) of the Constitution.
352 Meat & Livestock Australia *Supply Chain Feedlot sector* available at https://www.mla.eu/supply-chain/feedlot-sector/#.
353 European Parliamentary Research Service Ex-Post Evaluation Unit (2021) Animal Welfare on the farm-ex-post evaluation of the EU legislation: Prospects for animal welfare labelling at EU level at page 38 available at https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662643/EPRS_STU(2021)662643_EN.pdf.
354 Australian Animal Welfare Standards and Guidelines available at https://www.awe.gov.au/agriculture-land/animal/welfare/standards-guidelines.
355 Humane Methods of Slaughter Act 1958 https://www.nal.usda.gov/animal-health-and-welfare/humane-methods-slaughter-act.

the humane treatment and handling of livestock at factory farms or slaughter plants, and in Italy, the killing of male Chicks in the Egg Industry has been banned.[356]

RECOGNITION OF AND LAWS SURROUNDING SENTIENCE

Internationally, some legislators have formally recognised animals as sentient beings instead of property. An example is the Animal Welfare Amendment Act 2 of 2015[357] of New Zealand, one of the first countries to formally recognise animals as sentient beings. This recognition could help to ensure that Corporations properly respond to an animal's needs in terms of welfare and well-being. South African law recognises elephants as sentient[358] and several court cases have affirmed that animals are sentient beings.[359] There is no rational basis for viewing some and not other animals as sentient, when they share the same core characteristics. See further the above section relating to the capacities and capabilities of chickens in particular.

Some jurisdictions go as far as sanctioning fines and imprisonment to those who do not uphold this standard.[360] Quebec, for instance, enacted Bill 54: An Act to Improve the Legal Situation of Animals,[361] where it was expressly stated that animals in the province are to be considered as sentient beings instead of property, with fines and imprisonment being sanctioned on individuals not upholding this standard.[362]

The European Union ("**EU**") has also recognised animals as sentient beings and obligates signatories and the EU to pay full regard to animal welfare.[363] Various other countries have expressly provided for the recognition of animals as more than merely property, with some jurisdictions recognising the legal rights of animals.[364]

Within Africa, Tanzania became the first country in Africa to expressly recognise the above mentioned Five Freedoms as well as expressly recognising the sentience of animals.[365] Many of these countries

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356 An initiative that is said to positively impact approximately 35 million Chicks in the country's egg industry. https://animalequality.org/news/italy-bans-the-killing-of-male-chicks/.

357 https://www.legislation.govt.nz/act/public/2015/0049/latest/DLM5174807.html.

358 Norms and Standards relating to the Management of Elephants, 2008.

359 See the *2016 NSPCA Case*; 2008 *Openshaw*; *Smuts v Botha* 2002 in Part B above.

360 Boniface A.E Animals: 'Objects' or 'Sentient Beings'? A comparative perspective of the South African Law *Journal of Advances in Humanities and Social Sciences* 2016 2(3): 143-155 at 151.

361 Bill 54: An Act to Improve the Legal Situation of Animals. http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2015C35A.PDF.

362 Ibid.

363 The European Union Consolidated Version of the Treaty on the Functioning of the European Union [2008] OJ C115/47, art 13 in which animals were recognised as sentient beings.

364 These countries include France, Belgium, Austria, Czech Republic, Germany, Netherlands, Spain and Germany https://www.alaw.org.uk/2019/06/animal-sentience-within-the-law-an-international-perspective-by-grace-hudson/. Ecuador's Constitutional Court has also confirmed that Rights of Nature – which are Constitutionally recognised in Ecuador – extend to *wild* animals. https://law.lclark.edu/live/news/48641-ecuador-gives-rights-to-wild-animals-with-help.

365 The Animal Welfare Act 2008 of Tanzania retrieved from http://extwprlegs1.fao.org/docs/pdf/tan85327.pdf.

are member states to international animal welfare standards, and have developed their national animal welfare standards in conformity with the global shift towards better animal welfare conditions for animals under their control, including those in the Egg Industry.

BEAK TRIMMING BANS AND PROHIBITIONS

Beak trimming has been outlawed in Scandinavian countries for many years (Norway 1974, Finland 1986, Sweden 1988) and Denmark and Austria in 2013. More recently, the practice has been banned in the Netherlands and in some sectors of the German Poultry Industry. Other countries are likely to follow suit.[366] There is detailed literature as to why beak trimming should be banned.[367]

MALE CHICK CULLING BANS AND PROHIBITIONS

Several countries have banned or are banning male the culling of male Chicks including Germany, France, Austria, Luxembourg and Italy have enacted nationwide bans against chick killing.[368] Switzerland has banned the shredding of live Chicks.[369]

BATTERY CAGE BANS AND PROHIBITIONS

Due to the cruel nature of this form of confinement, Battery Cages have been banned or progressively phased out in several countries and jurisdictions. This includes India; [370] New Zealand,[371] Czech

366 https://www.poultryworld.net/health-nutrition/poultry-industry-adapts-to-changes-around-beak-trimming/.

367 EFSA Panel on Animal Health and Animal Welfare (AHAW) Welfare of laying hens on farm EFSA Journal 2022 doi: 10.2903/j.efsa.2023.7789 available at https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2023.7789.

368 https://www.foodwatch.org/en/chick-killing-ban-where-have-all-the-cockerels-gone.

369 https://plantbasednews.org/opinion/-switzerland-bans-shredding-of-male-chicks/.

370 https://thehumaneleague.org/article/battery-cages.

371 New Zealand has made it illegal to house Layer Hens in Battery Cages from 2023. However, while Battery Cages will be phased out, enriched cages have been promoted as an alternative. https://www.theguardian.com/world/2022/dec/29/new-zealand-bans-battery-cages-hens-replacement-just-as-bad.

Republic,[372] Australia,[373] Switzerland,[374] UK,[375] Luxembourg,[376] Austria,[377] Belgium,[378] Switzerland,[379] Canada,[380] Mexico,[381] Israel,[382] Germany,[383] Norway,[384] the European Union;[385] and Bhutan.[386]

In the USA, the following states have passed legislation that either bans or requires the phasing-out of Battery Cages:[387] California; Colorado; Massachusetts; Michigan; Ohio; Oregon; Rhode Island; Utah; Washington.

As a result of the "End the Cage Age" campaign, the EU agreed to work towards proposing new laws by 2023, with the aim of gradually phasing out caged animal farming by 2027.[388] EU countries have already shown encouraging support for the changes, with Germany unilaterally banning caged hens by 2025[389] and Spain, despite being a predominantly cage housing country, showing support for the transition to cage-free production.[390]

372 The Czech Republic declared a ban on the use of cages to confine hens in 2020, with the law becoming effective in 2027 after a 7-year phase-in period. Available at https://aldf.org/article/czech-republic-bans-cages-for-hens/.

373 In 2022, the Australian Animal Welfare Standards and Guidelines were released which will require all conventional Layer Hen cages to be phased out by 2036. Available at https://www.skynews.com.au/australia-news/animal-welfare-groups-major-win-battery-caged-hens-banned-by-2036-after-lengthy-battle-between-egg-industry-and-animal-welfare-groups/news-story/10da3d885001ecf00be5d8e412fb1548.

374 Battery cages have been banned since 1992. Available at https://thehumaneleague.org/article/battery-cages.

375 https://www.theguardian.com/world/2022/dec/29/new-zealand-bans-battery-cages-hens-replacement-just-as-bad.

376 https://www.bbc.com/news/world-europe-57668658.

377 Banned in 2009. Available at https://safe.org.nz/our-work/animals-in-aotearoa/hens-2/whats-happening-overseas/.

378 While Battery Cages are already banned in Belgium, there are proposals to ban colony cages by 2024. Available at https://safe.org.nz/our-work/animals-in-aotearoa/hens-2/whats-happening-overseas/.

379 Available at https://safe.org.nz/our-work/animals-in-aotearoa/hens-2/whats-happening-overseas/.

380 https://www.theguardian.com/world/2022/dec/29/new-zealand-bans-battery-cages-hens-replacement-just-as-bad.

381 https://www.theguardian.com/world/2022/dec/29/new-zealand-bans-battery-cages-hens-replacement-just-as-bad.

382 https://www.theguardian.com/world/2022/dec/29/new-zealand-bans-battery-cages-hens-replacement-just-as-bad.

383 Battery cages have been completely phased out since 2006. Available at https://thehumaneleague.org/article/battery-cages.

384 Battery cages have been banned since 2012. Available at https://thehumaneleague.org/article/battery-cages.

385 https://thehumaneleague.org/article/battery-cages.

386 https://thehumaneleague.org/article/battery-cages.

387 https://thehumaneleague.org/article/battery-cages.

388 BBC 'Caged animal farming: EU aims to end practice by 2027' available at https://www.bbc.com/news/world-europe-57668658.

389 Ibid.

390 Spanish government's response to a parliamentary question, confirming it's support to cage-free transition, available at https://www.congreso.es/entradap/l14p/e24/e_0246770_n_000.pdf.

The recognition and commitment shown by these countries have unfortunately not been followed in South Africa. However, it is recommended that the South African government urgently implement legislation to phase out and ultimately ban the use of Battery Cages in South Africa.

V. THIRD-PARTY CERTIFICATION AND STANDARDS

Third party certifications are independent organisations that verify the manufacturing process of a product and independently determine whether the final product complies with specific standards for safety, quality or performance.[391] These certifications raise complex issues and debates in the animal welfare and protection community. For example, some reports have argued that they can lead to Humane-washing,[392] while others argue that they can improve animal welfare standards and offer incentives for Corporations to do better, and simultaneously, consumers. As the below will indicate, there are several positive inclusions against Cruel Practices in the respective standards of third party certifiers. As part of our Stakeholder Component (as contained in Section IV), information was requested from the Selected Stakeholders with regard to Certifications. This informed the development of main Criteria 8 (Third Party Certifications)[393] for purposes of the rating of Selected Stakeholders. In addition, recommendations have been made with regard to certifications to ensure greater corporate accountability as further set out in Section V.

A Greener World ("**AGW**") is one of the most recognised animal welfare certifications, which at its core stresses that animals must be able to behave naturally and be in a state of physical and psychological well-being.[394] Certified Animal Welfare Approved by AGW requires animals to be raised on pasture or range; awards approval only to independent farmers and incorporates the most comprehensive standards for high welfare farming. To accomplish the goals of the Certified Animal Welfare Approved by AGW program, all standards address every aspect of each species' lifecycle needs from birth to death.[395]

Through the Animal Welfare Approved ("**AWA**") certification of AGW, a Corporations' standards for animal welfare may be aligned with that of the Five Domains. For instance, the Layer Hen must be allowed to behave naturally, giving the bird the opportunity to perform natural and instinctive behaviours such as perching, which are essential to their health and well-being.[396] Provisions are made to ensure social interaction, comfort, and physical and psychological well-being.[397] AGW has set up

391 https://www.nsf.org/knowledge-library/what-is-third-party-certification.
392 https://www.farmforward.com/publications/the-dirt-on-humanewashing/.
393 Main Criteria 8 relates to Selected Stakeholders presented evidence of SABS/AGW Certification or Other Certification.
394 https://agreenerworld.org.za/certifications/animal-welfare-approved/standards/.
395 https://agreenerworld.org/certifications/animal-welfare-approved/standards/.
396 https://agreenerworld.org.za/certifications/animal-welfare-approved/standards/.
397 https://agreenerworld.org.za/certifications/animal-welfare-approved/standards/laying-hen-standards/.

their standards according to a "humane and conscientious attitude".[398] In South Africa, AGW has certified at least three egg producers: Eddie's Eggs,[399] Boschrivier Farm[400] and Boschendal.[401]

The AGW Laying Hen Standards ("**AGW Standards**"),[402] cover several different areas, including: 1 Ownership and Operation; 2 Breeds and Origin of Birds; 3 Health Management; 5 Management of Poultry; 6 Food and Water; 7 Ranging And Foraging Area Access; 8 Housing and Shelter; 9 Removal of Birds From the Approved Farm; 10 Predators and Rodents; 11 Records and Record-Keeping; 12 Handling; 13 Transport; 14 Sale or Transfer of Birds; 15 Program Management; 16 Slaughter; 17 Traceability.

According to the AGW Standards, in respect of the Physical Alteration of Poultry (5.4): all mutilations or physical alterations of poultry are prohibited. These include: de-beaking (beak clipping, tipping and trimming); de-clawing; de-spurring; de-toeing and toe trimming; Hole punching; pinioning; notching; wattle trimming; comb trimming. castration (caponizing) of poultry is prohibited. It notes that trimming feathers is permitted but that skin or flesh must not be cut.

These AGW Standards note in respect of cages, the following: that the use of birds from confinement and/or caged systems is prohibited (2.2.2) and confinement systems, in-house or field-based pens or cages that restrict the birds' natural behaviours, are prohibited (7.2.8); Close confinement in cages, crates or by tethering is prohibited (8.0.24); the use of thin wire transport cages is prohibited. (13.5.5.).

The AGW Standards recommend the use of dual purpose breeds so that male Chicks can be raised as meat type birds and female Chicks can be raised as laying hens.

The above are examples of the AGW Standards relating to chickens in the Egg Industry, focusing specifically on the restriction of Cruel Practices. Other third party certifications exist in South Africa and internationally. As a third-party certifier, these standards are voluntary and non-binding. The standards do not supersede national government or state legislation. The consequences of not complying with these are potentially losing the certification.

For purposes of the Project and the Stakeholder Component, ALRSA requested from the Selected Stakeholders, information relating to any Third Party Certifications. None of the Selected Stakeholders indicated that they are certified by AGW.

398 https://agreenerworld.org.za/certifications/animal-welfare-approved/standards/laying-hen-standards/.
399 https://www.foodfocus.co.za/home/News-and-Events/Industry-News/First-Egg-Farm-In-Africa.
400 https://www.foodfocus.co.za/home/News-and-Events/Industry-News/Wittedrift-Farm-Awarded-World-Renowned-Environmental-And-Animal-Welfare-Certifications-.
401 http://boschendal.com/2022/11/24/creating-a-greener-world-with-farmer-jason/.
402 https://agreenerworld.org/certifications/animal-welfare-approved/standards/laying-hen-standards/. Area '4' is not allocated.

VI. NON-GOVERNANCE RELATED WELFARE AND WELL-BEING EFFORTS

OVO-SEXING

In-ovo-sexing is a technology which offers a humane alternative, and allows producers to determine the sex of the embryo before it develops into a chick avoiding the need to kill male chicks. Several countries have initiated efforts with regard to such technology.

Netherlands: According to the European Parliament, "[*i*]*n 2016, a Dutch start-up developed a screening machine for in ovo-sexing through a biomarker, as early as the ninth day of incubation*".[403]

Germany: According to the European Parliament, "[*i*]*n 2018, Compassion in World Farming gave a German company an innovation award for developing a method for sexing hatching eggs. The invention allows male hatching eggs to be recognised endocrinologically, and then rejected and turned into feed before the embryo develops the capacity to feel pain*".[404]

Israel: According to the European Parliament, "[*i*]*n 2020, an Israeli start-up developed software able to control the incubation process for chicken embryos, inducing the expression of the feminine gene over the masculine one and therefore controlling the sex development of the chick in favour of female development. Hatcheries in France have been granted €10 million in public funding to install and start using in ovo-sexing apparatus, in order to achieve the goal of ending day-old chick culling by 2022*".[405]

PART D: EGG-SAMPLES OF ANIMAL WELFARE ENFORCEMENT

I. INTRODUCTION

Our research has revealed that there are several enforcement issues with animal welfare and protection laws in South Africa, a few of which are expanded upon next.

Although supported by the South African Police Services ("**SAPS**") and prosecutors in the National Prosecuting Authority ("**NPA**"), the enforcement of animal welfare legislation in South Africa is largely left up to non-profit organisations, particularly the NSPCA and individual SPCAs.[406] It is widely reported in South African media, and claimed by the NSPCA that these entities receive no

403 https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/739246/EPRS_ATA(2022)739246_EN.pdf.
404 Ibid.
405 Ibid.
406 Notably, there are other non-profit organisations which undertake inspections and other enforcement, such as the Animal Anti-cruelty League and others are empowered in terms of the APA provided certain conditions are met.

governmental funding[407] and are severely overburdened and under-resourced.[408] While a full analysis of enforcement of animal protection laws as well as the suitability of the NSPCA and SPCAs to do so is an important consideration in the Egg Industry, it is outside the scope of this Initial Report. Given the focus of the Project is on corporate accountability, only selected issues relating to enforcement are highlighted in this context.

II. CRACKING UNDER PRESSURE: THE NSPCA

THE ROLE OF NON-PROFIT ORGANISATIONS (NPOS) AND THE NSPCA

The NSPCA has been in operation in the country since 1955 with the objective of uplifting all animal welfare standards in the country and preventing cruelty towards all animals.[409] The NSPCA is a statutory body governed by the Societies for the Protection of Cruelty to Animals Act 169 of 1993 (the "**SPCA Act**")[410] and numerous SPCAs across the country, administered by the NSPCA.

The NSPCA has extremely broad powers in terms of the Animals Protection Act, the SPCA Act and the 1986 Regulations relating to the seizure of animals by an officer of a society for the prevention of cruelty to animals ("**Seizure Regulation**").[411] Furthermore, the Constitutional Court in *National Society for the Prevention of Cruelty to Animals* v *Minister of Justice and Constitutional Development and Another*[412] affirmed that the NSPCA has the right to bring private prosecutions. This enables the NSPCA to bring cases regarding animal cruelty. Accordingly, the NSPCA and SPCAs are critical role-players in animal protection in South Africa.

Given this critical role of the NSPCA and individual SPCAs, it is essential that they remain impartial and not subject to any financial or other undue pressure in relation to their enforcement role. Yet, worryingly, the NSPCA receives a substantial amount of funding (over ZAR2million in a three year period alone) from Meadow Feeds, a subsidiary of the largest integrated poultry producer in South Africa, Astral. Astral's key activities comprise manufacturing of animal feeds, broiler genetics, production and sale of day-old Chicks and hatching eggs, breeder and broiler production, abattoir and further processing operations and sales and distribution of various key poultry brands.[413]

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407 NSPCA Annual Reports and Facebook page https://www.facebook.com/NSPCA/posts/funding-dont-animals-matterconcern-is-expressed-by-the-national-council-of-spcas/10151099964984843/.

408 M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa's Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at: http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf.

409 https://nspca.co.za/about-us/.

410 Act 169 of 1993.

411 https://faolex.fao.org/docs/texts/saf122858.doc.

412 (CCT1/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016).

413 https://www.astralfoods.com/.

In Astral's 2020 Integrated Report, they reported donating more than R500 000 to the NSPCA.[414] In their 2021 Integrated Report, they reported that Astral donated R500 000 to the NSPCA during the financial period.[415] In their 2022 Report they reported that they had donated R1 000 000 to the NSPCA.[416]

Certain members of the Farmed Animal Alliance[417] including ALRSA, wrote to the NSPCA in April 2023, asking about these donations. In their response, the NSPCA noted that:

> "*We confirm that the National Council of SPCAs (NSPCA) has received funding from Astral Foods which has been used to improve the welfare of farm animals in this country. This funding has in no way compromised the NSPCA but has instead assisted our Farm Animal Protection Unit to step up inspections of facilities where farm animals are raised, including those of Astral Foods. The funding has also made it possible to provide vital assistance to farm animals caught in disaster situations*".

ALRSA and the other Farmed Animal Alliance member organisations who sent the letter view it as inherently problematic that the entity enforcing animal welfare in respect of a particular stakeholder, is being funded by said stakeholder. The situation gives rise to actual or a reasonable apprehension of bias. Yet, the Constitution demands that holders of public power such as the NSPCA act without bias. It is appreciated how difficult a task the NSPCA has in terms of resources and carrying out its mandate, however this conflict of interest should be avoided.

The NSPCA and SPCA through their "Inspectorate" conduct inspections on various facilities, and also respond to complaints. While the NSPCA has powers of prosecution, and very wide powers in terms of the APA and Seizure Regulation, the NSPCA utilises several enforcement tools, including: warnings; notices; letters and veterinary reports. Veterinary attention is also provided to animals including farmed animals. The primary source of information around the enforcement of the APA is contained in the NSPCA's Annual Reports.[418] There is no public database of inspections conducted or actions taken.

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414 Astral Foods Integrated Report 2020: https://www.astralfoods.com/assets/Documents/Investor%20Centre/2020/Integrated-report-for-the-year-ended-2020.pdf.

415 Astral Foods Integrated Report 2021: https://www.astralfoods.com/assets/Documents/Index/Integrated-Report-for-the-year-ended-30-September-2021.pdf.

416 Astral Foods Integrated Report 2022: https://www.astralfoods.com/assets/Documents/Investor%20Centre/2022/Integrated%20Report%20for%20the%20year%20ended%2030%20September%202022.pdf.

417 Animal Advocacy Africa; Animal Law Reform South Africa; Anonymous for the Voiceless; Asher's Farm Animal Sanctuary; Beauty Without Cruelty – South Africa; Compassion In World Farming South Africa; Greyton Farm Animal Sanctuary; Humane Education Trust; Humane Society International Africa; Karoo Donkey Sanctuary; Pigs 'n Paws; Planty Bru; Save Movement Johannesburg (Climate Save Johannesburg; Animal Save Johannesburg; Health Save Johannesburg); #UniteBehind; Wild Vegan Farm Sanctuary and World Animal Protection Africa.

418 NSPCA Annual Reports accessible here: https://nspca.co.za/annual-reports/.

In its 2018 – 2019 Annual Report, the NSPCA notes that: "In pursuit of the prevention of cruelty, the National Council of SPCAs operates on the principle of education before prosecution, unless the situation is such that immediate prosecution is warranted or a person rejects education".

In relation to farmed animals such as poultry, NSPCA has a dedicated farm animal protection unit. This Farm Animal Protection Unit ("**FAPU**") undertakes to monitor and protect the following animals - sheep, pigs, goats, cattle including dairy cows, **poultry,** ostriches, emus, crocodiles, rabbits, equine, alpacas as well as farmed fish and other aquatic species raised for food production.[419] The Unit's areas of focus include **Broilers,** Crocodile Farms, Dairy Farms, **Hatcheries,** Export of Live Animal by Sea, Labelling of Animal Products, Prison Farms, Transport of Live Animals by Land, Animal Slaughter and Animal Saleyards.[420]

FAPU's activities include physical inspections of farming premise, interacting with DALRRD and the farming industry, and developing National Standards to benefit farm animals through the SABS.

In several of its reports, the NSPCA notes that it has raised free range labelling and advertising with the Department of Agriculture in an effort to ensure that products are correctly labelled without misleading the consumer.[421]

EXAMPLES OF ENFORCEMENT FOR FARMED ANIMALS

This section contains a summary from the NSPCA's publicly accessible Annual Reports between 2018 – 2022 of actions it has reported on in respect of prosecuting cruelty as well as for farmed animals. Unfortunately, these reports are one of the few sources available with information relating to enforcement of animal crimes. While the annual reports contain a summary of actions taken in the enforcement of animal welfare, they generally do not contain specific details relevant to the cases mentioned and accordingly, it is difficult to determine what these actions were for. This is one of the reasons why ALRSA sought to engage with the NSPCA using the PAIA process for purposes of the Project, as more fully set out in Appendix I.

Warnings, Notices, Letters and Prosecutions for Animal Cruelty

NSPCA 2018-2019 ANNUAL REPORT[422]

General:

419 https://nspca.co.za/farm-animal-protection/.

420 M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa's Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at: http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf.

421 http://nspca.co.za/wp-content/uploads/2021/07/NSPCA-Annual-Report-2017-2018.pdf.

422 https://nspca.co.za/wp-content/uploads/2023/01/2018-2019-NSPCA-Annual-Report.pdf.

- **18 successful prosecutions** were recorded, most of which appear to be related to dog fighting and one in respect of mulesing (a painful procedure that involves cutting crescent-shaped flaps of skin from around a lamb's breech and tail using sharp shears designed specifically for this purpose).[423]
- **97 cases pending** for animal welfare offences.
- **346 warnings, notices and letters of requirements were issued** for improvements to living conditions and standards of animal care.

Farmed Animals:

- **559 inspections** were conducted by FAPU and investigations during the period under review and all complaints were fully investigated. Various contraventions of the Animals Protection Act were found, at abattoirs, feedlots, **poultry farms,** hawkers, sale yards, dairy farms, pounds, pig farms, correctional facilities, rabbit farms, crocodile farms and agricultural farms to name a few. Warrants were obtained by the Unit for various facilities.
- **32 cases pending** finalisation through the legal system.
- **6 new cases were registered with SAPS** and 2 pending cases were successfully prosecuted.

NSPCA 2019-2020 Annual Report[424]

General:

- **8 successful prosecutions** were recorded. These cases related to equine, farm animals, wildlife and domestic animals.
- **102 cases awaiting finalisation** through the judicial system. These cases related to equine, farm animals, wildlife and domestic animals.
- **410 warnings, notices and letters of requirements were issued** for improvements to living conditions and standards of animal care.

Farmed Animals:

- **782 inspections and investigations** were conducted by FAPU during the period under review and all complaints were fully investigated. Facilities inspected included abattoirs, feedlots, poultry farms, hawkers, sale yards, dairy farms, pounds, pig farms, correctional facilities, rabbit farms, crocodile farms, **cull outlets**, aquaculture farms, petting farms, alpaca, mohair and agricultural farms. Warrants were obtained by the Unit for various facilities.
- **6 new cases were registered with SAPS and two pending cases were successfully prosecuted.**
- **32 cases pending finalisation through the legal system.**

423 https://kb.rspca.org.au/knowledge-base/what-is-the-rspcas-view-on-mulesing-and-flystrike-prevention-in-sheep/.
424 https://nspca.co.za/wp-content/uploads/2021/09/2019-2020-Annual-Report.pdf.

Appropriate action was taken to address any welfare concerns encountered during inspections. This action included recommendations for improvements as well as warnings to correct shortcomings.

Where contraventions of the APA were encountered, charges were laid. Seven new cases were registered with SAPS and convictions were secured in respect of two people who were found guilty of animal cruelty. FAPU has a further 31 cases pending finalisation including through the legal system.

NSPCA 2020-2021 Annual Report[425]

General:

- **8 successful prosecutions**
- **101 additional court cases are pending for animal welfare offences in respect of farm, wild and domestic animals**
- **The total number of warnings, letters, etc. were not included for purposes of this Initial Report** although separate units reported on these (with the exception of FAPU).

Farmed animals:

- **702 inspections were undertaken** by FAPU around South Africa to ensure that the welfare of farm animals was not compromised. Facilities inspected included: abattoirs, feedlots, poultry farms, hawkers, sale yards, dairy farms, pounds, pig farms, correctional facilities, rabbit farms, crocodile farms, cull outlets, aquaculture farms, petting farms, alpaca farms, mohair farms and agricultural colleges and schools. Appropriate action was taken in addressing any welfare concerns encountered during inspections. These actions included recommendations for improvements as well as warnings to correct shortcomings. Where contraventions of the Animals Protection Act No. 71 of 1962 were encountered, charges were laid. Farm Animal Protection Unit Inspectors operate nationally and undertake random, proactive inspections. All complaints received are also fully investigated.
- **New cases** (unclear how many) **were registered with SAPS and 1 conviction was secured** after the person was found guilty of animal cruelty.
- **28 cases pending** finalisation through the legal system.

ALRSA'S INITIAL OBSERVATIONS

While it is difficult to ascertain from the above information contained in the NSPCA's Annual Reports the exact scope of what has been found from the inspections, it is apparent that out of hundreds of inspections by the FAPU, less than 10% of these result in new cases. It would appear therefore that either these facilities are in compliance with the APA for the (sometimes thousands of) animals under their control, or that standard agricultural practices are not recorded as infringements of the APA, even though they may arguably be (see Part C above). The latter seems more likely, based on the

425 https://nspca.co.za/wp-content/uploads/2022/01/NSPCA-Annual-Report-2020-2021.pdf.

information obtained through ALRSA's PAIA request to the NSPCA, which indicated that Cruel Practices such as Battery Cages were not reported on in the inspection records as "Welfare Issues". Rather, the inspection records indicate that "out of the ordinary" welfare concerns were recorded, and only then, in some cases. For more detail, please refer to Appendix I.

Given the known suffering associated with Cruel Practices such as Battery Cages, and the potential for infringement of the APA within such a context, such Cruel Practices should, at a minimum, be recorded as welfare concerns as part of the NSPCA and SPCA's inspection records. Failure to do so indicates complicity towards Cruel Practices and reduces opportunities to challenge these systems and move towards higher welfare standards.

OTHER ACTIONS

In addition to the Annual Reports indicating actions by FAPU for farmed animals, one Annual Report dealt with another important welfare concern for chickens utilised in the Egg Industry – the transportation thereof.

In April 2021, a truck transporting **41,500 day-old Chicks** from a hatchery en route to a broiler farm overturned.[426] An unreported number of Chicks were killed and others were injured. Thousands of Chicks were found drenched in diesel which had spilled onto the Chicks as the truck was lying on its roof. The body of the truck was ripped apart which resulted in Chicks running across the highway. Chicks with life threatening injuries were euthanised. 21,000 Chicks who were found to have no injuries after examination, were loaded onto another truck and returned to the closest hatchery. These Chicks were then sent to a broiler farm (where they would, in any event, be killed for meat).

Below is the photo from the NSPCA's Annual Report. The methods of transportation for the Chicks in crates should be noted.

426 https://www.iol.co.za/capetimes/news/day-old-chicks-put-down-after-horrific-north-west-crash-9e4924e4-99ab-4221-a962-d7a19373bace.

[427]

NSPCA 2021 - 2022 Annual Report[428]

General:

- **9 successful prosecutions during the reporting period** (one of which was for cattle).
- **110 cases are awaiting finalisation** through the judicial system.
- **507 warnings** were issued to improve animal care.

Farmed animals

- **937 inspections were undertaken.** Facilities inspected included: abattoirs (red meat, poultry, crocodile, rabbit, ostrich), feedlots, poultry farms, hawkers, sale yards, dairy farms, ports of entry and exit, private and municipal livestock pounds, commercial and emerging piggeries, ostrich farms, prison farms, rabbit farms, crocodile farms, cull outlets, aquaculture farms, petting farms, alpaca farms, mohair farms, research farms, and agricultural colleges and schools. The Unit also monitored the live export of animals as well as Qurbani, and rodeos.
- **28 cases pending finalisation through the legal system.**

[427] Sourced from NSPCA 2021 Annual Report available at https://nspca.co.za/wp-content/uploads/2022/01/NSPCA-Annual-Report-2020-2021.pdf.

[428] https://nspca.co.za/wp-content/uploads/2023/05/2022-NSPCA-Annual-Report.pdf.

According to reports by NGOs, although the NSPCA has laid charges against workers at Battery Cages and abattoir operations for farmed animal cruelty, these have not made it to prosecution nor conviction.[429]

In addition to relying on publicly available information about the NSPCA, as part of the Project, ALRSA approached the NSPCA in order to request various information in terms of PAIA relating to its enforcement efforts in the Egg Supply Chain. In light of known Cruel Practices being commonplace for chickens used in egg production, we hoped to gain a deeper understanding of the legal consequences and whether and to what extent there is accountability.

PAIA correspondence and engagements with the NSPCA have been set out in further detail in Appendix I.

Overall, the records provided pursuant to our PAIA request revealed that there is room for greater transparency around the NSPCA's reports. This includes a full accounting of the specific aspects related to animal welfare, the role-players, such as farms and Corporations inspected by the NSPCA, and the criteria used in these inspections by FAPU being readily and explicitly available within these reports. As the primary entity responsible for the enforcement of animal welfare in South Africa and a statutory body, the NSPCA should further provide a full accounting of major donations received from role-players involved in animal related industries inspected by the NSPCA during the reported period as well as findings made in respect of such inspections conducted on these role-players. This would expose actual or potential conflicts of interest.

[429] Centre for Environmental Rights & Endangered Wildlife Trust: Fair Game. Available at https://cer.org.za/wp-content/uploads/2018/06/CER-EWT-Regulation-of-Wildlife-Welfare-Report-25-June-2018.pdf.

ANIMAL LAW REFORM
SOUTH AFRICA

OPEN WING ALLIANCE®

EGGONOMICS
THE ENVIRONMENTAL COSTS OF EGG PRODUCTION

Increasing Human Population + Growing Demand for Animal Products
= Increased Production of Chickens and Their Products
= Tremendous Impacts on the Environment

AIR POLLUTION

Harmful greenhouse gas emissions in high levels from animal agriculture. Ammonia; carbon dioxide, methane, and nitrous oxide.[1]
High volume of manure.
68% of anthropogenic nitrous oxide - remains in the atmosphere for up to **150 years** & has 296 times the global warming potential of carbon dioxide.[2]

SOIL POLLUTION

+/-9.1 – 13.6 kg manure produced by a single layer hen every year.[3]
Poultry manure might also contain contaminants such as pesticide residues, hormones, antibiotics, pathogens, and heavy metals.[4]

WATER POLLUTION

Manure produced by hens unable to be absorbed seeps into groundwater or runs off into surface water, affecting surrounding communities and aquatic species.[5]

LAND USE

38% of the total land area of South Africa is used for commercial agriculture.[7]

KILLING OF WILDLIFE

Animals such as black-backed jackal, caracal, leopard, cheetah, brown hyena and even crows and stray dogs are predators to animals in agriculture and are often killed by farmers.[9]

WATER USE

135 litres of water are needed to produce one egg.[6]

BIODIVERSITY LOSS

Our global food system is the primary driver of biodiversity loss[8]
Agriculture is the identified threat to **86%** species at risk of extinction.

OTHER

There are many other harmful impacts of animal agriculture and the egg industry in particular.[10]

1. The FootPrint of Eggs – A foodprint Report available at https://foodprint.org/reports/the-foodprint-of-eggs/#:~:text=High%20levels%20of%20the%20greenhouse,off%20in%20hens'%20natural%20behaviors. (accessed on 14 April 2023)
2. See (PDF) The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know (accessed on 12 February 2023)
3. Grzinic G et al(2023) "Intensive Poultry farming: A review of the impact on the environment and human health" available at https://www.sciencedirect.com/science/article/pii/S0048969722071145 (accessed on 14 April 2023)
4. Li J (2020) Impacts of different sources of animal manures on dissemination of human pathogenic bacteria in agricultural soils Environ. Pollut., 266 (2020), Article 115399
5. The FootPrint of Eggs – A foodprint Report available at https://foodprint.org/reports/the-foodprint-of-eggs/#:~:text=High%20levels%20of%20the%20greenhouse,off%20in%20hens'%20natural%20behaviors. (accessed on 14 April 2023)
6. Food & Agriculture Organisation of United Nations
7. https://www.statssa.gov.za/?p=13144
8. https://www.unep.org/news-and-stories/press-release/our-global-food-system-primary-driver-biodiversity-loss
9. https://predsa.mandela.ac.za/Scientific-Assessment-Publication
10. https://www.eurekalert.org/news-releases/888005. More South African research is needed on these issues

PILLAR 2: FLYING THE COOP:
ENVIRONMENT: ESCAPING RESPONSIBILITY

PART A: LAYING THE FOUNDATIONS

This "Environmental Pillar" contains a high-level summary of some of the environmental issues applicable to the Egg Industry in South Africa, as well as the regulation thereof, more specifically how these issues intersect with animal welfare and well-being. It is intended to provide an overview of selected matters only and is non-exhaustive of all of the relevant environmental considerations and law and policy relevant to the industry. [430] This Part A sets out the rationale for the selection of this Pillar; and connects it with information from our Stakeholder Report in Section IV (including information requested from Selected Stakeholders in terms of PAIA); Part B sets out background information as to how the Pillar connects with the Egg Supply Chain (including environmental harms associated with the Egg Industry including greenhouse gas emissions and climate change; competition for limited resources; water and soil pollution); and Part C provides an overview of selected governance matters associated with this Pillar in the context of the Egg Supply Chain in South Africa (including highlighting specific environmental legislation at national and international level).

Matters already dealt with in detail in other Pillars or sections of this Initial Report are not repeated.

This Environmental Pillar has been selected for purposes of the Project because in addition to the animal welfare issues arising during the industrial egg production process (as further set out in the Animal Welfare Pillar), the Egg Industry has negative environmental impacts, including contributing significantly towards global greenhouse gas ("**GHG**") emissions and climate change, use of non-renewable resources such as land, habitat and biodiversity loss, a significant water footprint, water pollution, and polluting atmospheric emissions other than GHGs.[431]

To get a sense of whether Selected Stakeholders in the Egg Supply Chain are aware of and compliant with Environmental Legislation,[432] our PAIA Requests to Selected Stakeholders requested reports,

[430] For a more detailed analysis of Environmental matters applicable to animal agriculture in South Africa, please refer to ALRSA's Food System Working Paper https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf and White Paper (October 2022) https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf respectively.
[431] https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf.
[432] Legislation (including any amendments, rules, lists, notices, regulations, etc.) concerning the environment, including, but not limited to: the National Environmental Management Act 107 of 1998 ("NEMA"); the National Environmental Management: Waste Act 59 of 2008 ("NEMWA"); The National Environmental Management: Air Quality Act 39 of 2004 ("NEMAQA") and the National Water Act 36 of 1998 ("NWA").

licenses, permits, warnings, citations, notices directives and similar enforcement and compliance records, both internal and external, specifically in relation to compliance and/or non-compliance with Environmental Legislation as well as records related to Adverse Findings[433] in respect of Environmental Legislation.

We further requested records related to Environmental Commitments.[434] These records we believed would provide insight into Selected Stakeholders efforts in respect of the environment. Furthermore, we would be able to analyse Selected Stakeholders' understanding of the environmental right and whether Selected Stakeholders have adopted an approach which is inclusive of addressing animal welfare as a measure for environmental protection and sustainability.

PART B: LAYING DOWN THE FACTS

A HIGH-LEVEL OVERVIEW OF SELECTED NEGATIVE ENVIRONMENTAL IMPACTS ASSOCIATED WITH LAYER HEN FARMING

The negative environmental impacts associated with intensive poultry farming include the production of waste materials that lead to air, soil and water pollution, pollution caused by pharmaceutical residues, livestock-related air pollution such as the emission of contaminated dust and its impact on lung disease, contribution to climate change and greenhouse gas ("**GHG**") emissions, competing for the use of limited land and water resources, and loss of biodiversity and wild habitat.[435] While research exists on some of the sources of pollution from poultry farming, long-term research is still required to determine the extent and full impact of these pollutants, such as pharmaceutical residues and the repeated application of contaminated chicken manure and poultry waste, on human health, the soil environment, water resources, and aquatic organisms.[436]

Examples of these negative environmental impacts of poultry farming are discussed briefly below.

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433 Any judgments, decrees, rulings, or other official statements containing findings against a Selected Stakeholder or their supplier or any other relevant third party in relation to non-compliance with or enforcement of Relevant Legislation or action against them by any Relevant Authority.

434 A commitment by a Selected Stakeholder related to environmental matters including sustainability, best practices relating to the use of the environment and its components (such as land, air, water, food, etc.) and environmental protection, including those that directly or indirectly provide for measures addressing animal welfare, specifically regarding Layer Hens and Chicks.

435 Astrid Jankielsohn. *Erratum to: The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know*. J Agric Environ Ethics(2015) 28:1159. DOI10.1007/s10806-015-9583-6. and Intensive poultry farming: A review of the impact on the environment and human health - ScienceDirect and Poultry Farms as a Potential Source of Environmental Pollution by Pharmaceuticals.

436 Intensive poultry farming: A review of the impact on the environment and human health - ScienceDirect.

GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

Climate change is a global phenomenon affecting all countries, including South Africa - in fact, it is already affecting its ecosystems, economies, and livelihoods.[437] Since 1990, the national average temperature has increased twice as fast as global temperatures, resulting in various severe consequences such as frequent drought.[438]

While livestock farming systems are likely to suffer from climate change impacts, they are also contributors towards climate change.[439] Generally, industrialised farming systems are said to have a greater carbon footprint and to release more methane gas than the free-range or pasture led systems.[440] The high volume of manure produced in intensive livestock farming is also responsible for the insidious emission of 68% of anthropogenic nitrous oxide, which remains in the atmosphere for up to 150 years and has 296 times the global warming potential of carbon dioxide.[441] Egg production releases high levels of GHG emissions, including carbon dioxide, methane, and nitrous oxide, throughout the production process. With around 27-million-Layer Hens recorded in South Africa in January 2022,[442] egg production undoubtedly represents a major contributor towards the release of harmful GHG emissions. This ultimately not only affects air quality in the country, but contributes towards the global threat of climate change.

COMPETITION FOR LIMITED RESOURCES

Climate change is not the only environmental impact arising from factory farming. Animals in factory farms consume huge quantities of feed grown on land that could be used to grow food crops instead, and this results in the inevitable conflict with other potential uses for limited arable land.[443] According to StatsSA, 38% of the total land area of South Africa is used for commercial agriculture.[444] The conversion of land to fields used to feed animals grown for human consumption, including feed used in Layer Hen farming, results in deforestation, biodiversity and habitat losses, worsened soil erosion, and increased carbon emissions.[445] The agriculture industry worldwide contributes significantly to biodiversity loss, with The United Nations Environmental Programme ("**UNEP**") stating: "our global

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437 South Africa Climate Change Fact Sheet.

438 South Africa Climate Change Fact Sheet.

439 Sustainability of Livestock Farming in South Africa. Outlook on Production Constraints, Climate-Related Events, and Upshot on Adaptive Capacity.

440 Sustainability of Livestock Farming in South Africa. Outlook on Production Constraints, Climate-Related Events, and Upshot on Adaptive Capacity.

441 Astrid Jankielsohn. *Erratum to: The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know*. J Agric Environ Ethics(2015) 28:1159. DOI10.1007/s10806-015-9583-6.

442 This figure is expected to increase to around 28 million by the 2023 summer season. https://www.farmersweekly.co.za/agri-news/south-africa/hopes-for-poultry-sector-growth-despite-challenges/.

443 Astrid Jankielsohn. *Erratum to: The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know*. J Agric Environ Ethics(2015) 28:1159. DOI10.1007/s10806-015-9583-6.

444 https://www.statssa.gov.za/?=13144.

445 Astrid Jankielsohn. *Erratum to: The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know*. J Agric Environ Ethics(2015) 28:1159. DOI10.1007/s10806-015-9583-6.

food system is the primary driver of biodiversity loss with agriculture alone being the identified threat to 24,000 of the 28,000 (86%) of species at risk of extinction".[446] The use of large areas of land for livestock-related activities therefore directly contributes significantly to the ecological footprint through such land use and biodiversity loss.[447]

Farming also uses significant quantities of water and the modern industrialised livestock–reduction methods - primarily dependent on crop-based feed - require immense amounts of water, and directly compete with other end users.[448] While eggs require less water than beef and broiler production, it still requires more water than pork and milk production.[449] As a water scarce country, with poor and unpredictable rainfalls as well as rising temperatures, livestock farming (including layer egg farming) exacerbates the water insecurity problems in South Africa.[450]

WATER AND SOIL POLLUTION

Intensive livestock farming practices that are used to breed thousands of chickens in confined spaces, face problems with the safe and proper disposal of tons of animal excreta produced daily.[451] Although chicken manure releases ammonia, it may return beneficial nutrients to the soil when applied in moderate amounts. Unfortunately, large commercial egg producers, with massive, enclosed buildings filled with Battery Cage confined hens, currently produce more manure than the surrounding land can absorb - oversaturating the land with minerals and nutrients, as well as pathogens. It is estimated that +/-9.1 – 13.6 kg manure produced by a single Layer Hen every year[452]

In South Africa, the heavy metals accumulated in chicken manure have been found to be way above acceptable limits.[453] Due to this, waste produced in these facilities causes harm to human and animal health, and also causes various environmentally harmful results.[454] Manure consists of a cocktail of substances, including bacteria, fungi, viruses, antibiotics, heavy metals, growth and sex hormones, and pesticides and might contain pathogens and heavy metals.[455] The presence of these contaminants

446 https://www.unep.org/news-and-stories/press-release/our-global-food-system-primary-driver-biodiversity-loss.

447 Astrid Jankielsohn. *Erratum to: The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know*. J Agric Environ Ethics(2015) 28:1159. DOI10.1007/s10806-015-9583-6.

448 Ibid.

449 Mekonnen, MM and Hoekstra, AY. "The Green, Blue and Grey Water Footprint of Farm Animals and Animal Products". UNESCO-IHE Institute for Water Education, Volume 1: pp. 29, December 2010. Retrieved July 9, 2019, from July 9, 2019, from The green, blue and grey water footprint of farm animals and animal products.

450 Sustainability of Livestock Farming in South Africa. Outlook on Production Constraints, Climate-Related Events, and Upshot on Adaptive Capacity.

451 Poultry Farms as a Potential Source of Environmental Pollution by Pharmaceuticals.

452 Grzinic G et al(2023) "Intensive Poultry farming: A review of the impact on the environment and human health" available at https://www.sciencedirect.com/science/article/pii/S0048969722071145.

453 How Safe is Chicken Litter for Land Application as an Organic Fertilizer?: A Review - PMC.

454 The FoodPrint of Eggs; also https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6801513/.

455 Li J (2020) Impacts of different sources of animal manures on dissemination of human pathogenic bacteria in agricultural soils Environ. Pollut., 266 (2020), Article 115399.

reduces the possibility of using manure for fertilization purposes.[456] The long-term, repeated application of such contaminated chicken manure may result in contaminant accumulation in agricultural soils, increasing their potential bioavailability and toxicity in the environment.[457] These contaminants are also easily leached through the soil into groundwater and adjacent water sources, and have the potential to contaminate drinking water, or cause antibiotic-resistant infections and diseases in animals, plants and humans,[458] resulting in devastating health effects and economic problems, too.[459] Manure produced by hens unable to be absorbed seeps into groundwater or runs off into surface water, affecting surrounding communities and aquatic species.[460]

In addition, as the turnover rate of Layer Hens are longer than broilers, logic dictates that the chicken manure lasts longer and therefore becomes more contaminated in layer houses than in broiler houses,[461] further highlighting the significant negative impacts of the Layer Hen industry on scarce water resources.[462] Improving the sanitary conditions of Layer Hen farms in intensive confinement, and thus improving animal welfare, has been cited as an alternative method to antibiotic drug use for controlling and preventing diseases on farms - which could ultimately prevent the entry of contaminated manure into water sources.[463]

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456 Intensive poultry farming: A review of the impact on the environment and human health - ScienceDirect.

457 Intensive poultry farming: A review of the impact on the environment and human health - ScienceDirect.

458 Poor practices play a major role in contributing to antimicrobial residues in food of animal origin, and these have been reported in many African countries where the use of antimicrobials remains largely unregulated, including in South Africa. This has resulted in the emergence of antimicrobial resistance, and these drug-resistant genes have been found in poultry, livestock and hospitalised patients in South Africa (including multidrug-resistant bacteria found in humans and animal sources in North West Province of South Africa). This is not only a cause for public health concern, but one that could be prevented with more cautious use of antimicrobials and, for purposes of this chapter, to implement the necessary environmental practices to prevent contamination of water resources and the further spread of such antibiotic-resistant genes. https://reader.elsevier.com/reader/sd/pii/S2213716519301985?token=4B83040E0678105F611B094D7CB428D8CF84B125BE284F2EC9BF326B203C5E7CD53070FA05F653C6EC5799A5D293BB6C&originRegion=eu-west-1&originCreation=20230214234650.

459 How Safe is Chicken Litter for Land Application as an Organic Fertilizer?: A Review - PMC.

460 The FoodPrint of Eggs – A Foodprint Report available at https://foodprint.org/reports/the-foodprint-of-eggs/.

461 How Safe is Chicken Litter for Land Application as an Organic Fertilizer?: A Review - PMC.

462 South Africa is a water scarce country, and many areas have experienced water shortages, such as Cape Town, Johannesburg, and parts of the Eastern Cape and Northern Cape. https://www.businessinsider.co.za/water-tips-2022-10, Fears Taps Could Run Dry in South Africa's Eastern Cape and Eastern Cape ravaged by double disaster of drought and poor municipal administration and Northern Cape farmers' drought misery continues.

463 See https://reader.elsevier.com/reader/sd/pii/S2213716519301985?token=4B83040E0678105F611B094D7CB428D8CF84B125BE284F2EC9BF326B203C5E7CD53070FA05F653C6EC5799A5D293BB6C&originRegion=eu-west-1&originCreation=20230214234650 (accessed on 15 February 2023).

PART C: LAYING DOWN THE LAW

REGULATION OF THE EGG INDUSTRY THROUGH AN ENVIRONMENTAL LENS

I. Introduction

The **Constitution** entrenches the right to an environment that is not harmful to our health and well-being, and seeks to protect the environment for the benefit of present and future generations (the "**environmental right**").[464] Importantly, the nature of the environmental right makes it suitable for vertical and horizontal application, and therefore the duty to protect the environment is not limited to the State but extends to companies and private individuals, too.[465] Corporations and individuals engaged in the Egg Industry, are therefore required to respect and protect the environment.

As discussed in further detail in the Animal Welfare Pillar, several cases[466] serve as a clarion call for the recognition of the intrinsic value of individual animals and to bring animal welfare under the rubric of the constitutional environmental right.[467] As discussed above, these cases identified the intrinsic value of animals,[468] and found that animal welfare and animal conservation together reflected two intertwining values.[469] The courts regarded animal welfare issues as environmental issues which implicated the constitutional environmental right.[470] This generous purposive interpretation of the environmental right by the courts is promising, as it affirms the intrinsic value of animals and is a positive step towards ensuring that animal welfare issues are (rightfully) considered under the environmental right.

In order to translate the constitutional environmental right into a more concrete reality, the National Environmental Management Act 107 of 1998 ("**NEMA**") was enacted, creating a framework to put much-needed environmental norms and standards in place, as well as to promote cooperative

464 Section 24 of the Constitution.
465 Glazewski J Environmental Law in South Africa (2019) 5-14.
466 *The National Society for the Prevention of Cruelty to Animals* v *Minister of Justice and Constitutional Development* [2016] ZACC 46 (the "**NSPCA Case**" or "**2016 NSPCA Case**") and the *National Council of the Society for Prevention of Cruelty to Animals* v *Minister of Environmental Affairs and Others* [2019] ZAGPPHC 337 (the "**Lion Bones Case**").
467 For a detailed discussion on these 2 cases and the salient aspects thereof, Scholtz W. 'Ethical and humane use', Intrinsic value and the Convention on Biological Diversity: Towards the reconfiguration of sustainable development and use. RECIEL. 2021;30:73–80. https://doi.org/10.1111/ reel.12360.
468 *NSPCA Case* at paras 54-57.
469 *NSPCA Case* at para 58.
470 *Lion Bones Case* at para 31.

governance and to emphasise the public interest in the environment, among other things.[471] As a framework Act, it is complemented by a number of subsequent "specific management Acts" ("**SEMAs**"), including the National Environment Management: Air Quality Act 39 of 2004 ("**NEM:AQA**"), the National Environment Management: Waste Act 59 of 2008 ("**NEM:WA**"), and the National Water Act 36 of 1998 ("**NWA**"). NEMA prescribes national environmental principles ("**NEMA principles**") to guide organs of state[472] when making decisions regarding the protection of the environment. NEMA and the SEMAS further follow a similar structure in that they impose duties of care and restrict the use of environmental resources by providing for standards, licensing requirements and conditions.

Most of the environmental legislation at a national level falls under the mandate of the Department of Forestry, Fisheries and Environment ("**DFFE**") with provincial governments also having authority over environmental and conservation matters. In addition, other governmental departments have mandates overlapping with environmental issues.

The aspects of these Acts that are of relevance to the regulation of the Egg Industry will be discussed in more detail below.

II. National Legislation and Regulations

1. NEMA

NEMA, under the mandate of the DFFE, regulates many activities, which have the potential to negatively impact on the environment,[473] and the provisions of the Act are applicable to the significant pollution[474] caused by intensive land farm systems, including the Layer Hen industry.

NEMA PRINCIPLES

Section 2 lists 18 NEMA principles,[475] which apply alongside the state's responsibility to respect, protect, promote and fulfil the social and economic rights and serve as a general framework and

471 Glazewski J Environmental Law in South Africa (2019) 7-6.

472 Although, it is suggested that the principles are applicable to private juristic persons, too, in the same way that the environmental right has horizontal application. Glazewski J Environmental Law in South Africa (2019) 7-11.

473 NEMA provides the legal definition of "environment" to mean the surroundings within which humans exist and that are made up of (i) the land, water and atmosphere of the earth; (ii) micro-organisms, plant and animal life; (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and; (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being.

474 NEMA provides the legal definition of pollution to mean any change in the environment caused by (i) substances; (ii) radioactive or other waves; or (iii) noise, odours, dust or heat, emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether engaged in by any person or an organ of state, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future.

475 Section 2(1) of NEMA provides that these principles apply throughout the country to the actions of all organs of state which may significantly affect the environment.

guidelines for organs of states' actions regarding environmental management and the formulation of implementation plans.[476] Underlying the NEMA principles is the notion of ecologically sustainable development,[477] which is evident from several of these principles.[478]

The NEMA principles are detailed and complex, and reflect many internationally established environmental norms, such as the precautionary principle,[479] the preventative principle[480] and the "polluter pays" principle.[481] These principles, when properly interpreted by a decision-maker should, at best, prevent the approval of Layer Hen farms in intensive confinement or, at the very least, require the implementation of proper measures to minimise the negative environmental impacts caused by such farms. For example, the precautionary principle requires a decision-maker to take a risk-averse and cautious approach, whilst taking into account the limits of current knowledge about the consequences of decisions and actions.[482] As long-term research is still required to determine the extent and full impact of poultry farm pollutants, such as pharmaceutical residues and the repeated application of contaminated chicken manure and poultry waste, on human health, the soil environment, water resources, and–aquatic organisms - the state has a duty to take a more cautious approach when considering applications for the development of such farms, and ensuring that appropriate conditions are imposed to manage these risks. Doing so would align with the precautionary principle.

Where activities result in pollution, environmental degradation and consequent adverse health effects, the "polluter pays" principle underpins provisions that seek to hold polluters liable for paying the costs of remedying, preventing, controlling and minimising such effects.[483] Pursuant to the general duty of care discussed next, a wide range of persons may be regarded as the "polluter" and be held accountable for environmental damage arising from the Egg Supply Chain, including the land owner, the farm company, its employees, managers, directors, as well as any party that then benefits from

476 Section 1(b) of NEMA.

477 Sustainable development is defined in NEMA as "the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations".

478 Section 2(3) of NEMA provides that '[d]evelopment must be socially, environmentally and economically sustainable', and section 2(4) provides that "[s]ustainable development requires the consideration of all relevant factors", which is further qualified by eight sub-principles (sections 4(a)(i) - (viii)).

479 Such as section 2(4)(vii) of NEMA, which provides that a "risk-averse and cautious approach" ought to be applied, taking into account the limits of current knowledge.

480 Such as section 2(4)(ii) which provides that "pollution and degradation of the environment are [to be] avoided, or, where they cannot be altogether avoided, are minimised and remedied", and section 2(4)(iv) provides that waste ought to be avoided, alternatively, minimised and re-used or recycled, where possible and other disposed of in a responsible manner.

481 Section 2(4)(p) of NEMA provides that the "costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment".

482 Section 2(4)(a)(vii) of NEMA.

483 Section 2(4)(p) of NEMA.

measures that are required to be taken by the state (in the event that the responsible party fails to take the necessary measures as directed) to rehabilitate the environment.[484]

GENERAL DUTY OF CARE

Section 28 of NEMA provides a general duty of care to take "reasonable measures" to prevent significant pollution or environmental degradation, or to minimise and rectify such pollution or environmental degradation where such harm cannot be reasonably avoided or is authorised by law.[485]

Section 28 is significant because the category of persons on whom this duty is imposed is non-exhaustive as it explicitly refers to "every person". The duty is therefore applicable to a wide range of persons including not only the owner of the land, but also any person who has the right to use the land on which any activity is performed.[486]

In terms of what ought to be regarded as "significant pollution or degradation" (our emphasis), the courts have held that this involves a considerable measure of subjective import and the threshold level of significance need not be particularly high,[487] and therefore significant pollution must be considered in light of the constitutional right to an environment conducive to health and well-being.[488] Based on the extent of pollution caused by the Egg Supply Chain, such pollution would likely be regarded as significant and a duty imposed on role-players who are involved to prevent, minimise or remediate such pollution and environmental harm.

The failure to uphold this duty is an offence under NEMA and, upon conviction, may result in a fine up to R10 million or imprisonment for up to 10 years.[489]

DIRECTOR LIABILITY

Section 34(7) of NEMA was enacted to prevent directors from hiding behind the corporate veil to avoid prosecution for environmental offences. Where a director fails to take all reasonable steps

484 Section 28(2) and section 28(9) of NEMA.

485 Section 28(1) provides that "[e]very person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment".

486 Section 28(2) of NEMA provides that the persons on whom the section 28 duty of care imposes an obligation to take reasonable measures include "an owner of land or premises, a person in control of land or premises or a person who has a right to use the land or premises on which or in which any activity or process is or was performed or undertaken; or any other situation exists".

487 *Hichange Investments (Pty) Ltd v Cape Produce Company (Pty) Ltd t/a Pelts Products, and Others* [2004] 1 All SA 636 (E).

488 Glazewski J Environmental Law in South Africa (2019) 7-23.

489 Section 49A(1) read with section 49B(1) of NEMA.

necessary to prevent the commission of an offence under Schedule 3 of NEMA,[490] such director(s) may be found personally liable for such offences. This provision is important because the ability to hold a director (a natural person) personally liable for environmental transgressions is a stronger deterrent than holding a Company (a juristic person) liable. This is especially the case when punishment includes imprisonment because it helps to recognise the devastating impact associated with environmental crimes and ensures that a director's actions are not insulated from liability.[491]

The APA is mentioned in Schedule 3 of NEMA, specifically sections 2(1) and 2A, which in turn relate to section 34 of NEMA which deals with 34 criminal proceedings. Section 34 provides that whenever any person is convicted of an offence under any provision listed in schedule 3 (i.e. offences in terms of the APA) and it appears that such person has by that offence caused loss or damage to any organ of state or other person, including the cost incurred or likely to be incurred by an organ of state in rehabilitating the environment or preventing damage to the environment, the court may in the same proceedings at the written request of the Minister or other organ of state or other person concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage caused.

ENVIRONMENTAL AUTHORISATIONS

NEMA lists various activities (known as "**listed activities**")[492] that may not commence unless the competent authority has granted an environmental authorisation for such listed activity or, where applicable, the activity is carried out in terms of applicable norms and standards as published by the DFFE.[493] Failure to do so is an offence.[494]

The listed activities are separated into various listings, depending on the significance of impact/s. For example, Listing Notice 1[495] relates to small scale activities that are less complex, with familiar or predictable consequences and only require basic assessments (a shorter and simpler application process); whereas Listing Notice 2[496] relates to large scale activities that are complex, with significant

490 Schedule 3 of NEMA provides a list of provisions in terms of national legislation and provincial legislation that are applicable for purposes of s34 of NEMA. These legislation includes, but is not limited to Relevant Legislation such as the Animal Protection Act, National Water Act and Fertilizer, Farm Feeds, Agricultural Remedies and Stock Remedies Act. Other legislation listed includes the Atmospheric Pollution Prevention Act (no 45 of 1965), Conservation of Agricultural Resources Act (no. 43 of 1983) and National Parks Act (no. 57 of 1976).

491 For a discussion on personal director liability for environmental transgressions, Chien L (2020) Do existing laws in South Africa hold directors personally liable for environmental transgressions? University of the Western Cape http://etd.uwc.ac.za/xmlui/handle/11394/8008.

492 Section 24(2) of NEMA.

493 Section 24F of NEMA.

494 Section 49(1)(a) of NEMA.

495 Environmental impact Assessment Regulations Listing Notice 1 of 2014, as amended.

496 Environmental impact Assessment Regulations Listing Notice 2 of 2014, as amended.

impacts that require full scoping and environmental impact assessments (longer and more involved application process assessing a more comprehensive range of factors).

Animal agricultural operations including Layer Hen farms, hatcheries and others are required to obtain environmental authorisation/s for activities triggered by such farming operations. What is evident though, is that poultry farming is not regarded / assessed as an activity with significant or unpredictable environmental impacts, as all relevant listed activities are only found under Listing Notice 1. These activities only attract a basic assessment requirement in order for an application for an environmental authorisation to be considered by competent authorities. This creates the (false, in our view) impression that these farming activities are less "harmful" to the environment, and authorisations are more easily obtained because the application process is simpler and shorter.

There are several activities specifically applicable to poultry farming and **for which an environmental authorisation must be obtained prior to commencing such activity**. These include Activities 3, 4,5, 8, 38, 40 and 43 under Listing Notice 1, which are set out further below.

Listing Notice 1 defines: "concentration of animals" to mean "*the keeping of animals in a confined space or structure, including a feedlot, where they are fed in order to prepare them for slaughter or to produce products such as milk* ***or eggs***." It further defines "*unit*" to mean "*in relation to a quantity standard for determining throughput of facilities or infrastructure for the slaughter of animals, has the meaning assigned to it in Regulations promulgated in terms of the Meat Safety Act, 2000 (Act No. of 40 of 2000)*".

- **Activity 3:** the "development and related operation of facilities or infrastructure for the slaughter of animals with a product throughput of poultry exceeding 50 poultry per day…".
- **Activity 4:** the "development and related operation of facilities or infrastructure for the concentration of animals for the purpose of commercial production in densities that exceed… 8 square meters per small stock unit".
- **Activity 5:** the "development and related operation of facilities or infrastructure for the concentration of:
    - more than 1000 poultry per facility situated within an urban area, excluding Chicks younger than 20 days;
    - more than 5000 poultry per facility situated outside an urban area, excluding Chicks younger than 20 days;
    - more than 5000 Chicks younger than 20 days per facility situated within an urban area; or
    - more than 25000 Chicks younger than 20 days per facility situated outside an urban area".
- **Activity 8:** the "development and related operation of hatcheries or agri-industrial facilities outside industrial complexes where the development footprint covers an area of 2 000 square metres or more".
- **Activity 38:** the "expansion and related operation of facilities for the slaughter of animals where the daily product throughput will be increased by more than 50 poultry…".
- **Activity 40:** the "expansion and related operation of facilities for the concentration of poultry, excluding Chicks younger than 20 days, where the capacity of the facility will be increased by40. (i)more than 1 000

poultry where the facility is situated within an urban area; or (ii)more than 5 000 poultry per facility situated outside an urban area".

- **Activity 43:** the "expansion and related operation of hatcheries or agri-industrial facilities outside industrial complexes, where the development footprint of the hatcheries or agri-industrial facilities will be increased by 2 000 square metres or more".

Other activities listed under Listing Notice 1 could also apply to poultry farming including if structures are constructed to for example transport sewerage and waste. Others may be applicable to poultry such as Activity 27, which relates to the clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation. The development of a chicken farm may require the clearing of indigenous vegetation, and therefore this activity may be applicable. Additional activities may also be triggered in other Listing Notices, of which there are 3.

2. SEMAs

SEMA: NEM:AQA

NEM:AQA was enacted to reform the regulation of air quality in order to protect the environment and improve ambient air quality in the country. It prescribes that listed activities - which are activities that result in atmospheric emissions that have a significant detrimental effect on the environment - may not commence without a provisional atmospheric emission licence or an atmospheric emission licence ("**AEL**").[497]

While the intensive farming of poultry is responsible for the emission of various harmful gases including methane, nitrogen and carbon dioxide, these processes do not currently require an AEL.[498] As such, the farms are not obligated to assess the impact of the emissions, or be subjected to licence conditions such as monitoring and reporting obligations, and the relevant authorities are then unable to hold them liable for the environmental harm caused by such emissions. The absence of intensive poultry farming from the NEM:AQA Listed Activities results in a gap in the legislation, and impairs the government and public's ability to hold farms accountable for their emissions.

An obligation is, however, imposed by NEM:AQA upon poultry farmers, in terms of the National Greenhouse Gas Emissions Reporting Regulations ("**GHG Reporting Regulations**").[499] The GHG Reporting Regulations are intended to introduce a single national reporting system for the transparent reporting of GHG emissions,[500] and applies to emissions resulting from various activities including intensive rearing of poultry. Poultry farmers must therefore register their facilities, and comply with

497 Section 21 of NEM:AQA.

498 While Category 10 includes "animal matter processing", this only relates to processes involving animal matter "not intended for human consumption", and therefore a poultry farm is not required to obtain an AEL before commencing activities, despite such processes emitting harmful gases. GN248 of Government Gazette 33064 published on 31 March 2010, as amended ("NEM:AQA Listed Activities").

499 Published by GN275 of Government Gazette 40762 of 3 April 2017, as amended.

500 Regulation 2.

the reporting requirements prescribed.[501] It is unclear whether poultry farms have been complying with these regulations, whether the DFFE plans on publishing any of the data reported, and whether the data reported will result in the amendment of existing legislation (so as to reduce or minimise the impact of the GHG emissions, caused by poultry farming, on the environment).

NEM:AQA provides that the occupier of any premise must take all reasonable steps to prevent the emission of any offensive odour caused by any activity on such premises,[502] and this provision would be applicable to Layer Hen farms as the intensive nature of these farms result in the accumulation of excessive quantities of–chicken waste products - which often result in offensive odours. Failure to comply with this provision and to take "all reasonable steps to prevent the emission", is an offence.[503] A person convicted of such an offence is liable to a fine not exceeding five million rand, or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction, to a fine not exceeding R10 million rand or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment.[504]

SEMA: NEM:WA

NEM:WA regulates waste management activities in order to protect human health and the environment. Selected relevant provisions are discussed briefly below.

DUTY OF CARE IN RESPECT OF WASTE

NEM:WA imposes a duty on a holder of waste to take all reasonable measures, including avoiding or minimising the generation of waste, ensuring that waste is treated and disposed of in an environmentally sound manner, and managing waste in a manner that does not endanger health or the environment.[505] Due to the generality of this provision, it is applicable to Layer Hen farms as these farms generate a considerable amount of waste that is required to be properly and responsibly managed.

LISTED ACTIVITIES

Activities listed under section 19 as waste management activities, may not commence without a waste management licence ("**WML**"), or compliance with standards as published by the DFFE.[506] The storage, treatment and processing of animal waste is no longer listed as an activity requiring a WML, and is only regulated by the National Norms and Standards for Organic Waste Composting (the

501 Regulations 5 and 7.
502 Section 35(2) of NEM:AQA.
503 Section 51 read with section 35(2) of NEM:AQA.
504 Section 52(1)(a) of NEM:AQA.
505 Section 16(1) of NEM:WA.
506 Section 20 of NEM:WA.

"**Composting Regulations**").[507] While the Composting Regulations provides a national uniform approach relating to the composting of organic waste, the absence of licensing requirements essentially makes it easier for Layer Hen farms to be established without having to assess their environmental impacts in order to apply for a WML, and to be bound by strict licence conditions thereafter. This may result in poorly managed waste activities on Layer Hen farms, without authorities being able to hold such farms accountable due to the absence of a WML with specific conditions

STORAGE OF WASTE

NEM:WA imposes waste storage requirements upon any person who stores waste, and this includes ensuring that waste storage does not breed vectors, and cause pollution of the environment or harm to health.[508] These requirements are applicable to Layer Hen farms as the waste accumulated on site contain contaminants that may spread diseases and cause harm to environment and health.

CONTAMINATED LAND

NEM:WA imposes a duty on the owner of land that is significantly contaminated,[509] or any person who undertakes an activity which causes the land to be significantly contaminated, to notify the relevant authority.[510] The site would then be subjected to an assessment to determine the extent of the contamination, and the authorities may then order the responsible party to remediate the land.[511] The contaminated land provisions are potentially applicable to land used for intensive Layer Hen farming - especially since intensive farming is known to cause significant pollution to soil.

Furthermore, NEM:WA also imposes notification obligations on the transfer of contaminated land[512] and creates a national contaminated land register to record data relating to contaminated land and any restrictions of use on such land.[513]

As the full impact of the long-term application of the contaminants generated through intensive farming of Layer Hens on the soil environment remains largely unknown, it is submitted that Layer

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507 Published by GN 561 of Government Gazette 44762 of 25 June 2021. The composting of organic waste, such as chicken manure, would fall under Category C of the List of Waste Management Activities that have, or are likely to have, a Detrimental Effect on the Environment, as published in GN 921 of Government Gazette 37083 of 29 November 2013, as amended ("NEM:WA Listed Activities"). Category C activities are only required to comply with relevant standards, and are not required to obtain a WML.

508 Section 21(d) and (e) of NEM:WA.

509 "Contaminated" is defined in section 1 of NEM:WA as "the presence in or under any land, site, buildings or structures of a substance or micro-organism above the concentration that is normally present in or under that land, which substance or micro-organism directly or indirectly affects or may affect the quality of soil or the environment adversely" (writer's emphasis). As this definition is quite broad, any contaminants that may affect the quality of soil or adversely impact the environment, would be regarded as contaminated.

510 Section 36(5) of NEM:WA.

511 Sections 37-39 of NEM:WA.

512 Section 40(1) of NEM:WA.

513 Section 41 of NEM:WA.

Hen farms could potentially be regarded as contaminated land. This issue requires further research, as this provision is a useful tool that may be used to hold farms liable for the contamination caused by their farming activities. This is especially so since the penalties imposed under NEM:WA are significant[514] and could deter would-be offenders.

514 In terms of section 68, a person convicted of an offence may be liable to a fine of up to R10 million or imprisonment for up to 10 years.

SEMA: NEM:BA

Given the vast impacts of industrialised animal agriculture on biodiversity, the National Environmental Management: Biodiversity Act[515] may find further application. This is particularly so with the new amendments to NEMBA in terms of NEMLA.

NEMLAA

With the promulgation of the National Environmental Management Laws Amendment Act,[516] which came into force in June 2023, a definition of "well-being" in relation to animals was introduced as a legislative mandate of the DFFE. The term "well-being" is defined as: "'the holistic circumstances and conditions of an animal, which are conducive to its physical, physiological and mental health and quality of life, including the ability to cope with its environment". It amends section 2 of NEMBA to provide for a new objective, within the framework of NEMA, "to provide for the consideration of the well-being of animals in the management". Furthermore, it provides that the Minister may, by notice in the Gazette and subject to such conditions as the Minister may specify in the notice, prohibit any activity".

NATIONAL WATER ACT (NWA)

The NWA is structured similarly to NEMA and the other SEMAs, in that it provides a duty of care in respect of water pollution,[517] as well as regulates the use of water through licensing requirements.[518]

As discussed earlier, Layer Hen farming generates contaminants that are also easily leached through the soil into groundwater and adjacent water sources and have the potential to cause detrimental harm to our water resources. As such, the disposal of waste undertaken by Layer Hen farms is considered a "water use" in terms of section 21 and a water use licence ("WUL") is necessary.[519] There may be other water uses ordinarily undertaken by Layer Hen farms that would also be subject to the licence requirement, such as taking water from a water resource or storing water.[520] The NWA therefore finds specific relevance in the regulation of the environmental impacts of industrial farming, as these farms

515 Act 10 of 2004 https://www.gov.za/documents/national-environmental-management-biodiversity-act-0.

516 Act 2 of 2022 https://www.gov.za/sites/default/files/gcis_document/202207/4660224-6-natenvmanaglawsamendact2%EF%80%A22022.pdf.

517 Section 19(1) provides that an "owner of land, a person in control of land or a person who occupies or used the land on which (a) any activity or process is or was performed or undertaken, or (b) any other situation exists, which causes, has caused or is likely to cause pollution to a water resource, must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring".

518 Chapter 4 of the NWA.

519 Section 21(g) of NWA. A WUL will not be required only if such water use is permissible in terms of a general authorisation, is a continuation of an existing lawful use, permissible in terms of Schedule 1, or the licence requirement is dispensed by the responsible authority (see section 22(1) of NWA).

520 Sections 21(a) and (b) of the NWA.

produce large amounts of waste which need to be properly managed in order to protect our scarce water resources.

III. INTERNATIONAL CONTEXT

1. Status

As mentioned above in relation to the Animal Welfare Pillar, international law can be (and has been) influential in the courts and in law and policy-making. The below international laws are relevant to the environmental impacts of the Egg Supply Chain.

2. UNFCCC

Climate change law has been described as the protection of people and the planet against global warming by seeking and enforcing ways to reduce GHG emissions.[521] The United Nations Framework Convention on Climate Change ("**UNFCCC**"), which seeks to impose obligations on states in relation to climate change, is one of five principal international law instruments adopted as a result of the Rio Conference.[522] Signatory states commit to the stabilisation of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.[523] The UNFCCC provides, in article 3(1), that parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity, in accordance with their common but differentiated responsibilities and respective capabilities.[524]

The UNFCCC provides mechanisms for the proper implementation and compliance of the ambitions contained in the convention. These include a burden sharing mechanism in which developing countries rely on assistance from developed countries in order to effectively implement commitments under the auspices of the UNFCCC.[525] It is an example of the recognition of climate change as a global dilemma and the need for a global solution. One of the most notable contributions of the UNFCCC was the establishment of Conference of the Parties ("COP") decisions to promote continued action in addressing climate change.[526] Various COP decisions have been made since the UNFCCC entered into force in 1994, with the most recent meeting being COP27, held in Egypt towards the end of 2022.

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521 Reynolds J 'Climate Engineering and International Law' and Ghaleigh NS 'Carbon Capture and Storage as a bridging technology' in Farber DA and Peeters M (eds.) 'Climate Change Law' (2016). Also Farber DA and Peeters M 'The emergence of global climate law' in Farber DA and Peeters M (eds.) 'Climate Change Law' (2016) 688.

522 Carter S and Barnard M 'Demystifying the Global Climate Change Regime' in Humby T et al 'Climate Change Law and Governance in South Africa' (2016) 3-2.

523 Article 2 of the UNFCCC.

524 Article 3(1) of the UNFCCC.

525 Article 4 of the UNFCCC. Also Stoll P 'The Climate as a global concern' in Farber DA and Peeters M 'Climate Change Law' (2016) 136.

526 https://unfccc.int/sites/default/files/convention_text_with_annexes_english_for_posting.pdfhttp://unfccc,int/e

3. Paris Agreement

Among the most notable of these COP decisions was the Paris Agreement, adopted at COP21 in 2015, and signed in 2016. It is an inclusive and ambitious international agreement with the goal of combating climate change.[527] The Paris Agreement's key objectives relate to mitigation of GHG emissions, adaptation to climate harms, financing for climate mitigation and adaptation, as well as addressing loss and damage for climate harms. The main aims of climate change are found in articles 2 and 4.1.[528] Both these articles highlight the long-term mitigation objective of maintaining the increase in global average temperature to well below 2 degrees Celsius above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degree Celsius above pre-industrial levels.[529]

The Paris Agreement expresses a desire to increase the ability to adapt to the adverse impacts of climate change while fostering climate resilience and low GHG emissions development.[530] The Paris Agreement is to be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in light of different national circumstances.[531]

The agreement addresses mitigation primarily through requiring that states prepare National Determined Contributions ("**NDC**")[532] (see articles 3 and 4). Each party is required to prepare, communicate and maintain successive NDCs that it intends to achieve to promote the objectives of the Paris Agreement. In doing so, they shall pursue their own domestic measures with the aim of achieving their contribution to keeping global temperature increases to safe levels.[533]

Parties are to pursue the global goal of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change.[534] The sharing of information, good practices and experiences learned including science, planning, policies and implementation measures are envisaged.[535] Furthermore, the agreement provides that parties should submit and update periodically adaptation

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ssential_background/convention_bodies/items/2629.php. It is noteworthy to mention that the COP has two subsidiary bodies that undertake technical discussions namely the Subsidiary Body for Implementation ("SBI") and the Subsidiary Body for Scientific and Technological Advice ("SBSTA"). This holds true to the linkages between the science behind climate change and international climate change law.

527 Ladan MT 'SDGs Framework as the Blueprint for Climate Change Action and Sustainable Development in Africa: Role of Law and Parliaments' (2016) 22 SAJELP 159 at 162.

528 Bodansky D., "The Paris Climate Change Agreement: A New Hope?" 110 (2016): 288 at 302.

529 Article 2.1(a) of the Paris Agreement.

530 Article 2.1 (b) of the Paris Agreement.

531 Article 2.2 of the Paris Agreement.

532 ALRSA and ELA's comments on the NDC, with a statement to the effect that:
ALRSA has expressed concern about the failure of South Africa's NDC to address mitigation in the animal agriculture sector. See their joint submission on South Africa's proposed updated Nationally Determined Contribution in terms of the UNFCC and the Paris Agreement from April 2021: https://www.animallawreform.org/wp-content/uploads/2021/04/NDC-Submission-ALRSA-and-ELA.pdf.

533 Article 4 of the Paris Agreement.

534 Article 7.1 of the Paris Agreement.

535 Article 7.7 (a) of the Paris Agreement.

communication which may include its priorities, implementation and support needs without creating any additional burden for developing countries.[536]

South Africa is a signatory state to the Paris Agreement. In its updated NDC report of September 2021, South Africa states that the country:

> "*aims to capitalise on the national and global shift to the green economy, through green industrialisation and by creating new opportunities for South Africa's rich mineral endowment, many of which are vital for low emission and climate resilient development*".[537]

Whilst there are mitigation targets which should reach agriculture, the Presidential Climate Commission's Just Transition Framework does speak to agriculture, as do adaptation plans that intend to give effect to the NDC. However, as can be seen from the below extract, much of the initial focus is on the electricity sector and the transport sector:

> "*[t]he long-term decarbonization of the South African economy will in the 2020s focus primarily on the electricity sector; in the 2030s, deeper transition will take place in the electricity sector, coupled with a transition in the transport sector towards low emission vehicles; while the 2040s and beyond will be characterised by the decarbonization of the hard-to-mitigate sectors*".[538]

Although environmentally detrimental, as highlighted above, the government views agriculture as a sector critical in attracting foreign exchange, job creation and production of raw material for the economy.[539]

Nevertheless, in its first adaptation communication, South Africa sets out actions to be taken or measures to be implemented during the period 2021 - 2030, including relating to the agriculture sector in the country. It states "development of early warning systems for small scale farmers; and supporting climate-smart agriculture. The development of a multi-hazard early warning system; capacity building for the farming sector on climate change; and full implementation of a climate-smart agriculture framework should be prioritised".[540]

536 Article 7.10 of the Paris Agreement.
537 Page 4 of South Africa's First Nationally Determined Contribution Under the Paris Agreement Report available at South Africa updated first NDC September 2021.
538 Page 5 of South Africa's First Nationally Determined Contribution Under the Paris Agreement Report available at South Africa updated first NDC September 2021.
539 Page 7 of South Africa's First Nationally Determined Contribution Under the Paris Agreement Report available at South Africa updated first NDC September 2021.
540 Page 10 of South Africa's First Nationally Determined Contribution Under the Paris Agreement Report available at South Africa updated first NDC September 2021.

4. Agenda for Sustainable Development ("SDGs")

In 2012, the United Nations (the "**UN**") established an Open Working Group ("**OWG**") mandated to develop a list of global goals that had the central theme of sustainable development.[541] The 2030 Agenda for Sustainable Development (the "**Agenda**") consists of a list of 17 goals and 169 targets for the achievement of sustainable development.[542] These global goals or sustainable development goals are regarded as essential in addressing all the facets of sustainable development,[543] including the eradication of poverty (SDG 1), zero hunger (SDG 2), inclusive and equitable quality education (SDG 4), gender equality and empowerment for women and girls (SDG 5), sustained and inclusive economic growth and productive employment (SDG 8), and sustainable consumption and production patterns (SDG 12).[544] The SDGs can be regarded as an encapsulation of the global sustainable development agenda and as a result of the adoption of monitoring and assessment mechanisms to attain these goals, the SDGs have not only political, but policy implications for states, including South Africa.[545]

References are made throughout the Agenda of the importance of environmental protection as it relates to sustainable development.[546] The environmental SDGs or 'environmental cluster' comprise of the sustainable management of water resources,[547] climate change,[548] the conservation and sustainable use of marine resources,[549] and biodiversity.[550]

Historically, food sourcing has been associated with environmentally harmful food sources such as palm oil or seafood.[551] As such, SDG 12 seeks to promote sustainable consumption and production patterns, which would entail a shift away from harmful food sources. According to the United Nations, "unsustainable patterns of consumption and production are the root cause of triple planetary crises, namely climate change, biodiversity loss and pollution". It further noted that "our reliance on natural resources is increasing, rising over 65% globally from 2000 to 2019".[552] ALRSA is of the view that

541 'Open Working Group on Sustainable Development Goals' A/67/L.48/rev.1.
542 UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1.
543 Ladan MT 'SDGs Framework as the Blueprint for Climate Change Action and Sustainable Development in Africa: Role of Law and Parliaments' (2016) 22 SAJELP 159 at 169.
544 UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1.
545 Ceaser C (2020) Agenda 2030: A South African Perspective on the Sustainable Development Goals University of the Western Cape http://hdl.handle.net/11394/7348.
546 89 of the total 169 targets of the SDGs relate to the environment and environmentally related issues. These targets include access to and control over land and natural resources, the reduction of vulnerability to climate related extreme events, ensuring sustainable food production and implement resilient agricultural practices taking into account the maintenance of ecosystems and the improvement of water quality through the reduction of pollution, elimination of dumping and the minimising of hazardous chemicals and materials.
547 SDG 6.
548 SDG13.
549 SDG 14.
550 SDG 15.
551 https://asiareengage.com/responsible-protein-sourcing-in-asia-baseline-benchmark/.
552 https://sdgs.un.org/goals/goal12.

unsustainable consumption and production patterns are ubiquitous within the Egg Industry due to the environmental harms caused by egg production and consumption, as well as the Cruel Practices inherent in intensive factory farming..

SDG 13 states that urgent action is required to combat climate change as well as its impacts. It includes strengthening resilience and adaptive capacity to climate-related hazards and natural disasters,[553] the integration of climate change measures into national policy adoption, strategies and planning,[554] the inclusion of climate education,[555] awareness raising and human and institutional capacity on climate change mitigation, adaptation and impact reduction.[556] Most notably, it provides for the promotion of mechanisms for raising capacity for effective climate change related planning and management, specifically for vulnerable countries, i.e. least developed countries and small island developing states in accordance with the provisions of the UNFCCC.[557] The goal is phrased using obligatory verbs requiring mitigation and adaptation in the context of the climate emergency, calling for the adoption of national policy, planning measures and the utilisation of technology in relation to capacity building for developing States. Although the SDGs are soft law, this phrasing encourages states to take mitigation, adaptation, and the use of measures to bolster capacity building seriously.

The UNEP is regarded as the global authority for setting the environmental agenda, the promotion of coherent implementation of the environmental dimensions of sustainable development, and the aforementioned environmental cluster of the SDGs.[558] The UNEP works with 193 member states and representatives from civil society, businesses and others to address environmental challenges through the UN Environment Assembly, the world's highest-level-decision-making body on the environment.[559]

The Intergovernmental Panel on Climate Change ("**IPCC**") is the global UN body for the assessment of climate change related science. Its reporting increasingly informs climate policy globally and within states. The IPCC has recognised the link between sustainable development and climate change, noting that climate change poses an increasing threat to equitable and sustainable development. It urged that climate policy be aligned with sustainable development and requires attention to adaptation and mitigation as well as strategies and action to be pursued towards climate-resilient pathways to sustainable development.[560] The IPCC has acknowledged that climate change is projected to undermine all aspects of food security including food production, access, use and price stability, with

553 Target 13.1.
554 Target 13.2.
555 Target 13.b.
556 Ladan MT 'SDGs Framework as the Blueprint for Climate Change Action and Sustainable Development in Africa: Role of Law and Parliaments' (2016) 22 SAJELP 159 at 167.
557 Target 13.b.
558 United Nations Environmental Programme available at https://www.unep.org/about-un-environment.
559 https://www.unep.org/environmentassembly/about-united-nations-environment-assembly?_ga=2.240966917.763181779.1633334104-825198589.1628667604.
560 Intergovernmental Panel on Climate Change AR5 Synthesis Report (2014:90).

rural areas expected to experience the major impacts of this.[561] As livestock systems contribute significantly to GHG emissions and climate change, law and policy reform should introduce mitigation measures such as improving manure management, soil and nutrient management, water management, implementing cooling systems, improving livestock management, and feeding practices for animals, and modifying demand practices (such as dietary choices).[562]

The IPCC is currently in its Sixth Assessment cycle during which the body is producing its Assessment report from its three internal Working Groups, three Special Reports and the Synthesis Report, which was released in March 2023.[563] The Synthesis Report notes that (emphasis added):

> "*Projected adverse impacts and related losses and damages from climate change escalate with every increment of global warming (very high confidence), but they will also strongly depend on socioeconomic development trajectories and adaptation actions to reduce vulnerability and exposure (high confidence). For example, development pathways with higher demand for food,* ***animal feed,*** *and water, more resource-intensive consumption and production, and limited technological improvements result in higher risks from water scarcity in drylands, land degradation and food insecurity (high confidence)*".

This finding confirms that as the Poultry Industry in South Africa is the highest consumer of animal feed, it faces significant risk due to climate change.

IV. REPORTING ON ENVIRONMENTAL ENFORCEMENT

The legal mandate of the DFFE is to manage, protect and conserve South Africa's environment and natural resources, and this mandate is informed by section 24 of the Constitution.[564] As discussed earlier, case law has called for the recognition of the intrinsic value of individual animals, and to consider animal welfare issues as environmental issues. Thus, animal welfare issues fall within the DFFE's mandate.

The DFFE publishes annual environmental compliance and enforcement reports ("**NECERs**") with the primary objective of providing a national overview of the environmental and compliance enforcement activities undertaken by relevant institutions to give effect to the environmental right. It also provides a deterrent effect to would-be offenders by publishing the consequences for those who choose to flout environmental laws.

Currently, the NECERs report on wildlife crimes, such as rhino poaching, but do not report on animal welfare issues. The introduction of NEMLAA may result in a shift towards reporting on animal well-being. The exclusion of animal welfare issues from the NECERs results in the public being less informed on the relationships between animal well-being and environmental protection. Further, the

561 Intergovernmental Panel on Climate Change AR5 Synthesis Report (2014:69).
562 The IPCC Special Report on Climate Change and Land: Food Security, available at https://www.ipcc.ch/srccl/chapter/chapter-5/.
563 https://www.ipcc.ch/report/ar6/syr/.
564 https://www.dffe.gov.za/aboutus/department.

Companies responsible for animal welfare issues as connected to environmental protection do not benefit from the deterrent effect of such reports.

It is clear that intensive livestock farming systems are major contributors towards climate change and cause significant environmental pollution and harm. If farms are able to improve the welfare conditions for Layer Hens, there would be less reliance on antibiotic drugs and other pharmaceuticals, for example, for controlling and preventing disease, and this would in turn result in less contaminants being released into the environment, reducing the risk of water and soil pollution. The need to improve sanitary and welfare conditions for Layer Hens in intensive confinement is therefore not only essential for the welfare of Hens, but vital for environmental protection, too.

Recommendations, including concerning environmental governance, are set out in Section V: Recommendations.

CRACKING OPEN THE MYTHS OF HEALTH

EGGSPOSING THE TRUTH ABOUT EGGS & CHICKENS

ANIMAL LAW REFORM SOUTH AFRICA

OPEN WING ALLIANCE

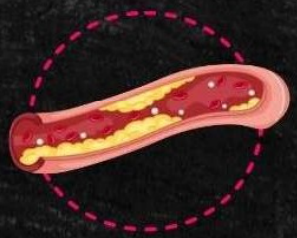
WHILE WE MAY HAVE BEEN TAUGHT THAT EGGS ARE HEALTHY... RESEARCH SHOWS THAT EATING EGGS CAN BE HAZARDOUS TO YOUR HEALTH.

SALMONELLA, E-COLI, ANTIMICROBIAL RESIDUES, ANTI-RESISTENT BACTERIA

A 2020 study on South African eggs showed the prevalence of Salmonella species and Escherichia coli, antimicrobial residues, and antimicrobial resistant bacteria.[1]

CHOLESTEROL

Cholesterol found in eggs can harm heart health and lead to diabetes, as well as prostate and colorectal cancers.[2]



SAME AS SMOKING?

Eating egg yolks accelerates atherosclerosis in a manner similar to smoking cigarettes.[3]

HEART DISEASE

Eating eggs increases the risk of dying from heart disease.[4]

CARDIOVASCULAR PROBLEMS

Those who eat the most eggs have a 19% higher risk for cardiovascular problems.[5]

DIABETES

Consuming one or more eggs per day may increase the risk of diabetes by 60%.[6]

CANCERS

Colon, rectal and prostate cancers have all been linked to egg consumption.[7]

AND ITS NOT JUST BAD FOR HUMANS...

ANIMAL HEALTH

Laying hens can suffer from many ailments, and diseases including Egg Drop Syndrome, Caged Layer Fatigue, Rickets, Egg Peritonitis, Fatty Liver Syndrome[8], Fowl Cholera, Coccidosis, Fowl Pox, Newcastle Disease, Salmonellosis Avian Influenza, Ovarian Cancer and more!

1. https://onlinelibrary.wiley.com/doi/abs/10.1111/jfs.12783
2. https://www.pcrm.org/good-nutrition/nutrition-information/health-concerns-with-eggs
3. https://www.sciencedaily.com/releases/2012/08/120813155640.htm
4. Zhao B, Gan L, Graubard BI, Männistö S, Albanes D, Huang J. Associations of dietary cholesterol, serum cholesterol, and egg consumption with overall and cause-specific mortality, and systematic review and updated meta-analysis. Circulation. Published online April 1, 2022 doi:10.1161/CIRCULATIONAHA.121.057642
5. https://pubmed.ncbi.nlm.nih.gov/21076725/
6. https://www.pcrm.org/news/health-nutrition/egg-consumption-increases-risk-diabetes
7. https://www.pcrm.org/good-nutrition/nutrition-information/health-concerns-with-eggs
8. https://www.roysfarm.com/common-diseases-in-laying-hens/

PILLAR 3: AS SICK AS A CHICKEN:
FOOD SAFETY AND HEALTH: *THE AFFLICTED AND DISEASED*

PART A: LAYING THE FOUNDATIONS

This "Food Health and Safety Pillar" contains a high-level summary of some of the food health and safety issues applicable to the Egg Industry in South Africa, as well as the regulation thereof, more specifically how these issues intersect with animal welfare and well-being. It is intended to provide an overview of selected matters only and is non-exhaustive of all of the relevant food safety and health considerations and law and policy relevant to the industry.[565] This Part A sets out the rationale for the selection of this Pillar; the main national government departments with mandates in respect thereof and connects it with information from our Stakeholder Report in Section IV; Part B sets out background information as to how the Pillar connects with the Egg Supply Chain; and Part C provides an overview of selected governance issues associated with this Pillar in the context of the Egg Supply Chain in South Africa.

Matters already dealt with in detail in other Pillars or sections of this Initial Report and have not been repeated.

This Pillar has been selected for purposes of this Project because as a supplier of a foodstuff (eggs) to the public and consumers, Corporations in the Egg Industry have various duties and responsibilities – including to ensure that food is safe. Additional duties arise to limit the spread of animal diseases and others in respect of public health. The methods of production in industrialised animal agriculture including the intensive farming of chickens raise not only serious animal welfare concerns but have major implications on food safety and human (and animal) health.[566]

For purposes of our requests to our Selected Stakeholders, we requested reports, licenses, permits, warnings, citations, notices directives and similar enforcement and compliance records, both internal and external, specifically in relation to compliance and/or non-compliance with Relevant Legislation as well as records related to Adverse Findings in respect of such legislation. Of relevance for this Pillar is legislation regulating issues of food health and safety including the MSA and the Animal Diseases Act. Records received from Selected Stakeholders in this respect would provide insight into

565 For a more detailed analysis of Food Safety and Health matters applicable to animal agriculture in South Africa, please refer to ALRSA's Food System Working Paper https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf and White Paper (October 2022) https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf respectively.

566 These will be discussed in subsequent components of this study.

compliance by the respective Selected Stakeholder with legislation related to ensuring food safety although no specific ratings have been made in respect of this Pillar for purposes of this Initial Report.

PART B: LAYING DOWN THE FACTS

Eggs are served directly to consumers by stakeholders in the form of raw eggs on their shelves, cooked eggs at their restaurant or hotel tables, and included as ingredients of well-known brands and in products consumed daily (including baked goods in mayonnaise). It is essential therefore that in the provision of these products to the public, that there is proper compliance with the law and regulations in respect of food safety as well as health. A failure to adequately consider these has dire consequences, including through the spread of zoonotic diseases;[567] and other short- and long-term impacts on individuals and public health more broadly.

DISEASES

There are several types of diseases which impact the Egg Industry. The most notable of which is called avian influenza, most commonly known as 'bird flu', and which has been reported on widely in international news, particularly in recent years. As at the date of this Initial Report, there is ongoing outbreaks and the World Health Organisation has stated that:

> *"The current outbreaks of avian influenza (also called "bird flu") have caused devastation in animal populations, including poultry, wild birds, and some mammals, and harmed farmers' livelihoods and the food trade. Although largely affecting animals, these outbreaks pose ongoing risks to humans".*[568]

Once an outbreak occurs, it is often policy to kill (or "cull") all of the animals – whether or not they are infected – in order to contain the spread of the disease. Avian influenza does not only affect the animals who are infected or killed, it can affect wild birds as well as public health more generally. One does not need to search far to find various records of and reports on outbreaks of bird flu in South Africa.

The national layer flock contracted by 7.1% in 2021 due to culling on HPAI-infected farms. An estimated 801 000 broilers and breeders were culled during 2021. [569]

In April 2021, it was reported that around 300 birds died of avian flu at the commercial chicken-layer farm in Ekurhuleni, east of Johannesburg. The same farm had also been affected by the 2017 outbreak

567 For a detailed list of recent outbreaks and epidemiological events in Africa by the World Organisation for Animal Health see https://rr-africa.woah.org/en/immediate-notifications-in-africa/.
568 https://www.who.int/news/item/12-07-2023-ongoing-avian-influenza-outbreaks-in-animals-pose-risk-to-humans.
569 SAPA 2021 Industry Profile.

of the highly pathogenic H5N8 strain of avian flu, which saw poultry farmers culling millions of birds and prompted neighbouring countries including Zimbabwe, Namibia and Botswana to ban poultry imports from South Africa.[570] In June 2022, it was reported that South Africa reported 145 outbreaks of avian flu and culled **3.7 million birds** in 12 months.[571]

On 9 May 2023, it was reported that South Africa's largest egg producer, Quantum Foods, has advised shareholders that HPAI was detected at its Lemoenkloof layer farm outside Paarl in the second half of April 2023. The article notes that at the time of the HPAI outbreak, the farm housed about **420,000 Layer Hens**, **all of whom had to be culled**. Quantum, owner of the Nulaid brand, has estimated that the direct loss resulting from this outbreak of bird flu is about R34-million (which includes the cost of the Layer Hens, feed and eggs that had to be destroyed).[572] The outbreak has also affected other farmers in the area and is expected to result in a reduction in egg production and costs in the province.

At the end of May, DALLRD issued a notice alerting the public that five HPAI outbreaks have been confirmed at commercial chicken farms in the province to date.[573]

According to the SAPA 2021 Industry Profile (emphasis added):

> "*Tighter biosecurity measures worked through the 2019 and 2020 winter seasons to safeguard South African flocks from highly pathogenic avian influenza (HPAI) infections, but it was almost inevitable that migrating birds would eventually bring the disease into the country from infected European nations. In March, an outbreak of H5N1 HPAI on a farm in Gauteng quickly spread to other provinces. By the end of the year, 134 cases in South Africa had been reported and* ***almost 2.39 million laying hens and 801 000 broilers and breeders had been culled****. Egg producers in the Western Cape were hardest hit, losing an estimated 21.5 % of their laying flock, with little expectation of receiving compensation from government*".[574]

POTENTIALLY NEGATIVE HEALTH IMPLICATIONS

While eggs are often advertised as a "health" food, the truth is that there are potentially several harmful consequences linked with the consumption of eggs. The Physician's Committee for Responsible Medicine has compiled various studies illustrating some of the not so positive health implications for consuming eggs.[575] These include heart disease; diabetes; cancer.

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570 https://www.reuters.com/article/us-safrica-avian-flu/south-african-commercial-poultry-farm-hit-by-avian-flu-outbreak-idUSKBN2C019V.

571 https://www.news24.com/news24/bi-archive/south-africa-has-145-avian-influenza-cases-between-april-2021-and-march-2022-37-million-birds-killed-2022-6.

572 https://www.dailymaverick.co.za/article/2023-05-09-its-make-or-break-for-western-cape-egg-producers-after-bird-flu-lays-waste-to-top-supplier/.

573 https://www.dalrrd.gov.za/index.php/component/content/article/204-outbreaks-and-diseases.

574 SAPA 2021 Industry Profile.

575 https://www.pcrm.org/good-nutrition/nutrition-information/health-concerns-with-eggs.

SALMONELLA, ANTIMICROBIAL RESIDUES, AND ANTIMICROBIAL RESISTANT BACTERIA:

A 2020 study on South African eggs showed the prevalence of Salmonella species and Escherichia coli, antimicrobial residues, and antimicrobial resistant bacteria.[576]

CHOLESTEROL:

Cholesterol found in eggs can harm heart health and lead to diabetes, as well as prostate and colorectal cancers.[577]

SAME AS SMOKING?:

Eating egg yolks accelerates atherosclerosis in a manner similar to smoking cigarettes.[578]

HEART DISEASE:

Eating eggs increases the risk of dying from heart disease.[579]

CARDIOVASCULAR PROBLEMS:

Those who eat the most eggs have a 19% higher risk for cardiovascular problems.[580]

DIABETES:

Consuming one or more eggs per day may increase the risk of diabetes by 60%.[581] A review of 14 studies published in the journal Atherosclerosis showed that those who consumed the most eggs increased their risk for diabetes by 68%.[582] Another review found similar results: a 39% higher risk of diabetes in people who eat three or more eggs per week in the United States.[583]

CANCERS:

Colon, rectal and prostate cancers have all been linked to egg consumption[584]

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576 https://onlinelibrary.wiley.com/doi/abs/10.1111/jfs.12783.
577 https://www.pcrm.org/good-nutrition/nutrition-information/health-concerns-with-eggs.
578 https://www.sciencedaily.com/releases/2012/08/120813155640.htm.
579 Zhao B, Gan L, Graubard BI, Männistö S, Albanes D, Huang J. Associations of dietary cholesterol, serum cholesterol, and egg consumption with overall and cause-specific mortality, and systematic review and updated meta-analysis. *Circulation*. Published online April 1, 2022. doi:10.1161/CIRCULATIONAHA.121.057642.
580 https://pubmed.ncbi.nlm.nih.gov/21076725/.
581 https://www.pcrm.org/news/health-nutrition/egg-consumption-increases-risk-diabetes.
582 Li Y,Zhou C,Zhou X,Li L. Egg consumption and risk of cardiovascular diseases and diabetes: a meta-analysis. Atherosclerosis. 2013;229(2):524- 530. doi: 10.1016/j.atherosclerosis.2013.04.003.
583 Djoussé L, Khawaja OA, Gaziano JM. Egg consumption and risk of type 2 diabetes: a meta-analysis of prospective studies. Am J Clin Nutr. 2016;103(2):474-480. doi: 10.3945/ajcn.115.119933.
584 https://www.pcrm.org/good-nutrition/nutrition-information/health-concerns-with-eggs.

ANIMAL HEALTH / DISEASES:

Laying hens can suffer from many ailments, and diseases including Egg Drop Syndrome, Caged Layer Fatigue, Rickets, Egg Peritonitis, Fatty Liver Syndrome[585], Fowl Cholera, Coccidosis, Fowl Pox, Newcastle Disease, Salmonellosis Avian Influenza, Ovarian Cancer and more!

ANTIBIOTICS:

In many parts of the world, food-producing animals are given antibiotics daily to make them grow faster and prevent diseases. When antibiotics are used for the purposes of growth promotion a small amount is often administered as compared to therapeutic use. Therefore, this may cause bacteria to develop resistance to antibiotics.[586]

PART C: LAYING DOWN THE LAW

REGULATION OF THE EGG INDUSTRY:
THROUGH FOOD SAFETY AND HEALTH LENS

Food safety and health is regulated by various legislation, a few of which will be highlighted here. Some of this legislation is implemented by the Department of Agriculture Land Reform and Rural Development ("**DALRRD**") at a national level. Other pieces of legislation are the responsibility of the Department of Health ("**DoH**").

MEAT SAFETY ACT 40 OF 2000 ("MSA")

The MSA includes measures to promote meat safety and the safety of animal products. The Minister may make regulations generally with regard to any matter which is necessary towards the achievement or promotion of the act.[587] In regard to the Poultry Industry, the Minister has enacted the Poultry Regulations.[588] However, the MSA and its regulations apply to meat and to animal products that are by-products from the carcasses of animals, other than the meat thereof. As such, this legislation does not regulate Layer Hens.

585 https://www.roysfarm.com/common-diseases-in-laying-hens/.
586 Andrew Selaledi, L.; Mohammed Hassan, Z.; Manyelo, T.G.; Mabelebele, M. The Current Status of the Alternative Use to Antibiotics in Poultry Production: An African Perspective. *Antibiotics* 2020, *9*, 594. https://doi.org/10.3390/antibiotics9090594.
587 Section 22 of the Meat Safety Act 40 of 2000.
588 Regulation Gazette No. 8402 No R.153 Meat Safety Act 40 of 2000: Poultry Regulations.

Nevertheless, the inclusion of specific welfare requirements for chickens who are utilised as broilers in the Poultry Regulations illustrates a precedent of positive legal standards in South African law in respect of chickens, at least as it relates to their transportation, slaughter and other welfare matters. A similar approach, namely the inclusion of positive welfare standards for chickens, could be adopted in relation to Layer Hens or male Chicks utilised in the Egg Industry, in terms of other suitable legislation.

ANIMAL DISEASES ACT ("ADA")

The purpose of the ADA is to provide for the control of animal diseases and· parasites, for measures to promote animal health, and for matters connected therewith. "Animal" is defined as "any mammal, **bird**, fish, reptile or amphibian which is a member of the phylum vertebrates, including the carcass of any such animal". Animal diseases in terms of the ADA are either classified as controlled or as notifiable animal diseases.

Examples of controlled diseases include Foot and Mouth disease, Brucellosis, Anthrax, African Horse Sickness, Tuberculosis and Rabies. Examples of notifiable animal diseases: Blue Tongue, Lumpy Skin Disease and Bovine Malignant Catarrhal Fever. In South Africa, avian influenza of any subtype is a controlled animal disease in terms of the Animal Diseases Act. Any suspect or confirmed case of avian influenza of any subtype must be reported immediately to the responsible state veterinarian in terms of the ADA. Both passive and active surveillance for avian influenza are conducted across the country in order to detect any incursion of avian influenza.[589]

Other provisions of the ADA regulate matters such as the importation of animals; quarantine stations; powers; control measures; straying of animals; duties of owners and managers to make reports about diseases and suspected diseases. It provides very broad powers of director (including in relation to entering, seizure and others).

589 http://www.daff.gov.za/images/outbreaks/Avian%20Influenza/Reports/h5-and-h7-update-report-4-may-2023.pdf.

2. Highly pathogenic avian influenza (HPAI)

There has been a sudden upsurge in H5 PCR positive samples. Pathotyping, N typing and sequencing is currently under way. The majority of H5 PCR positive samples are samples collected under an environmental research project for wild bird surveillance and originated from Gauteng, KwaZulu Natal and Mpumalanga Provinces. Samples from shorebirds from the Western Cape Province from three different locations were confirmed to be HPAI H5 PCR positive. Three commercial chicken facilities in the Western Cape were confirmed to be HPAI H5. Two further commercial chicken facilities in the Western Cape Province in the City of Cape Town Local Municipality have tested H5 PCR positive – pathotyping is underway.

All HPAI suspect farms are immediately placed under quarantine and no movement of birds, eggs or products are allowed on, off or through these farms. Samples are collected for verification of the suspicion and back and forward tracing is implemented to detect any possible spread of disease. So far most of the affected properties have culled out the chickens and carcasses were disposed of by dumping at an approved hazardous dump site, incineration, rendering or composting on farm; or on farm burial where allowed by the Environmental Affairs Department. Eggs are either taken under veterinary supervision for pasteurisation, or moved after double fumigation or fogging.

NATIONAL HEALTH ACT 61 OF 2003 ("NHA")

The NHA has the overarching purpose of providing a framework for a structured uniform health system within the Republic considering the obligations imposed by the Constitution and other laws on the national, provincial, and local governments with regard to health services; and related matters.[590] In terms of the NHA, the minister may make regulations regarding communicable diseases, non-communicable diseases; health technology; health research and generally in respect to any matter which is necessary to prescribe in order to implement or administer this act.[591]

FERTILISERS, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK REMEDIES, 1947

This Act provides for the registration of fertilisers, farm feeds, agricultural remedies, stock remedies, sterilising plants and pest control operators with the aim of regulating or prohibiting the importation, sale, acquisition, disposal or use of fertilisers, farm feeds, agricultural remedies, and stock remedies. Furthermore, it governs the use of antimicrobials for growth promotion and prophylaxis/metaphylaxis and the purchase of over-the-counter (OTC) antimicrobials by the lay public (chiefly farmers).[592] This Act becomes relevant in considering the feed fed to chickens in the Egg Industry as well as the use of substances such as antimicrobials.

590 Purpose of the National Health Act 61 of 2003 (National Health Act).
591 Section 90 of the NHA.
592 https://www.sahpra.org.za/document/fertilisers-farm-feeds-agricultural-remedies-and-stock-remedies-act-1947-act-no-36-of-1947/.

Feed is an important component within the Egg Industry which warrants further research, particularly around the sustainability thereof, but also in terms of the food health and safety aspects.

The Poultry Industry and Egg Industry, including ostrich farming, is the biggest consumer of animal feed in South Africa (consuming 64% of supply according to the Animal Feed Manufacturing Association (AFMA). SAPA estimates that 75% of the national flock is supplied to the broiler industry, making it the single largest destination for animal feed supply.

According to DALRRD: RCL Foods' subsidiary Epol, agricultural services company, Afgri, and Astral's subsidiary, Meadow Feeds, supply 75% of animal feed to South Africa's poultry producers.

There are several environmental implications of the use of feed for the Egg Industry and Poultry Industry more broadly and has led to several countries exploring options as to how to reduce harmful environmental implications – from the sourcing of such products to the use of circular waste feeding systems. It is apparent that SAPA acknowledges:

> "*In a year in which climate change and global warming came under the microscope at the United Nations Climate Change Conference in Glasgow (COP 26), egg producers around the globe are starting to evaluate the sustainability of their businesses. From 2022, supermarket giant Morrisons will begin to sell carbon neutral eggs, produced on free range farms in the UK. These carbon neutral farms make use of a circular waste feeding scheme, with insects (grown on waste product from the company's fruit and vegetable farms) used as a protein source for the laying hens. This approach reduces reliance on imported and environmentally damaging soybeans. Each insect 'mini-farm' will support 32 000 free range hens. Morrisons are not the first UK company to market carbon neutral eggs. Stonegate's 'Respectful' brand was launched through retailer Sainsbury's in October 2021. Stonegate farmers also eschew soya in the birds' feed; addressing deforestation and food miles with the use of locally sourced field beans. Farms and packaging plants are powered by renewable energy. In the US, grocery chain Kroger will launch carbon neutral eggs in late 2022. Kroger have partnered with Dutch firm, Kipster, to produce and market the eggs under the Simple Truth brand. The Kipster system makes use of waste products from bakeries and other food producers to remove soybeans from the laying feed, in effect upcycling food waste into eggs, meat and manure*".[593]

FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972 ("FCD ACT")

The FCD Act has the purpose of controlling the sale, manufacture and importation of foodstuffs, cosmetics, and disinfectants, and provides further provisions related to incidental matters.[594] "Foodstuff" includes "any article or substance (except a drug as defined in the Drug Control Act, 1965) ordinarily eaten or drunk by man or purporting to be suitable, or manufactured or sold, for human consumption".[595] Further, "foodstuffs" include "any part or ingredient of any such article or substance, or any substance used or intended or destined to be used as a part or ingredient or any such

593 SAPA 2021 Industry Profile.
594 Purpose of the Foodstuffs, Cosmetics, and Disinfectants Act 54 of 1972 (FCD Act).
595 Section 1(vii) of the FCD Act.

article or substance".[596] Raw eggs sold at retailers, or those served at fast food chains, restaurants and hotels fall within the definition and thus the ambit of the FCD Act, as do any and all egg products (such as dried egg pulp, powdered eggs, or any other egg by-product) included as ingredients in other manufactured items sold by wholesalers, retailers, and others. Corporations selling these products therefore have an obligation to adhere to the FCD Act, as well as regulations stemming from this Act.

The FCD Act contains several important provisions including but not limited to the use of employment of prohibited process, method, appliance, container or object (section 4); false description of articles (section 5) as well as liability for various parties (from importers, manufacturers or packers to employers or principles (sections 9 and 8 respectively).

The FCD Act provides that the Minister may make regulations prescribing the nature and composition of any foodstuff, or standards for the composition, strength, purity or quality of any other attribute of any foodstuff; prescribing, prohibiting, restricting or otherwise regulating, the use of employment of any substance or any appliance, container or other object or any process or method for, in or in connection with the manufacture, treatment, packing, labelling, storage, conveyance, serving or administering of any foodstuffs or the abstraction or removal of any substance from any foodstuff.

While a full description and analysis of this Act is outside the scope of this Initial Report, this legislation should be further considered in the context of the Egg Industry and, in particular, whether any specific regulations and/or standards are applicable thereto. An additional consideration is the enforcement of this legislation including inspection records and analysis of samples of products, including eggs.

596 Ibid.

YOUR CONSTITUTIONAL RIGHTS ARE IMPACTED BY THE EGG INDUSTRY

ANIMAL LAW REFORM
SOUTH AFRICA

OPEN WING ALLIANCE®

THE SOUTH AFRICAN CONSTITUTION CONTAINS RIGHTS FOR ALL WHO LIVE IN THE COUNTRY.

Some of these rights are impacted by the egg industry!

RIGHT TO ENVIRONMENT

Section 24 of the Constitution guarantees everyone the right to have the environment protected for the benefit of both current and future generations and that the state must take reasonable legislative and other measures to achieve the progressive realisation of that right.

Intensive animal agriculture including egg production has innumerable negative impacts on the environment including water, soil and air pollution; water and land use; biodiversity loss; habitat destruction and degradation and others.

RIGHT TO WATER

Section 27 of the Constitution states that everyone has the right to adequate water.

Animal agriculture (which includes egg production) is the largest use of fresh water in the country 135 litres of water are needed to produce one single egg.[1]

WORKER'S RIGHTS

Workers and their rights are protected in various ways in the South African Constitution including section 23 of the Bill of Rights which relates to "Labour Relations" and states that everyone has the right to fair labour practices, among others.

Research shows that workers in the animal agriculture industry suffer a significant level of rights violations, ranging from bad living conditions and low wages. Farm workers, in general, form a vulnerable and marginalised group due to a number of social and economic conditions.

Studies including from a commercial abattoir in South Africa illustrate the risk potential of employees suffering from post-traumatic stress syndrome.[2]

OTHER RIGHTS

These are just a few examples:
Other rights are implicated by animal agriculture including the egg industry, such as consumer rights against practices such as "green-washing" and "human-washing" where the public is misled by false, exaggerated or confusing claims.

THE GOVERNMENT AS WELL AS CORPORATIONS OWE YOU AS SOUTH AFRICANS DUTIES IN RESPECT OF YOUR RIGHTS.

1. Food & Agriculture Organisation of United Nations
2. Victor, K., & Barnard, A. Slaughtering for a living: A hermeneutic phenomenological perspective on the well-being of slaughterhouse employees. International Journal of Qualitative Studies on Health and Well-being, 11, Article 30266. (2016) https://psycnet.apa.org/record/2016-33756-001

PILLAR 4: FOUL PLAY?
SOCIAL ISSUES AND RIGHTS:
COMPROMISING JUSTICE FOR PROFITS

PART A: LAYING THE FOUNDATIONS

This "Social Issues and Rights" Pillar contains a high-level summary of some of the social matters (including social justice) and human rights issues arising in the Egg Supply Chain in South Africa. It is intended to provide an overview of selected matters only and is non-exhaustive of all relevant social issues, rights considerations and law and policy. [597] This Part A sets out the rationale for the selection of this Pillar; the main national government departments with mandates in respect thereof. Part B sets out background information as to how the Pillar connects with the Egg Supply Chain. Part C provides an overview of selected rights issues associated with this Pillar in the context of the Egg Supply Chain in South Africa.

Matters already dealt with in detail in other Pillars or sections of this Initial Report and have not been repeated.

This Pillar has been selected for purposes of this Project because the Constitution is the supreme law of the land and the rights contained in the Bill of Rights must be protected and respected. Community is of great importance throughout South Africa and community activism has been at the heart of mass change within the country throughout the liberation struggle and since the beginning of democracy. South Africa has a robust, supreme Constitution which grants a plethora of critical rights to its people and with which all law, policy and actions are measured against. These include the rights to access to water and food (section 27); the right to freedom and security of the person (section 12); the rights of workers (section 23); and the rights of children (section 28). These rights are aimed at social justice and human dignity.

For purposes of this Project, we explore briefly the interaction between factory farming / industrialised animal agriculture (particularly in the Egg Industry) with these rights. The right to access to information, the right to an environment not harmful to health or well-being, and the right to

[597] For a more detailed analysis of social issues and rights matters applicable to animal agriculture in South Africa, please refer to ALRSA's Food System Working Paper https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf and White Paper (October 2022) https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf respectively.

freedom of expression have been discussed elsewhere in this Initial Report and are not discussed below to avoid repetition. Please refer to Section II, Pillars 1 and 4 in particular.

All government departments have mandates to respect, protect, promote and fulfil the Bill of Rights. However, with regard to matters of justice and the constitution more generally, as well as social issues, the Department of Justice and Constitutional Development; the Department of Social Development; and Department of Labour have specific mandates.

PART B: LAYING DOWN THE FACTS

This Pillar highlights a few lesser explored links between guaranteed human rights in the Constitution, social injustices, and animal agriculture, with particular reference to the Egg Industry. These links are important given that South Africa is one of the most unequal countries in the world. More than 50% of the population lives in conditions of poverty, with limited access to water and food.[598] Gender-based violence is rife. Women and children are among the most vulnerable in society.[599] An energy crisis[600] driven by government maladministration and corruption plagues the country.[601] This social context exacerbates inherent justice issues relevant to the Egg Industry.

An intersectional understanding of justice recognises that all injustices are interconnected. As Martin Luther King Jr said:

> "*Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly*".[602]

Just two justice issues are highlighted here that point to the need to look holistically at the justice implications of the Egg Industry.

GENDER JUSTICE ISSUES

Practices within the Egg Supply Chain raise several issues relating to gender, one of the important aspects addressed in the Constitution through the right to equality and prohibition on discrimination on the grounds of gender (section 9). The production of eggs relies on the reproductive cycle of the

598 https://www.statssa.gov.za/?p=12075.
599 https://www.unicef.org/southafrica/press-releases/crime-statistics-devastating-violence-against-children-and-women-continues.
600 https://theconversation.com/south-africas-power-crisis-will-continue-until-2025-and-blackouts-will-take-5-years-to-phase-out-206343.
601 Corruption Watch - Annual Report 2020 available at https://www.corruptionwatch.org.za/publications-2/.
602 Martin Luter King Jr. Letter from a Birmingham Jail [King, Jr.] 16 April 1963. Accessed via African Studies Center - University of Pennsylvania https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.

female Chicken to be consistently exploited until such time as the female is considered "useless" or "spent" and unable to produce eggs. Layer Hens are not able to have the experience of rearing their young or to have normal cycles of reproduction – often being artificially inseminated. On the other side of the spectrum, male Chicks are killed shortly after they are born because they are deemed to be useless within the Egg Supply Chain (although there are some instances where these animals are utilised). These practices reinforce oppressive gender stereotypes that impair the dignity of humans and nonhuman animals alike.

An expansive body of literature is emerging on gender issues and animal use, exploitation and rights. In the South African context, research has been done on issues of women and the representation of animal bodies, particularly chickens in the broiler industry.[603] Tsampiras for example, in her work "Hot Chicks on Board" explores the gendered nature of the marketing and consumption of meat in South Africa which she notes is evident in multiple media, from local wholesale delivery trucks that transport the flesh of chickens, to sexist adverts by South African-owned fast-food chains with national and international reach. Her article analyses the vehicle delivery and television and printed adverts devised to sell meat to consumers, and argues that "*the representations of bodies – those of womxn and the bodies of other species – as being available for consumption (visual or otherwise), is an expression of the gendered social processes associated with food "production" and consumption (visual and physical) within the patriarchal capitalocene*".

She goes further on to state that the "*representations and production of food are innately linked to multiple forms of violence, including the repetitive visual aggressions associated with the female form being constantly under scrutiny and available for consumption. In the visual representations of convenience foods, the food and the absent referents they rely on deploy stereotypes of heteromasculinities and (hyper)femininities and are used to reinforce hierarchies of gender, species, and economic systems (and the violence associated with them). These images and food items thus act as "ordinary" indexes of patriarchal, capitalocene power relations*."

Outside of South Africa, there is a vast body of work on the gendered nature of animal agriculture - not only in relation to chickens but also cows, who are exploited in the dairy industry[604] as women and more specifically, as mothers. Additional international literature on this issue including most notably, the work of Carol J. Adams, in *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory* which explores a relationship between patriarchal values and meat eating by interweaving the insights of feminism, vegetarianism, animal defense, and literary theory.[605]

Given the vulnerability of women in South Africa including the high rates of femicide, rape and other violence against women, practices both within and outside of animal agricultural industry more broadly that

603 Tsampiras, C. (2021). "Hot Chicks on Board" – Gender, Meat, and Violence in Food Marketing in, and from, South Africa. Gender Questions, 9(1), 24 pages. https://doi.org/10.25159/2412-8457/7408.

604 See for example You Are What You Drink: A Feminist Critique of Milk and its Consequences for the Female by Tessa Cunningham (Undated). Accessed: Animals & Society website: https://www.animalsandsociety.org/research/sloth/sloth-volume-i-no-1-march-2015/you-are-what-you-drink-a-feminist-critique-of-milk-and-its-consequences-for-the-female/.

605 https://caroljadams.com/spom-the-book.

reinforce oppressive gender roles (such as the use of a woman's body (regardless of whether they are a human or nonhuman animal) merely as a reproductive machine, from the moment they are 'fertile' until they are considered to be 'spent' (as is prevalent in the Egg Industry) as well as violence against women, should be critically examined and rooted out of society.

ENERGY CRISIS

South Africa's energy crisis is having a devastating impact on all people in South Africa as well as the economy. It is estimated that $51 million is lost every day due to load shedding.[606] Animals too, are suffering terribly. Various reports show single instances of 40,000 broiler chickens having suffocated and died due to power supply disruptions.[607] Poultry operations rely on a consistent power supply to regulate the environment in which his chickens are bred (including lights, ventilation and cooling among other issues). In January 2023 it was reported that in excess of 10 million day old chickens were killed in a matter of weeks due to loadshedding,[608] more specifically, ventilation shutdown.

The CEO of SAPA confirmed that:

"*Companies that do not have generators can have up to 10,000 birds hanging on shackles in the abattoir, not being processed. These birds are lost and disposed of during load shedding due to the lack of cooling and potential food safety issues*".[609]

It is evident that the energy crisis is causing immense food waste, threatening human health and food safety. Countless animals are experiencing needless suffering, only to become waste.

The rights highlighted in this Pillar include: the right to access to water; the right to access to food; the right to freedom and security of the person; worker's rights, and children's rights. In respect of each of the rights, there exist specific laws and policies in South Africa, which have not been expanded on for purposes of this Pillar due to reasons of scope and length.

606 https://www.africanews.com/2023/03/27/south-africa-the-heavy-cost-of-load-shedding-on-farmers//.
607 https://www.africanews.com/2023/03/27/south-africa-the-heavy-cost-of-load-shedding-on-farmers//.
608 https://www.citizen.co.za/business/10-million-chickens-dumped-load-shedding/.
609 https://www.suidkaapforum.com/News/Article/Agriculture/load-shedding-s-devastating-impact-on-sa-s-poultry-sector-202304171242.

PART C: LAYING DOWN THE LAW

REGULATION OF THE EGG INDUSTRY:
THROUGH A SOCIAL ISSUES AND RIGHTS LENS

RIGHT TO WATER

Section 27 of the Constitution states that everyone has the right to have access to sufficient water. Animal agriculture (which includes egg production) is the largest use of freshwater in the country. According to the Food and Agriculture Organisation of the United Nations, 135 litres of water are needed to produce one single egg.[610] Other estimates indicate that is over 50 gallons of water or 600 gallons for a dozen (which equates to approximately 189.3 litres per egg or 2,271.60 litres for one dozen eggs). Other nutritional foods use substantially less water, including most fruits, vegetables and legumes. Water usage is relevant considering the current and increasing water crisis faced by the country. Amidst poverty and inequality, water is not evenly distributed. The most vulnerable in society ought to have sufficient water to meet their most basic needs. Women bear a disproportionate responsibility for securing food, water, and fuel, rendering uneven distribution of these resources a gender justice issue.[611] Unjustifiable water uses ought to be curtailed to ensure equitable access to water.

RIGHT TO FOOD

Section 27 of the Constitution states that everyone has the right to have access to sufficient food. While eggs are undoubtedly an important food source for many in the country, it must be considered whether there are less harmful means of achieving this right, particularly when one has due regard to the concept of 'proportionality' which is prevalent in the Constitution and can be seen from section 36 thereof.

610 Food & Agriculture Organisation of United Nations https://www.facebook.com/UNFAO/photos/a.448783138585/10160584123123586/?type=3.

611 UN Women, Explainer: How gender inequality and climate change are interconnected. 28 February 2022. https://www.unwomen.org/en/news-stories/explainer/2022/02/explainer-how-gender-inequality-and-climate-change-are-interconnected.

For example, there are many other food sources (potentially non-animal-sourced foods) which are nutritious, accessible, and do not cause animal welfare, environmental, and health implications that eggs do (to name a few).[612]

In addition, given the serious pressures on the Poultry Industry from South Africa's energy crisis as well as rising feed costs and serious outbreaks of highly pathogenic diseases, including avian flu (among other issues), it is questionable whether the Poultry Industry can be considered to be ecologically sustainable and socially and economically justifiable, in accordance with the environmental right. Alternatives should be explored.

[613]

RIGHT TO FREEDOM AND SECURITY OF THE PERSON

Section 12 states that everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources. The Poultry Industry violently slaughters approximately 1 billion sentient animals for meat as well as thousands of Chicks and hens per year. Although the term "everyone" is not currently understood to include nonhuman animals, there is a body of scholarship arguing for law reform in this area.[614] Moreover, factory farm workers ought not to be exposed to the levels of brutality involved in factory farming, and their exposure to this violence could be viewed as a violation of their right to freedom and security of the person.

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612 For a more detailed discussion on alternatives, please refer to Animal Law Reform South Africa's Working Paper and White Paper on alternatives to animal sourced foods. Accessible: https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf and White Paper (October 2022) https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf respectively.

613 https://twitter.com/theEVERYcompany/status/1398017525254737920/photo/1.

614 Bilchitz, David. *'Does Transformative Constitutionalism Require the Recognition of Animal Rights?*' (2010) 125 Southern African Public Law 267-300. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1872936.

WORKERS' RIGHTS

Workers and their rights are protected in various ways in the Constitution including in section 23 of the Bill of Rights, which relates to "Labour Relations". It states that everyone has the right to fair labour practices, among others. The Poultry Industry in South Africa provides direct and indirect employment to over 110 000 people; is the second largest consumer of maize in the country; and supports many peripheral businesses (including the feed industry) and those downstream in the value chain.[615]

Research shows that workers in the animal agriculture industry suffer significant rights violations, ranging from bad living conditions and low wages. Farm workers form a vulnerable and marginalised group due to a number of social and economic conditions.[616]

Studies including from a commercial abattoir in South Africa illustrate the risk of employees suffering from post-traumatic stress syndrome,[617] related to slaughtering animals, is high. It is equally likely that workers responsible for killing millions of male Chicks in the Egg Industry could suffer some sort of psychological distress from the work of killing sentient animals.

The South African Human Rights Commission notes in its handbook on Farmworkers and Human Rights that "Farm workers, in general, form a vulnerable and marginalised group due to a number of social and economic conditions".[618] This vulnerability manifests in the form of poor remuneration, long working hours, poor housing conditions, forced and child labour, failure to provide adequate leave allowances and unfair termination of labour amongst others.[619]

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615 South African Poultry Association 2021 Industry Profile. https://www.sapoultry.co.za/wp-content/uploads/2023/01/2021-Industry-Profile.pdf.

616 In the South African context, see South African Human Rights Commission 'Farm Workers and Human Rights' https://www.sahrc.org.za/home/21/files/FINAL%20Farm%20Workers%20and%20Human%20Rights%20Educational%20Booklet.pdf. In the USA context see [Delcianna J. Winders and Elan Abrell, *Slaughterhouse Workers, Animals, and the Environment: The Need for a Rights-Centered Regulatory Framework in the United States That Recognizes Interconnected Interests* Health and Human Rights Journal (December 2021). https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2021/12/abrell.pdf.

617 Victor, K., & Barnard, A. Slaughtering for a living: A hermeneutic phenomenological perspective on the well-being of slaughterhouse employees. International Journal of Qualitative Studies on Health and Well-being, 11, Article 30266. (2016). https://psycnet.apa.org/record/2016-33756-001.

618 South African Human Rights Commission 'Farm Workers and Human Rights' https://www.sahrc.org.za/home/21/files/FINAL%20Farm%20Workers%20and%20Human%20Rights%20Educational%20Booklet.pdf (accessed 2 April 2022).

619 South African Human Rights Commission 'Farm Workers and Human Rights' https://www.sahrc.org.za/home/21/files/FINAL%20Farm%20Workers%20and%20Human%20Rights%20Educational%20Booklet.pdf (accessed 2 April 2022).

There is very little information publicly available online relating to the workers in the Egg Industry in South Africa. A cursory online search indicates that the hourly rate for industry: Chicken Egg Production is ZAR34.60, although this has not been independently verified.[620]

Further information and research regarding the circumstances of the workers in the Egg Industry is needed in order to determine the extent to which the rights and interests of these workers are being properly considered in this context. Given the known issues of farmworkers more broadly, as well as some of the potential health and safety and environmental risks associated with the Egg Industry (as further set out in the Environmental Pillar and Food Health and Safety Pillar respectively) labour rights and laws should be responsive to any potentially harmful or unfair treatment and to ensure worker's rights are protected.

CHILDREN'S RIGHTS

In terms of section 28 of the Constitution, every child has the right to basic nutrition, among other rights. In some instances, as expanded on below, eggs are offered as a solution to nutritional deficiencies experienced by children. In addition, specific campaigns by the Egg Industry target children. Below are a few examples of dedicated programs and advertising campaigns by the Egg Industry focusing on children. This is despite the fact that egg allergies are one of the more common allergies in children,[621] such that the inclusion of eggs in their diets should be carefully considered against the rights of the child to basic nutrition.

It was reported in January 2023 that Hy-Line International together with Hy-Line South Africa approached Dr. Blessman (of Blessman International, an organisation which focuses on several issues including feeding children) to cooperate with his feeding program with the purpose to add "an-egg-a-day" to the feeding program to "further enhance his efforts by enhancing the nutritional content of the meals".[622] This means that beneficiaries of the program, who receive daily meals consisting of a basic grain and vegetable-based diet, would now receive eggs too.

The "Eggs are Magic" campaign mentioned on the SAPA website and in the Industry Component in Section II of this Initial Report was reported[623] to be directed at school children and their moms, and features a through-the-line mix combining activations and industrial theatre, competitions, mobile media, radio and giveaways, all of which are designed to showcase the versatility of eggs.

620 https://www.payscale.com/research/ZA/Industry=Chicken_Egg_Production/Hourly_Rate.
621 https://www.healthdirect.gov.au/egg-allergy.
622 https://www.poultryproducer.com/hy-line-launches-partnership-to-provide-egg-protein-to-malnourished-african-children/.
623 https://www.bizcommunity.com/Article/196/179/61647.html.

PROTECTING YOUR RIGHTS AS A CONSUMER

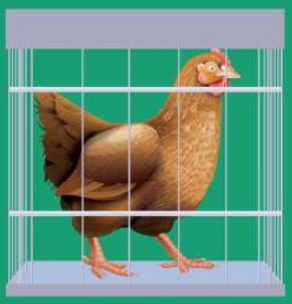
ANIMAL LAW REFORM SOUTH AFRICA

OPEN WING ALLIANCE®

As a consumer in South Africa, you have legal rights – including to not be mislead by the companies providing your food and products.

EXPECTATION

VS



REALITY

Many popular and well-known egg producers, retailers, brands, hotels, restaurants, and fast-food stores in South Africa are keeping their consumers in the dark and even misleading them regarding the conditions the chickens in the egg industry are kept in.

DON'T BE A VICTIM OF "WASHING"!

HUMANE-WASHING

Is a practice when false, misleading or confusing claims are made about animals used for products including their treatment or conditions of their birth, life or slaughter.

This can be done using images of happy animals or misleading terms such as “humane”, “happy”, “humanely raised”, “ethically sourced”, “high-welfare”, and others.

GREEN-WASHING

Like humane-washing, green-washing is when false, exaggerated, misleading or confusing statements or claims are made which focus on the environmental aspects or environmental benefits of animal products such as “sustainable”, “eco-friendly”, “farm grown”, “country eggs” and others.

The use of these images of terms, which often have no specific legal meaning are used to mislead / deceive consumers.

FREE RANGE

“Free-range” is a term used by industry where consumers may think that the animals roam around freely in open green fields for most of their live. This is not the case! For example, according to the NSPCA, due to Avian Influenza outbreaks, free-range layer hens are often 'quarantined' indoors for 24 weeks, yet the eggs are still sold to the public as “free range”[1]

1. NSPCA Refutes Layer Hen Cage Sizes in South Africa available at https://nspca.co.za/nspca-refutes-layer-hen-cage-sizes-in-south-africa/ (accessed on 13 April 2023)

PILLAR 5: BIRD IN A GILDED CAGE?
CONSUMER PROTECTION: *THE 'MYTH' OF THE HAPPY HEN*

PART A: LAYING THE FOUNDATIONS

This "Consumer Protection Pillar" contains a high-level summary of some of consumer protection issues applicable to the Egg Industry in South Africa, as well as the regulation thereof, more specifically how these issues intersect with animal welfare and well-being. It is intended to provide an overview of selected matters only and is non-exhaustive of all of the relevant consumer protection considerations and law and policy relevant to the Egg Industry.[624] This Part A sets out the rationale for the selection of this Pillar; the main national government departments with mandates in respect thereof, and connects it with information from our Stakeholder Report in Section IV; Part B sets out background information as to how the Pillar connects with the Egg Supply Chain; Part C provides an overview of selected governance issues associated with this Pillar in the context of the Egg Supply Chain in South Africa; and Part D provides examples of the other Parts in practice.

Matters already dealt with in detail in other Pillars or sections of this Initial Report and have not been repeated.

This Pillar has been selected for purposes of the Project because consumers are often unaware of, or even misled or deceived by Corporations, including within the animal agriculture industry as to where their food comes from. This can include misinformation relating to anything from methods of production to the subjective feelings of animals. By asking Corporations questions and for specific information such as their Public Statements[625] about animal welfare or even the environment, we aim to interrogate whether they are being transparent and accountable to their consumers and members of the public, specifically in respect of duties owed to consumers.

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624 For a more detailed analysis of Consumer Protection matters applicable to animal agriculture in South Africa, please refer to ALRSA's Food System Working Paper https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf and White Paper (October 2022) https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf respectively.

625 A statement made by a Selected Stakeholder available in the public domain and provided to ALRSA in response to a request for access to information in which it discloses its sourcing practices in respect of the Egg Supply Chain (as a distributor or user thereof) and/or its production system in respect of eggs (as applicable). It does not include statements not provided to ALRSA.

While the well-known nursery rhythm "Old MacDonald" may have inculcated the idea that chickens live happily and healthily on idyllic farms, the reality is unfortunately far from this.[626] As discussed in the Animal Welfare Pillar, the modern approach of confinement agriculture –- where vast numbers of chickens are raised in limited controlled environments –- causes inhumane physical suffering to chickens as well as psychological deprivation through the lack of space, lack of companionship for social animals, inability to move freely, boredom and stress.[627]

It is important that Companies making claims about their products (such as eggs), regardless of whether these are made on the product itself (labeling), in the advertising or marketing thereof, or in any other activity relating thereto, are clear, transparent, truthful and that their claims are not exaggerated or otherwise misleading to consumers. This is both in terms of legal obligations (such as is required by the Egg Labelling Regulations and Consumer Protection Act, ("**CPA**") among others) but arguably also ethical or moral obligations towards their consumers.

Consumers deserve to know the truth about their products so that they can make informed decisions and are empowered to select products based on attributes that are important to them – whether this be in relation to animal welfare (such as the methods of production or inputs); environmental; health or otherwise. Furthermore, consumers have legal rights in terms of the products and services they purchase, and there are corresponding duties on Corporations. Failure to comply with these duties can cause financial liability, and have reputational impacts. Moreover, breaches of consumer protection duties, misinformation, and a lack of transparency can have far-reaching implications for consumers. For example, during the 2017-2018 listeriosis outbreak in South Africa over 1000 people lost their lives from purchasing contaminated meat products.

Some legislation discussed under this Pillar falls under the mandate of the DTIC, while other legislation is implemented by DALRRD.

For purposes of our PAIA Requests to our Selected Stakeholders, we requested any and all records of Public Statements made by Selected Stakeholders.

Our motivation for this request was that Public Statements could provide insight as to the disclosure of the practices Selected Stakeholders are currently undertaking in respect of their egg sourcing or production. Consumers ought to demand Comprehensive and accurate Public Statements in respect of their food purchased from retailers, fast food outlets and restaurants, wholesalers, and hotels. In the CPA, for example, section 24(2)(a) of the CPA states that a person must not knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or

626 Similarly, deceptive advertising and labelling continue to paint a misleading picture regarding how these animals are treated and managed on farms. https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf and the Charissa Kemp and 10 Others v Fair Cape Dairies (Pty) Ltd case.

627 Astrid Jankielsohn. *Erratum to: The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know*. J Agric Environ Ethics(2015) 28:1159. DOI10.1007/s10806-015-9583-6.

expressed in that trade description. Additionally, section 29 of the CPA A producer, importer, distributor, retailer or service provider must not market any goods or services in a manner that is reasonably likely to imply a false or misleading representation concerning those goods or services, as contemplated in section 41.[628] We expected that Public Statements made by Selected Stakeholders identified as producers would provide an accounting of current practices employed in their respective production systems, including the use of Cruel Practices and measures adopted in respect of Progressive Measures to address these, if any.

Responses received from Selected Stakeholders informed rating Criteria 6 (inclusive of Indicator 6.1, 6.2 and 6.3) with reference to whether Selected Stakeholders provided accurate and Comprehensive Public Statements in relation to their involvement in the Egg Industry. These were requested in order to indicate any misleading or inaccurate Public Statements and to enable consumers to be more aware of the practices of Selected Stakeholders, as highlighted in Public Statements (with reference to the other information provided by a Selected Stakeholder).

PART B: LAYING DOWN THE FACTS

A lack of public awareness about the vast harms of intensive animal agriculture, and the lack of adequate regulation and oversight may be exploited by Corporations when labelling, marketing, and advertising animal sourced foods. For customers to be empowered to make ethical and informed choices, they need to be informed of where their food comes from, and what and how the suppliers of their favourite foods are doing to ensure the requisite compliance and care. Accountability remains a powerful tool for consumers as it creates transparency and understanding of how food is produced and the overall sustainability of such supply chains. Further, it prevents Humane-washing and Greenwashing.

As per our Glossary, "Humane-washing" is:

> "*[t]he practice of making a false, misleading, or exaggerated claim about the treatment of animals or the conditions in which they are born, raised, transported, or killed, creating the (false) impression that animals are treated with compassion or in a humane manner*".

628 Section 29 read with section 41 of the CPA. Section 41 deals with "False, misleading or deceptive representations" and contains a list of various matters in respect of both goods and services that can be deemed as such.

As per our Glossary, "Greenwashing" is:

> "*[t]he practice of making a false, misleading, or exaggerated action or set of claims made by a Selected Stakeholder about the positive impact that a company, product or service has on the environment*".

To govern Humane-washing and Greenwashing, South Africa has introduced consumer protection laws as further discussed in Part C, such as the Consumer Protection Act, 2008, Marketing of Agricultural Products Act 47 of 1996, Agricultural Products Standards Act 119 of 1990[629] and its Regulations Regarding the Grading, Packing and Marking of Eggs Intended for Sale in the Republic of South Africa (the "**Egg Labelling Regulations**"),[630] and Codes of the Advertising Regulatory Board.

PART C: LAYING DOWN THE LAW

REGULATION OF THE EGG INDUSTRY: THROUGH A CONSUMER PROTECTION LENS

I. CONSUMER PROTECTION ACT

The Consumer Protection Act ("**CPA**"), as the name suggests, aims at protecting consumers and their interests in a variety of ways, including because apartheid and discriminatory laws of the past have resulted in consumer vulnerability due to high levels of poverty, illiteracy and other forms of social and economic inequality. This recognition centres the protection of consumer rights as an issue of social justice. As a result, the Act aims to:

1. promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose to establish national norms and standards relating to consumer protection,
2. provide for improved standards of consumer information,
3. prohibit unfair marketing and business practices,
4. promote responsible consumer behaviour,
5. promote a consistent legislative and enforcement framework relating to consumer transactions and agreements,
6. establish the National Consumer Commission.

629 https://www.gov.za/documents/agricultural-product-standards-act-6-mar-2015-1127.

630 Regulations Regarding the Grading, Packing and Marking of Eggs Intended for Sale in the Republic of South Africa published in Government Gazette No. 43108 of Notice R.345 on 20 March 2020, available at https://www.gov.za/sites/default/files/gcis_document/202003/43108rg11055gon345.pdf.

The Act sets out specific rights for consumers, including but not limited to: the right of equality in the consumer market;[631] consumers' rights to privacy;[632] the right to disclosure and information;[633] the right to fair and responsible marketing;[634] the right to fair and honest dealing;[635] the right to fair, just and reasonable terms and conditions;[636] the right to fair value, good quality and safety;[637] and consumers' rights to safe, good quality goods.[638]

It also sets out liability including but not limited to liability for damage caused by goods (section 61)[639] and vicarious liability (section 113). As a consumer product sold in South Africa, eggs fall under the ambit and definition of "goods" regulated and therefore all relevant provisions of the CPA referencing "goods"[640] apply to the industry and the consumers, as appropriate.

The CPA (and other relevant legislation) has been relied upon in the listeria class action case currently taking place.[641] Tiger Brands, one of our Selected Stakeholders, is the entity against which the class action has been initiated.

II. AGRICULTURAL PRODUCT STANDARDS ACT AND EGG LABELLING REGULATIONS*

*** Information contained in the following paragraphs insofar as they relate to Egg Laballing Regulations being mandatory have been amended in Version 3 of this Initial Report.**

This legislation has been discussed under the Animal Welfare Pillar, focusing on the types of eggs and how they must be identified on the outer containers. The regulations specify requirements for different categories of eggs: Cage Eggs, Free Range Eggs, and Barn Eggs.

While the regulations aim to promote transparent labelling, it is important to note that disclosing production methods on packaging is optional. This means that producers and retailers may choose whether or not to indicate whether the eggs are from cage, barn, or free-range systems. Nonetheless,

631 Part A of the Consumer Protection Act.
632 Part B of the Consumer Protection Act.
633 Part D of the Consumer Protection Act.
634 Part E of the Consumer Protection Act.
635 Part F of the Consumer Protection Act.
636 Part G of the Consumer Protection Act.
637 Part H of the Consumer Protection Act.
638 Section 55 of the Consumer Protection Act.
639 For example it states that except to the extent contemplated in subsection (4), the producer or importer, distributor or retailer of any goods is liable for any harm, as described in subsection(5), caused wholly or partly as a consequence of (a) supplying any unsafe goods; (b) a product failure, defect or hazard in any goods; or (c) inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor or retailer, as the case may be.
640 Goods are referenced throughout the entirety of the CPA, as compared to "services". Generally, throughout the CPA for all provisions, both goods and services are mentioned, although each also has particular sections which apply to them only. For example, in relation to goods – Pyramid and related schemes (section 43).
641 https://listeriaclassaction.co.za/.

when producers do opt to disclose this information, it helps consumers become more aware of the welfare considerations associated with Layer Hens.

This awareness can encourage relevant stakeholders in the Egg Supply Chain to consider transitioning from inhumane cage systems to better welfare practices. Such a shift not only improves the welfare of Layer Hens but also protects the commercial and reputational interests of producers. By demonstrating a commitment to corporate accountability, these practices can enhance consumer trust and align with growing public demand for ethical food sourcing.

Section 6 of the Act states:

> "*No illustration, depiction, logo or other method of visual expression that constitutes a misrepresentation, or either directly or by implication creates or may create a misleading impression regarding the contents, quality, origin, grade, size group, production method or diet shall be indicated on a container or outer container containing eggs*".

The Egg Labeling Regulations promulgated in terms of the Act further restrict what can be included on the outer container of eggs. These restrictions can help prevent Humane-washing and Greenwashing.

In terms of regulation 13(1)(a):

> "*No name, mark or any other method of expression using the following words or wording shall be indicated on a container or outer container containing eggs:* …
>
> *(ii) A message of veterinary medicine-free* ***or which indicates the more humane treatment or rearing of poultry or which creates an impression that the eggs are safer or that poultry was fed a special diet such as, but not limited to, 'antibiotic free', 'fed a diet free of hormones', 'cage free', 'furnished cage', 'safe', 'pure', 'grass fed', 'pasture fed', 'forage fed', 'canola fed', 'grain fed', 'mixed grain', 'organic',*** ….
>
> *(iii)* ***Any other wording not addressed in sub-paragraphs (i) and (ii) above that constitutes a misrepresentation or either directly or by implication creates or may create a misleading impression regarding the contents, quality, origin, grade, size group, production method or diet***".

These restrictions relate only to what may be displayed on the outer packaging and do not speak to the advertising and marking of eggs.

III. MARKETING OF AGRICULTURAL PRODUCTS ACT 47 OF 1996

The purpose of this Act[642] is to authorise the establishment and enforcement of measures to intervene in the marketing of agricultural products; including the introduction of levies on agricultural products; to establish a National Agricultural Marketing Council; and to provide for matters connected

642 https://www.gov.za/sites/default/files/gcis_document/201409/act47of1996.pdf.

therewith. Section 15 of this Act allows for the introduction of "levies" subject to certain conditions being met.

Due to a declining membership of Egg Organisation over several years, SAPA indicated that the only way to fund the organisation was through a statutory egg levy. SAPA, with the support of the producers of more than 66% of the country's eggs, successfully applied to the NAMC.[643] Regulations in terms of this Act thus introduced a statutory levy to be paid on all eggs sold in the Republic to SAPA. The egg levy came into force from 27 July 2018. It requires that all egg producers and packing stations contribute 1.5 c/dozen eggs traded. Subsequent levies were successfully applied for by SAPA to the NAMC in other years, the latest of which will lapse in March 2026[644] (as further set out in the table below).

In respect of levies collected, they should be used as follows (emphasis added):

> *"a) Approximately 70% of the funds are required to be used for functions relating to* ***consumer communication and education, consumer assurance, research, industry information and liaison and production development****;*
>
> *b) At least 20% of the funds are required to be used for* ***transformation****; and*
>
> *c) Not more than 10% of the funds may used for* ***administrative costs****".*[645]

Based on 2017 numbers, the total levy should amount to around R9 million, in an industry likely to have revenues of well over R15 billion.[646] This means a substantial amount of money (over R6million) is available to SAPA for consumer communication, education, etc. Please refer to the section on SAPA above in respect of the NAMC Study relating to cage free egg production.

In terms of a 2022 Government Gazette[647] with three separate notices,[648] specifically relating to the Marketing of Agricultural Products Act, a levy is payable on "table eggs and egg products" being non-

643 https://www.namc.co.za/ . NAMC is a statutory body reporting to the Minister of DALRRD and was established in terms of the Marketing of Agricultural Products Act No. 47 of 1996, as amended by Act No 59 of 1997 and Act No. 52 of 2001.

644 SAPA Industry Profile 2021.

645 https://www.gov.za/sites/default/files/gcis_document/202201/45771gon1682.pdf at 3.

646 https://www.news24.com/news24/bi-archive/new-egg-levy-for-marketing-and-empowerment-to-sa-poultry-association-now-active-2018-8.

647 https://www.gov.za/sites/default/files/gcis_document/202201/45771gon1682.pdf.

648 679 Marketing of Agricultural Products Act (47/1996): Continuation of Statutory Levies on Table Eggs as prescribed by Regulation R345, as amended and on Egg Products sold to the Trade and Determination of Guideline Price 45771; 1680 Marketing of Agricultural Products Act (47/1996): Continuation of Statutory measure regarding the Registration of Sellers of Table Eggs as Prescribed by Regulation R354, as amended and Egg Products sold to the Trade 45771; and 1681 Marketing of Agricultural Products Act (47/1996): Continuation of Statutory Measure regarding Records and Returns by Sellers of Table Eggs as prescribed by Regulation R345, as amended and Egg Products Sold to the Trade 45771.

fertile eggs of the species *gallus domesticus* for domestic consumption. The Government Gazette, at 2 states (emphasis added):[649]

> "*The purpose and aim of this statutory measure is to* ***compel establishments selling table eggs to the trade to register with the levy administrator [namely SAPA]****. This is necessary to ensure all role-players have access to market information which is an essential ingredient in any agricultural development,* ***access to accurate market information*** *is very crucial in any decision-making process. Continuous and accurate market information relating to eggs sold to the trade should be available to all market participants.*
>
> *The establishment of the statutory measure should assist in promoting the efficiency of the marketing of table eggs both local and abroad. The viability of the Egg Industry should thus be enhanced through the introduction of statutory measures.*
>
> *The measure is not detrimental to any objectives of the Act and, in particular, shall not be detrimental to the number of employment opportunities or fair labour practice in the Egg Industry.*[650]
>
> *Confidential information of any person subject to this statutory measure obtained by the levy administrator through the implementation, administration and enforcement of this statutory measure shall be dealt with in accordance with section 23(2) of the Act.*[651]
>
> *The measure shall be administered by the levy administrator who will appoint a third party to assist them with the registration of the identified role-players. The latter shall act in terms of the mandate and on behalf of SAPA".*

Furthermore, the Government Gazette states that the levy ought to fund:

(a) Transformation in the developing sector;

(b) Consumer communication and education;

(c) Consumer assurance;

(d) Research and Development

(e) Industry information and liaison;

(f) Production development; and

(g) Administration cost.

649 https://www.gov.za/sites/default/files/gcis_document/202201/45771gon1682.pdf at 2.

650 https://www.gov.za/sites/default/files/gcis_document/202201/45771gon1682.pdf at 2.

651 Section 23(2) of the Marketing of Agricultural Products Act No. 47 of 1996 states that "*No person shall, except in the performance of his or her functions under this Act, or unless required to do so by a court of law or in terms of any law, or with the written consent of the Minister, disclose to any other. person information, pertaining to any 15 person, institution or body of persons, collected under section 18 or otherwise acquired in the performance of functions in terms of this Act*".

AMOUNT OF LEVY

The amount of the levy payable:

	Dozen of Table Eggs
From 1 April 2022 to 31 March 2023	R0, 018 (VAT excluded)
From 1 April 2023 to 31 March 2024	R0, 018 (VAT excluded)
From 1 April 2024 to 31 March 2025	R0, 018 (VAT excluded)
From 1 April 2025 to 31 March 2026	R0, 018 (VAT excluded)

This levy appears to cement the role of SAPA as the primary mouthpiece for the Egg Industry and through these levies (promulgated in government documents), SAPA is empowered with financial means to promote the Egg Industry. This could potentially have the effect of consolidating power and potentially creating further barriers to engagement with civil society and transparency of information, given that SAPA has already refused information on ground discussed above.

IV. ADVERTISING REGULATORY BOARD

According to its website, the Advertising Regulatory Board ("**ARB**") was set up by the broader marketing and communications industry to protect the South African consumer through the self-regulation of advertising, including packaging. The ARB administers the widely-accredited Code of Advertising Practice which regulates the content of South African advertising.[652] There is a specific code for "Food and Beverage" applicable to egg products.[653]

Importantly, a 2022 decision the Supreme Court of Appeal confirmed that the ARB is entitled to consider the advertising of non-members, and issue decisions thereon, for the guidance of its members.[654]

There are several important provisions in the Code that aim to protect consumers and hold Corporations involved in advertising products accountable. These are not discussed in further detail for purposes of this Initial Report, save to highlight that, these codes have been utilised in several cases involving advertising in the animal agriculture sector. Some challenges were unsuccessful and at least one has been successful.[655] The successful challenge involved and ARB Appeals Committee ruling that a dairy company in South Africa could not utilise the terms "humane" and "#happycows" in their advertising due to this being in contravention of the Codes.

652 https://www.arb.org.za/#codes.

653 https://www.arb.org.za/assets/appendix-j-food---beverage-(2022).pdf.

654 Advertising Regulatory Board NPC and Others v Bliss Brands (Pty) Ltd (786/21) [2022] ZASCA 51; [2022] 2 All SA 607 (SCA); 2022 (4) SA 57 (SCA) (12 April 2022). https://www.saflii.org/cgibin/disp.pl?file=za/cases/ZASCA/2022/51.html.

655 'Statement on Advertising Appeals Committee decision on complaint Fair Cape Dairies vs Kemp, Fairbrother, others, issued on 5 May 2020' available at: https://medium.com/@joannefairbrother/statement-on-advertising-appealscommittee-decision-on-complaint-fair-cape-dairies-vs-kemp-1173775edd14.

PART D: EGG-SAMPLES OF EGG PACKAGING, STATEMENTS AND MARKETING AND ADVERTISING IN SOUTH AFRICA

WELCOME TO TOPLAY

Which comes first, the chicken or the egg? At TopLay our hens come first! Our hens are treated with extra special care and are fed the highest quality feed to give you the eggs you trust.

656

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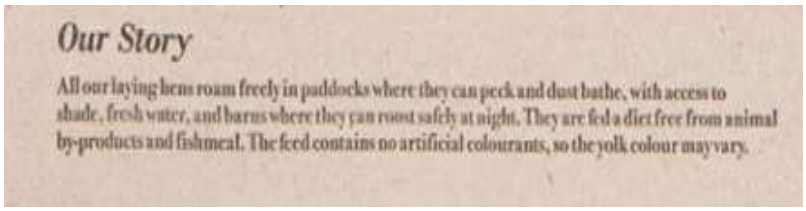
657

656 https://toplay.co.za/.
657 https://www.eggbert.co.za/.

WOOLWORTHS – STAKEHOLDER 4[658]

"All our laying hens roam freely in paddocks where they can peck and dust bathe, with access to shade, fresh water and barns where they can roost safely at night. They are fed a diet free from animal by-products and fish meal. The feed contains no artificial colourants, so the yolk colour may vary".



Woolworths claims to be the only retailer that sells no caged eggs in these advertisements from 2019 and 2018 respectively: Sources: Woolworths SA.[659]

658 **https://www.woolworths.co.za/prod/_/A-20175870**

659 2019: https://www.pressreader.com/south-africa/woolworths-taste/20190701/285177244766349 and 2018: https://www.pressreader.com/south-africa/woolworths-taste/20181001/281698320672126

Example: Labelling Investigation

In 2019, an investigation was conducted into Pick n Pay's claims around its free-range eggs by Testing of Products Initiated by Consumers ("**TOPIC SA**").[660] TOPIC SA is a consumer-led organisation funded by consumers and retailers that are committed to transparency. With the use of laboratory testing, farm and factory visits and any other means necessary to verify that ingredients and label claims are accurate.

According to TOPIC SA, "*consumers buy free range eggs because they believe that the hens are 'happier', "healthier' and the eggs 'taste better*"'. *"Hen welfare is rated as 'important*"'. The difference in price between free-range and cage eggs is quite significant. Price differences on Pick n Pay online as of 14 January 2022 shows that shoppers will pay between 8% to 64% more for eggs labelled as free range over non-labelled cage eggs.[661]

TOPIC SA undertook to investigate the accuracy of Pick n Pay's free range egg labelling by requesting documentation which either supported or confirmed the free-range status of its eggs along with a farm visit to view the production facilities. In response, Pick n Pay stated that it has six suppliers producing its free-range eggs in various regions countrywide. Furthermore, Pick n Pay stated that "*all supplier packing facilities undergo external audit (FSA Intertek/GFSI Intermediate/GFSI Certification), where the premises and processes are audited*". In respect of a farm visit, Pick n Pay relayed its suppliers' reluctance to have customers on site due to bio security issues and the links to the Avian Influenza.

In early February 2020, TOPIC SA requested a copy of the report from the most recent external audit or inspection conducted on Pick n Pay free range egg suppliers. TOPIC SA expressed their understanding of the biosecurity concerns and had previously been fully compliant with a farm visit it had conducted in the previous year, requesting that Pick n Pay reconsider a farm visit to one of their Western Cape Suppliers.[662]

Pick n Pay provided authorisation in this respect to TOPIC SA, providing access to three of its free-range suppliers, namely Windmeul Eggs, Alzu and Quantum Foods respectively. TOPIC SA undertook to contact these suppliers to conduct farm visits. These visits, however, would not take place on any of these farms. This was due to numerous Avian Influenza outbreaks occurring during this investigation.

660 https://topicsa.org.za/blog/free-range-pick-n-pay-eggs/.
661 Ibid.
662 Ibid.

TOPIC SA, while engaging with Nulaid, the egg-layer division of Quantum Foods, stated:

> "*by May 2021, four different strains of bird flu has been detected at South African poultry farms. According to an IOL report from August 2021, nearly 2.7 million birds in the broiler and egg industries 'were culled as a preventative measure which represents around 2% of the national flock*"'.

A spokesperson for Windmeul Eggs further stated:

> "*Currently due to the high alert of HPAI, they [Layer Hens] are kept indoors. Normally the pop holes are open 24 hours, and we close certain farms under normal conditions at 20:00 due to natural predators*".

Furthermore, during the investigation, South Africa entered lock down due to the COVID-19 pandemic which further led suppliers to be reluctant to arrange farm visits with these suppliers.

In conclusion, TOPIC SA noted that both Windmeul Eggs and Nulaid stated that they are compliant with SAPA's code of conduct and guidelines "and then would also appear to be compliant with the limited free range egg labelling legislation."

It further stated:

> "*SAPA's conditions make reasonable provision for the welfare of hens raised in free range production systems. They allow for adequate rest, expression of natural behaviours, protection from predators and from the sun, and six hours of continuous daytime access to vegetated areas, but SAPA does not monitor or audit its members. The TOPIC team has not received evidence to support the claims of conditions at Pick n Pay's suppliers (whether from Pick n Pay or their suppliers, or from audits) and due to a combination of Covid-19 lockdowns, and farms not allowing visits due to the Avian influenza outbreaks, TOPIC has been unable to be on site to verify such claims*".

While this investigation did not yield the desired results in confirming or refuting the free-range labelling claims of Pick n Pay, it is indicative of the harmful conditions associated with the commercial Poultry Industry. Pathogenic disease outbreaks in these operations occurring with such regularity that conducting a farm visit remains a difficult task, with Industry Associations such as SAPA not conducting audits nor monitoring of compliance on its members.[663]

663 https://topicsa.org.za/blog/free-range-pick-n-pay-eggs/.

ANIMAL LAW REFORM
SOUTH AFRICA

OPEN WING ALLIANCE

MOTHER HENS AND THEIR CHICKS TREATED CRUELLY JUST FOR OUR EGGS

HENS

While hens naturally lay eggs as part of their reproductive cycle, the way they are used in the modern-day egg industry is anything but **NATURAL**

NUMBER OF EGGS[1]

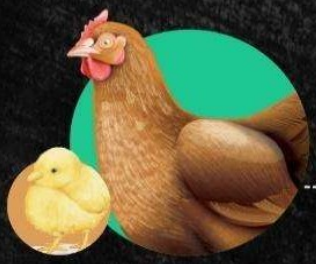
Naturally, in the wild, hens would lay one clutch per year, consisting of 12 or so eggs. BUT on factory farms, hens lay an egg nearly every single day. Nearly 3,000% increase in egg production is far from "NATURAL"

LIFE EXPECTANCY[2]

Naturally, the average life span of a hen is between 10-20 years. BUT when used in intensive egg production, a hen's life span is approximately 24 months.

DENIED THEIR CHILDREN

Naturally, hens are excellent moms and carers of their baby chicks BUT as egg layers, they are denied the ability to be mothers and care for their young.



TREATED LIKE A COMMODITY

Mother hens are not treated as living sentient beings with intrinsic value, but instead are treated as mere commodities.

CHICKS

MALE CHICKS = USELESS TO EGG INDUSTRY = CONSIDERED AS WASTE AND "DISPOSED OF" IN EXTREMELY CRUEL WAYS.

DAY OLD MALE CHICK KILLING AKA "CULLING"

Gassing and maceration (grinding up while still alive) of chicks are considered practical and acceptable methods to get rid of or "dispose" of these babies.[3] Thousands upon thousands of baby day-old male chicks are killed this way regularly.

GASSING

Placing in a container and exposing chicks to gas for a long enough period so as to cause death.

MACERATION / GRINDING UP

= grinding baby male chick while still alive, along with other waste such as the egg shells and stillborn chicks.

DUMPING

Male chicks have also been found dumped at refuse sites whilst still alive.[4]

Dependent on breed and species
1. https://thehumaneleague.org/article/egg-production
2. https://www.egg-truth.com/life-of-a-hen
3. South African Poultry Association Code of Practice June 2022 available at https://www.sapoultry.co.za/wp-content/uploads/2022/06/2022-SAPA-COP.pdf
4. NSPCA Refutes Layer Hen Cage Sizes in South Africa available at https://nspca.co.za/nspca-refutes-layer-hen-cage-sizes-in-south-africa/ (accessed on 13 April 2023)

PILLAR 6: GOLDEN EGG: CORPORATE AND BUSINESS: THE NECESSITY FOR CORPORATE ACCOUNTABILITY

PART A: LAYING THE FOUNDATIONS

This "Corporate and Business Pillar" contains a high-level summary of some of the corporate and business considerations applicable to the Egg Industry in South Africa, as well as the regulation thereof, more specifically how these issues intersect with animal welfare and well-being. It is intended to provide an overview of selected matters only and is non-exhaustive of all of the relevant corporate and business considerations and law and policy relevant to the industry.[664] This Part A sets out the rationale for the selection of this Pillar; the main national government departments with mandates in respect thereof; and how it connects with our Stakeholder Report in Section IV. Part B sets out background information as to how the Pillar connects with the Egg Supply Chain. Part C provides an overview of selected governance issues associated with this Pillar in the context of the Egg Supply Chain in South Africa. Part D provides examples of the other Parts in practice.

Matters dealt with in detail in other Pillars or sections of this Initial Report and have not been repeated. As one of the main focus areas of this Project is Corporate Accountability, this theme has emerged throughout the Report.

The rationale for including this as a separate Pillar is that this is a newer area in the context of animal law and animal protection, and there are regulatory considerations that do not necessarily fall neatly into the other Pillars to be considered. Given that the emphasis of this Project is Corporate Accountability, this Pillar intersects with all other Pillars discussed in different ways, such as in respect of the duties that Corporations have in relation to other Pillars (e.g., Corporations' duties towards the environment and Corporations' duties towards the protection of consumers, etc.).

This Pillar has been selected for purposes of this Project as it falls under ALRSA's Corporate Accountability Programme, premised on the idea that Corporations operating in South Africa owe moral and legal duties to everyone whom their operations are affecting pursuant to South Africa's constitutional regime. These duties extend beyond shareholders, directors, investors, management,

664 For a more detailed analysis of business and corporate matters applicable to animal agriculture in South Africa, please refer to ALRSA's Food System Working Paper https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf and White Paper (October 2022) https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf respectively.

customers, suppliers or even employees and other personnel. They are owed to the public at large and animals.

That being said, due to their role and dominance in society and influence on regulation, corporations are often the worst offenders in terms of the infringement of rights and interests. Conversely, they have immense power to change the *status quo* for the betterment of all.

Some legislation discussed under this Pillar falls under the mandate of the **DTIC**, for example, the Companies Act. While not discussed, the Competition Act could be relevant and ought to form part of a future research agenda.

In the context of researching this Pillar and developing the Stakeholder Component of this Initial Report, we requested Selected Stakeholders provide access to their Annual Reports.[665] Furthermore, we requested access to Selected Stakeholders' animal-welfare centred Internal Policies. ALRSA is of the view that Internal Policies that expressly address Cruel Practices; provide for Progressive Measures to address these practices; and indicate mechanisms ensuring compliance, are indicative of a Selected Stakeholder adopting an accountable approach to animal welfare. Annual Reports, specifically addressing animal welfare measures and publicly reporting on Progressive Measures to address Cruel Practices reinforce corporate accountability.

As such, responses received from Selected Stakeholders informed specific Criteria and Indicators, namely, Criteria 1 (inclusive of Indicators 1.1 – 1.6), which assessed whether Selected Stakeholders provided evidence of animal welfare-centred Internal Policies. Furthermore, Annual Reports provided by Selected Stakeholders were analysed and informed Criteria 2 (inclusive of Indicators 2.1 -2.4), which assessed whether the Selected Stakeholder provided access to Annual Reports that report on relevant animal welfare.

PART B: LAYING DOWN THE FACTS

Businesses have a responsibility to the societies around them through work being done in the areas often referred to broadly as "Business and Human Rights", "Business and Environment" and "ESG". However, Corporations are lagging behind when it comes to recognising their duties towards animals as well as how their duties towards humans and the environment intersect with their duties towards

665 The Annual Reports, Integrated Annual Reports, Sustainability Reports and/or Environmental Social and Governance ("ESG") Reports and similar records of a Selected Stakeholder for the period of 1 November 2018 to 30 November 2022, requested by ALRSA. These documents are distinct from Internal Policies (as defined in this Initial Report) and are generally tabled with and approved by the boards and shareholders of stakeholders. Annual Reports are often available in the public domain.

animals. This is apparent from our Stakeholder Component and the responses we received to our requests for information in terms of PAIA as further set out in Section IV.

This Initial Report aims to assist with establishing discourse around the duties of corporations operating in the animal use industry, particularly the Egg Industry, as well as the consideration as to whether Corporations have duties towards animals. It aims to help stakeholders understand how they can manage risks and opportunities around animal issues which impact sustainability issues.

Corporations, including those involved in industrial, intensive animal agricultural operations, are some of the worst abusers of animals.

As discussed above, the Constitution's horizontal application means that non-state actors such as Corporations are responsible for and have duties in respect of human rights.

BUSINESS AND HUMAN RIGHTS

Due to the major role that Corporations have on society and specifically human rights, there is increasing recognition that Corporations have an important role to play in the achievement as well as non-infringement of human rights.

One prevalent international example is the UN Guiding Principles (UNGPs) on Business and Human Rights, adopted by the UN Human Rights Council by Resolution 17/4 on 16 June 2011. The UNGPs are a set of 31 principles directed at governments and businesses that clarify their duties and responsibilities in the context of business operations.[666] According to the United Nations Development Programme (UNDP),

> "*[t]he UN Guiding Principles on Business and Human Rights (UNGPs) – the most authoritative and widely adopted set of principles for responsible business, endorsed in 2011 – call on both governments and companies to identify, prevent, mitigate, and remedy actual and potential human rights abuses. The UNGPs are not only a guide to help businesses respect human rights in their operations, they are also a roadmap for businesses to contribute to the SDGs*".[667]

The SDGs as further discussed in the Environmental Pillar above. This is an area of research and work which is growing, and which could be built on further in subsequent phases of the Project following this Initial Report.[668]

If the argument is accepted that there are duties on corporations to protect and promote human rights (as required in terms of the horizontal application of the Constitution in section 8), and that human rights are impacted by the practices of Corporations in the Egg Industry (as further set out in the

666 https://www.undp.org/laopdr/publications/guiding-principles-business-and-human-rights.
667 United Nations Development Programme: https://www.undp.org/rolhr/business-and-human-rights.
668 For example, David Bilchitz, Fundamental Rights and the Legal Obligations of Business, Cambridge University Press, October 2021. ISBN: 9781108895224. DOI: https://doi.org/10.1017/9781108895224.

Animal Welfare Pillar and Social Issues and Rights Pillar, among others which include in relation to the right to environment (section 24); the right to access to information (section 32); the right to freedom of expression (section 16); the right to freedom and security of the person (section 16); the right to food and water (section 27); and rights relating to children (section 38) and workers (section 23), among others), then it can be alleged that Corporations operating in the Egg Industry have particular corresponding duties in respect of those rights, and potentially others, in respect of their operations that require careful consideration. These need to be properly adjudicated on by the courts in order to determine whether such duties are applicable and the extent of such duties.

SEPARATE LEGAL PERSONALITY

Importantly, in South Africa, Corporations are largely considered as legal persons, or legal subjects, such that the business or legal entity is considered to be separate from that of its directors, shareholders, employees, etc. While there are several advantages of this status, and it is important for the entity to function, it immunises individuals from liability and thus inhibits accountability. This is often referred to as "limited liability" or the "corporate veil".

PIERCING / LIFTING THE CORPORATE VEIL

In some instances, the protections of limited liability are lost when the "corporate veil is pierced or lifted". This means individuals involved in a Corporation can become personally liable for debts, wrongdoings, or claims of the corporation. This could mean their personal assets are surrendered and cause substantial hardship, among others.

Increasingly, activists are utilising the court system to bring cases that seek to pierce the corporate veil in respect of environmental and climate issues and infringements.[669] Accordingly, it is a possibility that individuals involved in other harmful industries, such as in animal agriculture (including the Egg Industry) could similarly be considered in such litigation, when appropriate.

FIDUCIARY AND GENERAL DUTIES OF DIRECTORS

Various stakeholders in Corporations including, most notably, directors (and other prescribed officers) have fiduciary responsibilities and duties. These are contained in various sources including but not limited to the common law; the Companies Act; the relevant Corporation's Memorandum of Incorporation, or internal policy and operating documents; and duties in specific legislation such as those described in the Environmental Pillar above (see NEMA).

669 https://www.levernews.com/piercing-the-corporate-climate-veil/ and https://www.iucnael.org/en/documents/1296-piercing-the-corporate-veil.

SOCIAL LICENSE TO OPERATE

While not a legal norm and with no universal definition, the social license can be defined as existing when a project has the ongoing approval within the local community and other stakeholders, ongoing approval or broad social acceptance and, most frequently, as ongoing acceptance.[670]

This is distinguishable from other licences or permits required by a business by law for their operations (for example, environmental permits for business activities defined in environmental legislation). This social license to operate indicates a social dimension to doing business which gives the power to the public or society (as opposed to the government of Corporations). The social license to operate means that if activities are considered by a community to be unacceptable, a Corporation can lose this social license or support, and experience hardships - which can ultimately impact on their bottom line (profits or financials).

In the context of animals, and the Egg Industry in particular, a Corporation has the potential to have its social license to operate removed or "revoked" if the public deems certain practices (for example the Cruel Practices), to be unacceptable, which can have implications for their business.

PART C LAYING DOWN THE LAW

REGULATION OF THE EGG INDUSTRY:
THROUGH A BUSINESS AND CORPORATE LENS

In South Africa, there are a plethora of laws and policies which regulate Corporations and their operations, activities, liabilities, etc. For purposes of this Pillar a few specific laws will be referenced, namely: the Companies Act; King IV Code; Companies' Internal Legal Documents and Internal Policy Documents.

In his upcoming work, Bilchitz[671] attempts to answer a relatively neglected question, namely, the legal possibilities that exist in South Africa for holding corporations to account for harms caused to the interests of animals. He identifies four primary means through which corporations could arguably have duties to protect animal interests being:

- **Duties flowing from the Constitution / Corporate Social Obligations:** He explores the foundational document of South African law – the Constitution – and argues that Corporations are bound to act within

670 Social License Website http://socialicense.com/definition.html.
671 David Bilchitz, *Corporate Accountability Towards Animal Well-Being: Exploring The Legal Possibilities*, *Forthcoming* in "Animal Law and Welfare in South Africa" edited by Melanie Murcott and Amy P. Wilson, Taylor and Francis (2024).

the boundaries set by the Constitution, pursuant to the fact that the Bill of Rights applies horizontally (between private entities and individuals). Those boundaries include a recognition of the intrinsic value of individual animals and the importance of respecting animal welfare. Therefore, Corporations have obligations to act in a way consonant with these recognitions.

- **Duties from Animal Protection / Welfare Legislation** He further argues that corporate duties flow directly from animal welfare legislation

- **Duties from the Corporate Governance Framework:** fiduciary duties (including a duty to consider and address the harmful effects of corporate activity on animals). Furthermore, that social and ethics committee should engage with and report on the effect of corporate activities on animals. Additional requirements arise including in respect of reporting from the King IV Report on Corporate Governance, including a consideration of corporate impacts on animals.

- **Duties from Consumer Protection Law**: that the possibilities that exist within consumer protection law and softer ethical frameworks for ensuring corporations do not present misleading information about their treatment of animals and that there is a need for a positive duty actively to inform consumers about the treatment of animals by corporations.

COMPANIES ACT

The Companies Act, 71 of 2008 [672] has various aims relating to Companies in South Africa. There are numerous provisions which find relevance in a discussion around corporate accountability, a few of which are highlighted.

The purposes of the Act include (section 7):

> *"(a) promote compliance with the Bill of Rights as provided for in the Constitution, in the application of company law;*
>
> *(b) promote the development of the South African economy by:*
>
> > *…(iii) encouraging transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation*
>
> *d) reaffirm the concept of the company as a means of achieving economic and social benefits".*

The "social significance" of a company is considered as a factor in determining duties of a Company, for example, requirements to produce annual financial statements (section 30).

Reference is also made to "Social and Ethics Committees" of companies, with it being a requirement for companies to have such a board committee and additional prescribed requirements for the functioning of such a committee.

672 https://www.gov.za/documents/companies-act.

There are detailed provisions on the governance of Companies in Part F including fiduciary and general duties (which are also contained throughout the act) as well as in the documents governing a corporation including but not limited to its Memorandum of Incorporation ("**MOI**").

The above sections illustrate tangible legal obligations of Companies operating in South Africa relating to social and ethical obligations. These indicate an expansion beyond obligations and duties to internal personnel towards society more broadly.

KING IV CODE

While not hard law in the form of legislation like the Companies Act, the King IV Code ("**King Code**") is an important South African corporate governance code. The aim of the code is to provide a practical, principle-based approach to good corporate governance, which also incorporates both global public sentiment and international regulatory change.[673]

According to Beyond Governance, the Code has a number of aims all of which are crucial to building and retaining value and creating a better society:

- create an ethical culture in organisations;
- improve the organisation's performance and increase the value they create;
- ensure there are adequate and effective controls in place;
- build trust between all stakeholders;
- ensure the organisation has a good reputation; and
- ensure legitimacy.

Again, provisions and aims in this code indicate an expansion beyond duties within a Company to internal stakeholders to society more broadly.

BENCHMARKING INITIATIVES

In addition to legislation already mentioned and governance measures such as the King IV Code, other third-party initiatives are used as mechanisms by companies to ensure good governance. One example is the FAIRR Initiative (FAIRR) is a collaborative investor network that raises awareness of the environmental, social and governance (ESG) risks and opportunities in the global food sector.

673 https://beyondgovernance.com/king-iv-code/.

PART D: EGG-SAMPLES OF CORPORATE AND BUSINESS MECHANISMS

INTERNAL POLICIES

In addition to third party certifications, companies can and should also specify their own requirements for themselves and entities within their supply chain to the extent possible when it comes to animal welfare. These policies should be made publicly available, and consumers should be able to question the corporation on their policies, request information to show they are compliance with these statements and, if relevant, challenge the Corporations on them. This will ensure greater transparency and accountability.

Example: Woolworths

For example, the Woolworths Animal Welfare Policy[674] states the following:

In respect of mutilations:

> *"We recognise that a number of routine mutilation measures are used to abate anxiety traits in animals (e.g. hen pecking, tail biting, and aggressiveness) which may endanger farmer and/or livestock safety, and which may develop in part due to animal boredom and close confinement. As a result, we will promote first, the use of enrichment methods as well as reduced confinement in our private label fresh meat products as an alternative to routine mutilations associated with boredom in animals due to barren landscapes and over–crowding - e.g. including teeth clipping, tail docking and* ***beak trimming****. Where these practices are deemed absolutely necessary, we encourage the use of the best available technique causing minimum distress, for example:*
>
> *The use of infrared for beak trimming in hens.*
>
> *The use of anaesthesia or analgesia applied in the presence of a veterinary surgeon, for the all of the following: Castration of cattle, pigs (including piglets) and mutton; de-horning or de-budding of cattle; teeth clipping in piglets; tail docking in piglets and lamb. We prohibit mulesing of lamb or mutton."*

674 https://www.woolworths.co.za/images/elasticera/New_Site/Corporate/Woolworths_Animal_Welfare_Policy_and_Position_Statement.pdf.

675

Their policy from 2016 currently available online, states:

> "*Woolworths is proud to have been the first major local retailer to stop selling whole eggs from hens kept in cages in 2004, and has achieved 95% free range egg for all egg ingredients in private label products*".[676]

In respect of transparency and reporting:

> *"Transparency and Reporting We will be transparent about our progress and publish periodic updates on the commitments we have made".*

Example: SPAR

Unlike Woolworths, SPAR does not have a specific animal welfare policy but rather a general sourcing policy which references animal welfare. SPAR's general sourcing policy states:

> "*SPAR is committed to providing customers with a wide range of fresh and dry goods that are locally and/or sustainably sourced. SPAR Partners across the globe continue to develop ways to provide customers with products that are produced under conditions with a reduced impact on the environment, promote animal welfare, and provide equal opportunities for farmers and fishermen*".[677]

675 https://www.woolworths.co.za/images/elasticera/New_Site/Corporate/GBJ_2022_Animal%20Welfare.pdf.

676 https://www.woolworths.co.za/images/elasticera/New_Site/Corporate/Woolworths_Animal_Welfare_Policy_and_Position_Statement.pdf.

677 https://spar-international.com/responsible-retailing/sourcing/.

Example: Pick n Pay

ADVANCING SUSTAINABLE SEAFOOD

Pick n Pay is a reconised leader among African retailers in advancing sustainable seafood sourcing and providing customers with the best environmental choices. We drive change throughout our seafood supply chain to mitigate the risks of over-fishing.

Pick n Pay has has been working closely with WWF-SASSI for the past 10 years, and in 2011 we became the first retailer in Africa to make the commitment to only sell sustainable seafood. Since then we have invested R15 million in the WWF Sustainable Fisheries Programme (SFP).

We continue to make progress towards our target of all our seafood products being sustainably sourced. Currently, 83% of our seafood products by species and 95% of our products by sales either meet credible sustainability standards or come from fisheries that are actively improving their environmental sustainability performance.

We are dedicated to ensure that all our seafood complies with at least one of the following criteria by 2019.

OUR COMMITMENT

1. IT IS CERTIFIED AS SUSTAINABLE BY THE MARINE STEWARDSHIP COUNCIL FOR WILD CAUGHT SPECIES
2. IT IS CERTIFIED AS SUSTAINABLE BY THE AQUACULTURE STEWARDSHIP COUNCIL FOR FARMED SPECIES
3. IT IS CATEGORISED AS 'GREEN' BY WWF-SASSI
4. IT IS SOURCED FROM CREDIBLE, TIME-BOUND IMPROVEMENT PROJECTS

SECTION IV

THE FOX AND THE HENHOUSE: STAKEHOLDER COMPONENT

ANIMAL LAW REFORM
SOUTH AFRICA

SECTION IV: THE FOX AND THE HENHOUSE: STAKEHOLDER COMPONENT

PART A: INTRODUCTION

While the Industry Component in Section II locates egg production within the Poultry Industry, and the Research Component in Section III outlines the regulatory regime applicable to the role-players in the Egg Supply Chain, this Section IV is our Stakeholder Component (Component 2 of the Project). It discusses the performance and commitment of 36 (or 3 dozen) Selected Stakeholders[678] in relation to enhancing animal welfare, transparency, and corporate accountability in the Egg Supply Chain.

As set out in Part B below, the methodology for the Stakeholder Component of the Project was extensive. It entailed, first, a Stakeholder Mapping process to understand, holistically, the numerous role-players in the Egg Supply Chain. Secondly, we identified Selected Stakeholders with whom we would engage and about whom we are reporting. Thirdly, we engaged in an extensive stakeholder engagement process. Relying on the right to access to information provided for in section 32 of the Constitution and the PAIA, which gives effect to that right, we requested access to information from the Selected Stakeholders to facilitate our stakeholder engagement. We did so by completing Form C, an appendix to Regulations promulgated in terms of PAIA.[679] The information requested in terms of PAIA was intended to illustrate attitudes, policies, and practices of the Selected Stakeholders in relation to enhancing animal welfare, transparency and corporate accountability in the Egg Supply Chain. Having regard to several of the identified Pillars discussed in Section III, PAIA requests were drafted and then tailored depending on the role of the Selected Stakeholder within the Egg Supply Chain, in order to gain relevant information. Selected Stakeholders' responses (or the lack thereof) to our PAIA requests would form the basis for our rating and analysis (see Part C and Part D, respectively). Fourthly, our methodology entailed developing the Rating Criteria[680] and Indicators[681]

678 The entities in the Egg Supply Chain being either a retailer, hotel chain, fast food chain, restaurant, egg producer or cage and/or feed manufacturer selected for analysis in this Initial Report, listed in annexure 1. Where a Selected Stakeholder is a multinational corporation, this Initial Report refers to their presence in South Africa (whether as a subsidiary or otherwise).

679 Regulation 10 of PAIA.

680 A set of 10 criteria against which Selected Stakeholders are evaluated by ALRSA in the Report, each with several Indicators.

681 To evaluate the Selected Stakeholders against each Criteria, Indicators have been developed which inform the colour-ratings applied in respect of each Criteria. The Indicators enable more detailed inquiries in respect of our analysis of Selected Stakeholders and their efforts (or lack thereof) towards animal welfare, transparency and willingness to engage with ALRSA concerning their involvement in the Egg Supply Chain.

against which we rated the Selected Stakeholders (as per Part C). This was done in conjunction with the stakeholder engagement process. Fifthly, we applied the Rating Criteria and Indicators to the Selected Stakeholders. Lastly, this Stakeholder Component was prepared, allowing for analysis (as per Part D).

In this Section IV, we provide the public with information about who some of the key role-players in the Egg Supply Chain are; and how they are performing in relation to animal welfare, corporate accountability, and transparency in the Egg Supply Chain in terms of ALRSA's rating system.

This Stakeholder Component aims to increase consumer awareness concerning animal welfare issues in the Egg Supply Chain about the attitudes, policies, and practice of the Selected Stakeholders. This awareness could, in turn, empower consumers to make more informed choices, and to demand more of role-players in relation to animal welfare, particularly the Selected Stakeholders. It also aims to promote improved transparency and corporate accountability from the Selected Stakeholders, based on their ratings and the ratings of other Selected Stakeholders.

This Stakeholder Component, to our knowledge, is the first of its kind in Africa, and was prepared in the public interest to advance, among others, the fulfilment of the right to an environment not harmful to health or well-being enshrined in section 24 of the Constitution, as well as the constitutional values of transparency and corporate accountability.

Our intention is to supplement and update this Stakeholder Component following further engagement with the Selected Stakeholders and other role-players in the Egg Supply Chain, and to expand on or amend our Rating Criteria and Indicators as appropriate. Selected Stakeholders and other interested parties are encouraged to raise any questions or concerns about the rating and analysis set out below with us. In the spirit of collaboration and as part of the collective effort to enhance animal welfare and a just transition towards a cage-free Egg Supply Chain, we urge Selected Stakeholders to engage with us and provide further information which could assist in promoting animal flourishing.

The structure of the Stakeholder Component is as follows. Next, in Part B, we set out our methodology in more detail. Then, in Part C, we tabulate our rating of the Selected Stakeholders against the Rating Criteria and Indicators developed. Lastly, under Part D we set out our analysis. Recommendations arising from our analysis can be found in Section V of our Initial Report.

PART B: METHODOLOGY

The methodology for this Stakeholder Component involved the following steps during the period from July 2022 to July 2023.

- **STEP 1: STAKEHOLDER MAPPING**, when we identified and mapped out stakeholders in the Egg Supply Chain.
- **STEP 2: STAKEHOLDER SELECTION**, when in view of the Stakeholder Mapping, we identified and selected 36 Selected Stakeholders for analysis and rating in this Stakeholder Component based on three selection criteria.
- **STEP 3: STAKEHOLDER ENGAGEMENT**, which involved locating the PAIA Manuals[682] (statutorily required to be publicly available)[683] of Selected Stakeholders and other necessary information to make requests for access to records from Selected Stakeholders in terms of PAIA (PAIA requests), which were dispatched with letters explaining the rationale for our requests and background to this Project. Thereafter, we engaged in correspondence with Selected Stakeholders in relation to their responses or lack thereof.
- **STEP 4: DEVELOPING RATING CRITERIA AND INDICATORS** against which Selected Stakeholders would be rated, as well as determining a scoring system.
- **STEP 5: RATING** the Selected Stakeholders based on an analysis of the information and correspondence received in response to our PAIA requests (or lack thereof).
- **STEP 6: REPORTING** on our findings.

Each step is discussed in more detail below.

STEP 1: STAKEHOLDER MAPPING

As set out in Section II (Industry Component), the Egg Supply Chain is vast and complex, given the many role-players involved in producing various types of eggs for consumption. Many studies and reports focus on corporate accountability and animal welfare in relation to specific role-players of the Egg Supply Chain, such as retailers and fast food and restaurants.[684] In order to advance Corporate Accountability across the Egg Supply Chain more holistically, and recognising the extensive and complex nature of the Egg Supply Chain, we endeavoured to map out and draw links among a diverse range role-players, including those involved in manufacturing poultry farming equipment and feed for

682 The Manual referred to in s 51 of PAIA which must be compiled by the head of the private body, updated regularly, and must contain, among other things, contact details, records available without the need for a PAIA request, records available in terms of applicable legislation, details as to how to request information.

683 See section 14 of PAIA.

684 These include, but not limited to the Mercy for Animals Canada Animal Welfare Scorecard 2021; Asia Research and Engagement: Responsible Protein Sourcing in Asia: Baseline Benchmark Report 2022; the Forum Nacional de Protecau E Defese Animal EggLab Report 2022.

chickens, those involved in breeding and rearing Layer Hens, those involved in egg production, and those who facilitate the sale of eggs or egg products to the public for consumption. In addition, we recognised that Industry Associations such as the SAPA, and Relevant Authorities such as the NSPCA exercise some degree of oversight, as discussed elsewhere in this Initial Report.

To map the role-players, we conducted extensive desktop research, and identified over 200 entities (playing diverse roles) involved in the Egg Supply Chain. For instance, we consulted various sources, including but not limited to, the WOW Report[685] the World Animal Protection Pecking Order Report 2021,[686] information publicly available from SAPA,[687] reports from DALRRD,[688] the DFFE,[689] and the NSPCA.[690] The role-players that we identified are by no means exhaustive. A limitation of our research is that we did not map out role-players involved in the informal egg production and supply economy. A further limitation is that we did not attempt to comprehensively map out role-players involved in the production, distribution, and consumption of powdered and liquid eggs.

Our research revealed a vast array of role-players in the Egg Supply Chain from "fertilization to plate" and everything in-between. Whilst we identified over 200 role-players, our mapping was focused predominantly on identifying large Corporations (as opposed to smaller operations) involved in the Egg Supply Chain. This is because the activities of large Corporations potentially impact on the welfare of the most significant number of chickens and Chicks, given the size of their market share. For instance, according to the WOW report, Quantum Foods obtains 44% of its company revenue from animal feeds, 27% from broiler and layer farming and 24% from eggs. Furthermore, this Corporation has sold 1.2 billion eggs and egg products and produced 76 million day-old Chicks.[691]

A starting assumption was that the types of feed manufactured, cages produced, and egg production systems utilised all have the potential to impair animal flourishing, particularly where Cruel Practices are at play. Further, large Corporations involved in facilitating the sale of eggs produced pursuant to Cruel Practices are complicit in these Cruel Practices. At the same time, these Corporations potentially have a significant influence in the industry practice (given the scale of their operations).

Drawing on our desktop research, we identified role-players in accordance with the function performed in respect of entities' involvement in the Egg Supply Chain. There are various ways in

685 Available for purchase at https://www.whoownswhom.co.za/store/poultry-egg-industry-south-africa/.
686 Available at https://www.worldanimalprotection.org/pecking-order-2021.
687 See for instance the Poultry Bulletin Available at https://www.sapoultry.co.za/poultry-bulletin-feb-march-2022/; SAPA, on its website, provides a list of Allied Members and Accredited Suppliers. This list is available at https://www.sapoultry.co.za/allied-member/.
688 https://nationalgovernment.co.za/department_annual/403/2022-department-of-agriculture-land-reform-and-rural-development-(dalrrd)-annual-report.pdf.
689 https://www.dffe.gov.za/sites/default/files/reports/necer2020.2021report.pdf.
690 https://nspca.co.za/annual-reports/.
691 Who Owns Whom Report 2021.

which these role-players can be grouped, depending on the focus and purpose of one's research.[692] According to the WOW Report:

> "*[t]here are five major parts to the Poultry and Egg Industry. Upstream are poultry breeders and feed suppliers. The breeders supply broiler chickens to the broiler industry and layer Pullets to the Egg Industry. Broiler operations and egg-laying operations are the heart of the industry. Downstream, meat processors are supplied products by the broiler industry to generate consumer products. There is significant integration of these parts into the operations of single companies in the industry and concentration of market share is found throughout the value chain*".

Given that our focus was on the Egg Supply Chain, and had the goal of identifying those Corporations who impact on animal welfare the most, or have the most influence on animal welfare, we grouped role-players as participating in three core stages in the Egg Supply Chain:

- **Egg Supply Chain Stage 1:** The **Farming the Feed** stage in which the actions that make Layer Hen farming possible take place, including the manufacturing of chicken feed and equipment (such as Battery Cages).
- **Egg Supply Chain Stage 2:** The **Farming the Chickens and Eggs** stage in which chickens are bred, born, raised and then introduced into the larger flock of commercial producers, and when eggs are produced from Layer Hens. Producers include independent producers, wholesale distributors, and free-range producers.
- **Egg Supply Chain Stage 3:** The **Market** stage is the point at which consumers can directly engage with eggs through retailers, wholesalers, hotels, catering companies, fast food outlets, restaurants, and others.

In relation to stage 1, we identified that 75% of animal feed supplied to South Africa's poultry producers is manufactured by Epol (Pty) Ltd, a subsidiary of RCL Foods Ltd, AFGRI Group Holding Proprietary Ltd (AFGRI), an agricultural services company, and Meadow Feeds (Pty) Ltd, a subsidiary of Astral Operations Ltd.[693] Globally, Big Dutchman AG (a German holding company), claims to be "the market leader" in the manufacturing of feeding systems and housing equipment for modern pig and poultry production.[694] Their South African subsidiary is Big Dutchman South Africa. This entity is the primary distributor of cages and equipment in respect of the Egg Supply Chain and supplies a range of Pullet rearing and laying cages to egg producers in the country.

In relation to stage 2, we identified breeders such as A & J Broiler Breeders (Pty) Ltd, Namajaca Poultry (Pty) Ltd, and Omphile Letlotlo (Pty) Ltd. These are relatively small role-players. Hatcheries identified include Hy-Line South Africa (Pty) Ltd, Rossouw Pluimvee Eiers (Pty) Ltd, and Arbor Acres South Africa (Pty) Ltd. Free-range producers identified include Windmeul Eggs (Pty) Ltd, Elgin Free Range Eggs (Pty) Ltd and Alzu Eggs (Division of Alzu Ondernemings (Pty) Ltd. In contrast with producers that operate as "integrated systems", these Corporations have less power in terms of

692 DALRRD Value Chain Report 2019.
693 Who Owns Whom Report 2021.
694 https://www.bigdutchman.com/en/portal-en/.

influencing the means of production of fresh eggs (such as free-range production as opposed to eggs produced in cages) sold by retailers, and at what price. As such, they were not the focus of the Project. Companies that operate using integrated systems tend to make extensive use of contract growers.[695] It is reported that:

> "*This concentration of production capacity is also characterised by the fact that these companies are highly integrated with backward linkages into the provision of feed, breeding and rearing and also forward linkages into processing, distribution and even retail and export markets*".[696]

We established that such Corporations (i.e., those operating integrated systems) represent extremely powerful players in terms of influencing how eggs are produced and sold to the market. An example is Top-Lay Eierkooperasie Beperk Primary Cooperative, which sells eggs on behalf of roughly 50 farmers. Together with Quantum Foods (Pty) Ltd (primarily through its Nulaid brand) and Eggbert Eggs (Pty) Ltd, Top-Lay is reported as accounting for 51% of South Africa's egg production (in stage 2 of the Egg Supply Chain).[697]

Stage 3 represents the largest number of role-players in the Egg Supply Chain. This is likely because a vast number of retailers, hotels, fast food outlets, and restaurants serve the millions of eggs produced, whilst the majority of these eggs are largely sourced from a handful of dominant egg producers, which in turn rely on a small number of equipment (cage and feed) manufacturers.

In relation to stage 3, to identify retailers we drew from to the Deloitte Global Powers of Retailing Top 250 2023 Report,[698] which revealed that Woolworths Holdings Ltd is ranked the 225th biggest retailer in the world in terms of retail revenue, Spar Group Ltd, ranked 135th, and Pick n Pay Stores Ltd is ranked 180th. While the Deloitte ranking speaks to these retailers' global retail revenue, the Corporations are also dominant in South Africa.[699] For instance, SAPA identifies these major retailers as playing a role in the Egg Supply Chain, along with Shoprite Holdings (Pty) Ltd and MassMart Holding (Pty) Ltd.[700]

When identifying other role-players in stage 3 of the Egg Supply Chain, we drew on various reports.[701] Drawing from these reports, we identified wholesalers such as Bidcorporation Ltd, Pioneer Food

695 Who Owns Whom Report 2021.
696 Who Owns Whom Report 2021.
697 Who Owns Whom Report 2021.
698 Deloitte Global Powers of Retailing 2023 Report, available at https://www.deloitte.com/content/dam/assets-shared/legacy/docs/analysis/2022/gx-global-powers-of-retailing-v9.pdf.
699 Deloitte Global Powers of Retailing 2023 Report, available at https://www.deloitte.com/content/dam/assets-shared/legacy/docs/analysis/2022/gx-global-powers-of-retailing-v9.pdf.
700 SAPA Statistic Reports, available at https://www.sapoultry.co.za/statistics-reports/.
701 These include governmental reports such as DALRRD annual report 2021 - 2022, available at https://nationalgovernment.co.za/department_annual/403/2022-department-of-agriculture-land-reform-and-rural-development-(dalrrd)-annual-report.pdf; Animal welfare reports such as Mercy for Animals, Count your

Group Ltd, Tiger Brands Ltd, and National Brands Ltd as involved in the egg supply chain in various forms. We noted that many role-players in the Egg Supply Chain are subsidiaries of multinational Corporations, such as the fast-food chain, KFC, owned by Yum!Brands Inc, Unilever South Africa, owned by Unilever Proprietary Ltd, and Nandos, owned by Chickenland (Pty) Ltd. Other Corporations are only operational in South Africa, but still have a significant market share within the country. An example is Spur Corporation Ltd, a South African Corporation that owns various fast-food outlets and restaurants, including Spur Corporation Ltd and Rocomamas Franchise Co. (Pty) Ltd. Famous Brands Ltd is a South African Corporation with various fast-food outlets and well-known restaurants such as Steers, Wimpy and Mugg n Bean under its umbrella. In respect of hotels, we identified the biggest hotel chains in the world: Marriott and Hilton Hotels (which also have hotels located in South Africa).[702] Furthermore, hotels such as City Lodge[703] and Sun International[704] originated in South Africa and have hotels with ownership and operations across the continent.

Having mapped out the Egg Supply Chain comprehensively, we were able to identify Selected Stakeholders with whom we would engage to obtain information for purposes of our Stakeholder Component. The identification of Selected Stakeholders is discussed next.

STEP 2: STAKEHOLDER SELECTION

Given the aims of our Initial Report, 36 (or 3 dozen) Selected Stakeholders were identified for rating in this Section IV of our Initial Report. Three selection criteria informed the identification of the Selected Stakeholders, namely: (a) size of market share; (b) Corporations identified by OWA as significant for their work; and/or (c) apparent popularity. Other role-players were identified as potentially meeting one or more of these selection criteria but are not reported on given the scope and time constraints in respect of our research. These include, but are not limited to, Country Bird Holding Ltd, Crown Chickens (Pty) Ltd, Alzu Ondernemings (Pty) Ltd, and Food Lovers Holdings (Pty) Ltd. We may report on these and/or additional role-players in future.

I. Size of Market Share

Our Stakeholder Mapping exercise revealed that some role-players in the Egg Supply Chain have a significant share of the market, as discussed above. Selected Stakeholders are generally those with a significant market share in one of the three stages of the Egg Supply Chain. To narrow the scope of our inquiry, small-scale role-players identified through our mapping exercise were not selected. Some

chicken report 2022 available at https://mercyforanimals.org/count-your-chickens-report/ and industry reports such as the Who Owns Whom Report 2021.

702 https://hospitalityinsights.ehl.edu/biggest-hotel-chains.

703 https://clhg.com/company-profile.

704 https://corporate.suninternational.com/about/history/#:~:text=As%20one%20of%20Africa's%20most,eSwatini%2C%20Botswana%2C%20and%20Lesotho.

of the small-scale role-players not reported on include, but not limited to, Voermol Feeds Ltd, Namajaca Poultry Ltd, and Sapuma Eggs CC.

II. OWA Global Cage-Free Campaign

ALRSA is a member of OWA (specifically, the Africa group), which has the objective of ending the abuse of chickens worldwide. Their first step toward achieving this ambitious goal is eliminating Battery Cages from our world, and they are working towards achieving that vision, one cage-free policy at a time. It is made up of 90+ member organisations globally.

OWA and its partners have done considerable research into the role-players involved in the production and consumption of eggs in Africa and globally to pursue its cage free objective. This research has resulted in longstanding and successful advocacy campaigns against caged egg production and supply by various Corporations.[705] Role-players identified by OWA as significant to advancing their global and regional Cage-Free Campaigns were chosen as Selected Stakeholders for part of this Project and for rating.[706]

III. Popularity: Well-known / prevalent players / familiar and iconic brands in ZA to the general public

With reference to the Ask Africa Icon Brands 2020/2021 report,[707] we identified Corporations that are considered prevalent, well-known, or popular in the Egg Supply Chain. Role-players such as Mugg n Bean, Pick n Pay, KFC, and Shoprite were identified on this basis.

While some Selected Stakeholders are involved in various stages and have multiple roles in the Egg Supply Chain (including through other brands, holding companies, subsidiaries or otherwise), for purposes of this Stakeholder Component, they have been grouped as follows (with the major retailers, fast food outlets and restaurants, wholesalers and manufacturers, and hotels falling within stage 3 of the Egg Supply Chain, and egg producers falling within stage 2, and feed, cage, and other equipment producers falling within stage 1:

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705 For instance, in November 2022, ALRSA along with other OWA Africa launched the OWA Africa Regional Campaign against Pick n Pay due to a recent investigation revealing that Pick n Pay is supporting animal cruelty by sourcing their eggs from farms that practice cruel Battery Cage farming. More information is available at https://safcei.org/owa-africa-regional-campaign-against-pick-n-pay-14-30-november-2022/.

706 Notably, ALRSA's Rating Criteria and Indicators as well as Ratings of Selected Stakeholders are not necessarily reflective of OWA's ratings of such Selected Stakeholders. Due to ALRSA only considering information provided (or not provided) by Selected Stakeholders in terms of the PAIA process, Selected Stakeholders actual commitments including Cage Free Commitments may not have been factored into their overall rating and may not be reflective of actual actions and progress towards commitments or otherwise.

707 Ask Africa Icon Brands has been tracking consumer trends specifically with regards to brand and product loyalty among South African consumers from 2010. This survey is the largest benchmark of its kind in South Africa and measures thousands of brands across 238 product categories. The latest such report is available at https://www.askafrika.co.za/wp-content/uploads/2020/10/Ask-Afrika-CP.pdf.

1. **Major retailers**, namely: (1) Pick n Pay; (2) Shoprite; (3) Spar; (4) Woolworths; and (5) MassMart (Selected Stakeholders 1 to 5).
2. **Fast food outlets and restaurants**, namely: (6) Spur; (7) Rocommamas; (8) Mugg n Bean; (9) Wimpy; (10) Steers; (11) Nandos; (12) Papachinos; (13) Kauai; (14) KFC; (15) McDonalds; and (16) Subway; and (17) Bidvest (Selected Stakeholders 6 to 17).
3. **Wholesalers and manufacturers**, namely: (18) Tiger Brands; (19) Bakers; (20) Unilever; (21) Pioneer Food Group; (22) Rhodes Food Group; (23) Bidcorp; (Selected Stakeholders 18 to 23).
4. **Hotels**, namely: (24) Sun International; (25) City Lodge; (26) Southern Sun; (27) Hotel Verde; (28) Marriott Hotels; and (29) Hilton Hotels (Selected Stakeholder Stakeholders 24 to 29).
5. **Egg producers and equipment, cage, and feed producers**, namely: (30) Eggbert; (31) Quantum Foods; (32) TopLay; (33) Big Dutchman; (34) AFGRI; (35) RCL Foods; and (36) Meadow Feeds (stakeholders 30 to 36).

STEP 3: STAKEHOLDER ENGAGEMENT

Having identified 36 Selected Stakeholders, we set out to engage with them based on constitutional obligations owed by Corporations to everyone in South Africa pursuant to the horizontal application of the rights in the Bill of Rights.[708] As discussed elsewhere in this Initial Report, whereas in many countries in the world, rights are only enforceable vertically by private persons or entities against the state, the horizontal application of rights entails that some rights are enforceable and impose obligations as between private persons or entities within South Africa.[709]

Constitutional rights that have a direct bearing on advancing Corporate Accountability and animal welfare in the Egg Supply Chain include (among others) the environmental right enshrined in section 24,[710] and the right to access to information provided for in section 32.[711] The environmental right has been found to protect animals as sentient beings with intrinsic value.[712] The right to access to information provides that everyone has the right to access information. The right to access to information is enforceable against private bodies when the information requested is "required" for the protection of another right. In the case of information in private hands, access ought to be granted

708 Currie I and De Waal J (2013) The Bill of Rights Handbook 4th Ed Juta & Co, Landsdowne 2001 at 41.

709 Ibid.

710 Section 24 of the Constitution provides that everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation [and] promote conservation.

711 Section 32 of the Constitution provides that everyone has the right to access to (a) any information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any rights. This section further provides that national legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

712 *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another (CCT1/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016)* (the "**NSPCA Case**" or "**2016 NSPCA Case**").

where the requestor has evidenced a demonstrable and sufficient connection to the exercise or protection of any rights.[713]

We invoked the right to access information to engage with the Selected Stakeholders on the basis that the information requested is required for the exercise and protection of the environmental right provided for in section 24 of the Constitution. We did so using PAIA, the legislation intended to give effect to the right to access to information. PAIA empowers those seeking access to information to complete requests for access to information and imposes obligations on those to whom requests are made.

With reference to Corporations' PAIA manuals (where available),[714] we drafted PAIA requests and dispatched these to the Selected Stakeholders. PAIA Requests were dispatched during the period from 16 November 2022 to 28 February 2023. Our PAIA Requests indicated that:

> "*ALRSA is undertaking a project entitled "Laying Down the Facts: Corporate Accountability" (the "**Project**"). To advance the Project we hereby request records from [Selected Stakeholder] in terms of the Promotion of Access to Information Act 2 of 2000 ("**PAIA**") as set out in paragraph 6 below. The request extends to you and any and all franchisees currently in operation within South Africa, as applicable*".

and

> "*The information requested below is required for the protection of the environmental right enshrined in section 24 of the Constitution of the Republic of South Africa, 1996 ("the **Constitution**"). This constitutional right to have the environment protected includes the protection of animal welfare, giving rise to a duty on companies, including those in the poultry sector, not to harm animal welfare without reasonable justification*".

PAIA imposes a legal duty on a person to whom a request is made to respond within 30 days of receipt of the request.[715] A person to whom a request was made may, however, extend the period referred to above once for a further period of not more than 30 days, if the request related to a large number of records requested and compliance with our request would unreasonably interfere with the activities of the person.[716] Many Selected Stakeholders invoked their entitlement to extend the period in which to respond to our PAIA Requests.

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713 *Qoboshiyane NO and Others v Avusa Publishing Eastern Cape (Pty) Ltd and Others* [2012] ZASCA 166; 2013 (3) SA 315 (SCA) (21 November 2012).

714 Section 14 of PAIA obligates all bodies in South Africa, whether private or public bodies to compile a manual on functions of, and index of records held by the body. These manuals are pivotal in enabling the public to gain access to records held by entities for the protection and achievement of rights.

715 Section 50 of PAIA provides that a (1) a requester must be given access to any records of a private body if (a) that record is required for the exercise or protection of any rights; (b) that person complies with the procedural requirements in this Act relating to a request for access to that record; and access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

716 See sections 56 and 57(1) of PAIA.

Access to information requested can be refused on the basis of various grounds listed in PAIA. For purposes of this Stakeholder Component, reference will be made to the most common grounds of refusals referenced by Selected Stakeholders.

Access can be refused on the basis that the requested record cannot be found or does not exist.[717] In such instances, it was incumbent upon a Selected Stakeholder to provide an affidavit detailing the steps taken by it to locate the information, and to clarify precisely which information was not in its possession. This affidavit is a legal document confirming under oath that the Selected Stakeholder is not in possession of information requested. Various Selected Stakeholders were unaware of the requirement to produce an affidavit. After alerting Selected Stakeholders of this requirement, some granted access to information they had initially refused to provide.

Other listed grounds for refusal include the mandatory protection of commercial information of a third party[718] (such as a supplier to a retailer) and/ or mandatory protection of confidential information of such a third party.[719] PAIA also permits refusal of a request for access to requested records if its disclosure would constitute a breach of confidence towards a third party in terms of an agreement.[720] It is also permissible for a private body to refuse access to the commercial information of the private body itself.[721]

The courts have, however, confirmed that it is not sufficient to refuse access to records merely by quoting a provision in PAIA. In order to rely on a ground of refusal, it is necessary to properly justify the basis upon which disclosure of the requested information could legitimately be refused.[722] PAIA is to be interpreted strictly when it comes to refusal, as disclosure and transparency ought to be the default within the post-apartheid constitutional regime which calls for a culture of justification rather than a culture of secrecy. Moreover, the Supreme Court of Appeal ("**SCA**") has confirmed that

> "*Corporations operating within our borders, whether local or international, must be left in no doubt that in relation to the environment…there is no room for secrecy and that constitutional values will be enforced*".[723]

Notwithstanding the legal position outlined, many Selected Stakeholders invoked grounds of refusal or were non-responsive.

This Stakeholder Component takes into account all information furnished to, and correspondence with, ALRSA up to and including 10 May 2023. The information enumerated below was requested so

717 Section 55 of PAIA.
718 See section 64 of PAIA.
719 See section 65 of PAIA.
720 See section 65 of PAIA.
721 See section 68 of PAIA.
722 *Qoboshiyane NO and Others v Avusa Publishing Eastern Cape (Pty) Ltd and Others* (864/2011) [2012] ZASCA 166; 2013 (3) SA 315 (SCA) (21 November 2012).
723 *Company Secretary of Arcelormittal South Africa and Another v Vaal Environmental Justice Alliance* (69/2014) [2014] ZASCA 184; 2015 (1) SA 515 (SCA); [2015] 1 All SA 261 (SCA) (26 November 2014).

as to empower us to rate the Selected Stakeholders with reference to the Rating Criteria and Indicators. All information was requested for the period from 1 November 2018 to November 2022.

This Stakeholder Component only considers information provided or furnished directly to ALRSA as part of the PAIA process and subsequent correspondence (not information otherwise in the public domain). Information and documentation provided was not independently verified and no additional sources were consulted. Accordingly, the information that follows including the rating is informed by that which was supplied.

I. Animal Welfare-centred Internal Policies[724]

Any and all **Internal Policies** were requested to inform our understanding of Selected Stakeholders' attitudes in respect of animal welfare, specifically related to Layer Hens and Chicks.

Internal Policies were assessed to determine whether a Selected Stakeholder acknowledged obligations towards Layer Hens and Chicks under their control (or within their supply chain) as well as animal welfare concerns related to caged egg production systems. Secondly, Internal Policies were assessed to determine whether Selected Stakeholders prohibited and/or regulated Cruel Practices[725] through Progressive Measures.[726] Internal Policies were further analysed to gain an overall understanding of a Selected Stakeholder's interpretation in respect of their obligation towards animal welfare as part of the environmental right. Internal Policies were further helpful in identifying and requesting further records in respect of compliance with these Internal Policies by customers and/or third parties, such as suppliers.

II. Annual reporting on animal welfare and asset and stock registers

We requested Annual Reports[727] from Selected Stakeholder to gain insight into the Selected Stakeholders' reporting on animal welfare issues (including Progressive Measures to address Cruel Practices and beyond) in their Annual Reports.

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724 Any policy document of a Selected Stakeholder, including, but not limited to their responsible sourcing policy, sustainability policy, or environmental policy that specifically addresses or regulates animal welfare (whether in general or in relation to the Egg Supply Chain specifically). Internal Policies, however, exclude Annual Reports, Relevant Commitments and Other Commitments, as defined in this Initial Report.

725 Practices involved in the Egg Supply Chain that cause suffering and pain to layer-hens including, but not limited to the use of Battery Cages, beak trimming, de-toeing or toe clipping , and/or overstocking within cages and in relation to male Chicks - culling. Many of these practices have been banned or are being phased out elsewhere in the world due to their cruel nature.

726 Any measure that phasing out and taking other reasonable steps to enhance the welfare of Layer Hens and Chicks and address Cruel Practices (as defined in this Initial Report) so as to align with best practice elsewhere in the world.

727 The Annual Reports, Integrated Annual Reports, Sustainability Reports and/or Environmental Social and Governance ("ESG") Reports and similar records of a Selected Stakeholder for the period of 1 November 2018 to 30 November 2022, requested by ALRSA. These documents are distinct from Internal Policies (as defined in this Initial Report), and are generally tabled with and approved by the boards and shareholders of stakeholders. Annual Reports are often available in the public domain.

Selected Stakeholders' assets and stocks registers relevant to their egg supply or production were requested to assess the number of eggs sold or produced by a Selected Stakeholder and suppliers of eggs.

III. Compliance with Relevant Legislation[728]

We requested any and all records evidencing compliance or a lack thereof with Relevant Legislation. We further requested any and all records evidencing inspections conducted by any Relevant Authority.[729] This request was intended to provide insight into a Selected Stakeholder's understanding of their legal obligations in terms of Relevant Legislation.

IV. Adverse Findings[730]

We requested any and all records evidencing Adverse Findings against Selected Stakeholders by any Relevant Authority. The purpose of this request was to assess whether there had been non-compliance with Relevant Legislation and enforcement measures taken against a Selected Stakeholder.

V. Relevant Commitments[731] and Supply Chain Details

We requested records evidencing that a Selected Stakeholder has signed on to an Animal Welfare Commitment[732] and, if so, the progress towards meeting such commitment. Requests were made for access to Environmental Commitments[733] as well as records evidencing progress towards the fulfilment of such Environmental Commitments.

We requested information relating to egg production/cage and feed manufacturing/egg supply, as applicable to each category of Selected Stakeholder. In respect of major retailers, fast food outlets and restaurants, wholesalers, manufacturers, and hotels, we requested details of the Selected Stakeholders' egg/egg-product suppliers. For egg producers, we requested information evidencing whether and to what extent the Selected Stakeholder produces eggs with the use of caged egg production systems. Records requested included those evidencing the number of chickens housed/processed per annum by producers/suppliers (as applicable);

728 Animal Legislation as defined in this Initial Report, Environmental Legislation as defined in this Initial Report, and any other legislation that may be relevant to the Egg Supply Chain.

729 The South African Police Service ("SAPS"), the National Council of Societies for the Prevention of Cruelty to Animals ("NSPCA") and any Society for the Protection of Cruelty to Animals ("SPCA"), and any other relevant authority responsible for implementing or enforcing Relevant Legislation (as defined in this Initial Report) in respect of animal welfare.

730 Any judgments, decrees, rulings or other official statements containing findings against a Selected Stakeholder or their supplier or any other relevant third party in relation to non-compliance with or enforcement of Relevant Legislation or action against them by any Relevant Authority.

731 One or more Animal Welfare Commitments and Environmental Commitments.

732 A Cage-free or Better Chicken Commitment of a Selected Stakeholder respectively.

733 A commitment by a Selected Stakeholder related to environmental matters including sustainability, best practices relating to the use of the environment and its components (such as land, air, water, food, etc.) and environmental protection, including those that directly or indirectly provide for measures addressing animal welfare, specifically regarding Layer Hens and Chicks.

the number of eggs produced per annum; nutrition of chickens; the use of cages and type of cages used; the stocking density and the number of chickens and Chicks culled in the production process.

In respect of Selected Stakeholders categorised as cage, equipment and/or feed manufacturers, our PAIA Requests related to manufacturing details, including records relating to the number and type of cages or egg production systems manufactured and/or supplied to any stakeholder in the Egg Supply Chain and records relating to the type, quantity and quality of the feed manufactured per annum, including details of antibiotics and pesticides utilised in the manufacturing process, if applicable.

VI. Public Statements[734]

We requested records evidencing Public Statements made by Selected Stakeholders to assess whether Selected Stakeholders' engagement with the public aligned with their animal welfare practices, and willingness to engage openly with ALRSA. We also wished to establish whether Selected Stakeholders are engaging in Greenwashing[735] and/or Humane-washing.[736]

VII. Memberships of Industry Associations[737]

We requested records evidencing membership of Selected Stakeholders to Industry Associations, on the basis that Industry Associations offer some degree of guidance, training and leadership to role-players in the Egg Supply Chain (including in relation to animal welfare). Industry Associations further impose codes of practice, internal standards and other

734 A statement made by a Selected Stakeholder available in the public domain and provided to ALRSA in response to a request for access to information in which it discloses its sourcing practices in respect of the Egg Supply Chain (as a distributor or user thereof) and/or its production system in respect of eggs (as applicable). It does not include statements not provided to ALRSA.

735 Greenwashing involves claims that companies make regarding steps they are taking to be more environmentally conscious or characterizations of their products and the impacts they may have. This misleading measure adopted by corporations in respect of their environmental efforts is generally perceived to be an easy alternative to costly and time-consuming efforts such as revamping their business practices. Retrieved from Abate R.S (2022) "Fool Me Once, Shame on You": Promoting Corporate Accountability for the Human Rights Impacts of Climate Washing *Global Agency for Human Rights: A Corporate Duty? Intercultural Human Rights Law Review Symposium* October 21, 2022 at 8.

736 Humane-washing is the practice of overstating higher-welfare farming practices, especially in labelling animal product food. This misleading practice is made to deceive consumers who want more humanely handled meat, eggs, and dairy products and are willing to pay more for such products. Retrieved from Abate R.S (2022) "Fool Me Once, Shame on You": Promoting Corporate Accountability for the Human Rights Impacts of Climate Washing *Global Agency for Human Rights: A Corporate Duty? Intercultural Human Rights Law Review Symposium* October 21, 2022 at 13.

737 Any relevant association regulating any aspect of the Egg Supply Chain that supports and protects the rights of companies and employers and requires adherence to relevant welfare standards of the South African Bureau of Standards ("SABS") and/or other voluntary compliance measures, including, but not limited to, the South African Poultry Association ("SAPA") (both the SAPA Egg Organization Association and SAPA Broiler Organization Association), the Livestock Welfare Coordinating Committee ("LWCC"), the Sustainable Retailer Forum, the Animal Feed Manufacturer Association or any other poultry, egg or chicken organisation or association that may be relevant to animal welfare.

requirements on members, including certification requirements. Furthermore, Industry Associations often represent stakeholders in the Egg Supply Chain.

VIII. Certifications

We requested any and all records illustrating SABS/AGW Certification[738] or Other Certification. AGW certifies role-players in the egg and other animal and agricultural industries in respect of their sustainability practices. This includes an "animal welfare approved" food label awarded to Companies that comply with the requirements or certification of AGW. SABS certification and accreditation is the process of certifying that a product has passed performance and quality assurance tests stipulated in a standard or regulation or that it complies to a national and international standard or regulation governing quality and minimum performance requirements. The SABS Product Certification Scheme aims to provide third party guarantees of the quality, safety and reliability of products provided by Selected Stakeholders to the consumer.[739] We further requested any Other Certification beyond the SABS/AGW, in order to allow Selected Stakeholders to provide information regarding animal welfare efforts we might not be aware of. Records evidencing such certification could provide insight in respect of Selected Stakeholders' efforts related to improved animal welfare, specifically regarding their sourcing and/ or production of eggs and/or egg by-products.

Having dispatched PAIA Requests to Selected Stakeholders in respect of the above information, during the period from 16 November 2022 to 28 February 2023, we corresponded with them to follow up on our requests, deal with their concerns or queries, and clarify legal obligations giving rise to our requests. The process involved research in relation to PAIA and the environmental right as it pertains to animal welfare.

STEPS 4 AND 5: DEVELOPMENT AND APPLICATION OF RATING CRITERIA AND INDICATORS

In order to analyse and rate Selected Stakeholders on their efforts related to animal welfare, transparency, and accountability, alongside our stakeholder engagement, ALRSA developed 10 Rating Criteria, each with one or more Indicators against which to evaluate Selected Stakeholders, as set out below.

Based on the information we received from each Selected Stakeholder, and their correspondence with us, we then assigned a colour-rating to each Selected Stakeholder, namely, green, orange, red, and/or grey, as explained in more detail below. In essence, green was awarded to illustrate compliance on the

738 Certifications, notices, letters and correspondence or other relevant documentation issued by the South African Bureau of Standards ("SABS") or A Greener World ("AGW") to a third party indicating compliance with relevant requirements of the SABS, SANS or AGW in respect of animal welfare.

739 More information available at https://www.sabs.co.za/Certification/certification_markscheme.asp.

part of a Selected Stakeholder, orange illustrates partial compliance, red illustrates non-compliance or a refusal,[740] and grey indicates Non-responsiveness.[741]

As set out in the table below, a colour-rating for each Criteria was based on the Selected Stakeholder being rated a particular colour for 50% or more of the Indicators relative to the relevant Criteria (e.g., a Selected Stakeholder would be rated green for Criteria 1, if they achieved a green rating for three or more of the six Indicators for Criteria 1, etc.).

COLOUR KEY	THRESHOLD FOR COLOUR-RATING
🟢	Green ratings were awarded for 50% or more of the underlying Indicators in respect of a Criteria.
🟠	Orange ratings were awarded for 50% or more of the underlying Indicators in respect of a Criteria.
🔴	Red ratings were awarded for 50% or more of the underlying Indicators in respect of a Criteria.
☐	Grey ratings were awarded for 50% or more of the underlying Indicators in respect of a Criteria.

Similarly, an "overall" colour rating for all Criteria was awarded to each Selected Stakeholder based on their colour-rating across all 10 Criteria.

CRITERIA 1 focused on whether a Selected Stakeholder presented evidence of animal welfare-centred Internal Policies and views during our stakeholder engagement. The Internal Policies of, and correspondence with, each Selected Stakeholder (if any) were carefully reviewed before applying a colour-rating. To rate Selected Stakeholders against this Criteria, we considered the following Indicators, and awarded a colour-rating as tabulated.

740 A situation where a Selected Stakeholder refused to provide access to information requested by ALRSA by invoking one or more of the grounds of refusal listed in ss 62 to 70 of PAIA, as opposed to a situation contemplated by s 58 of PAIA, where the Selected Stakeholder is deemed to have refused access by virtue of their failure to give a decision on a request for access within the prescribed period (i.e. 30 days or an extended period). In this Initial Report, the latter situation is referred to as 'Non-responsiveness', whereas the former situation is referred to as a Refusal. In terms of PAIA, a refusal would include both situations.

741 A situation contemplated by s 58 of PAIA, where the Selected Stakeholder is deemed to have refused access by virtue of their failure to give a decision on a request for access within the prescribed period (i.e. 30 days or an extended period) whether having acknowledged receipt of a request for access to information or not.

INDICATOR	COLOUR-RATING
1.1: The Selected Stakeholder provided access to animal welfare-relevant Internal Policies.	🟢 The Selected Stakeholder granted access to one or more animal welfare-relevant Internal Policies that made provision for responsible egg sourcing and addressed welfare concerns of layer hens and chicks. 🟠 The Selected Stakeholder granted access to one or more animal welfare-relevant Internal Policies; however no mention was made of responsible egg sourcing, or welfare conditions of layer hens and chicks. 🔴 The Selected Stakeholder explicitly refused access or confirmed (whether explicitly or implicitly) that no such Internal Policies exist. ☐ The Selected Stakeholder was Non-responsive.
1.2: The Selected Stakeholder's Internal Policies contain Progressive Measures to address Cruel Practices.	🟢 All Cruel Practices are expressly prohibited by relevant policy documents. 🟠 Cruel Practices are permitted, but relevant policy documents provide for Progressive Measures to address all Cruel Practices, for instance through phasing out processes. 🔴 One or more Cruel Practices are neither prohibited nor regulated in any way in Internal Policies (if any, as indicated by Indicator 1.1)/ The Selected Stakeholder explicitly refused access or confirmed (whether explicitly or implicitly) that no such Internal Policies exist. ☐ The Selected Stakeholder was Non-responsive.
1.3: The Selected Stakeholder acknowledged in Internal Policies, correspondence, statements, etc. that environmental protection and animal welfare are intertwined values.	🟢 The Selected Stakeholder acknowledges that animal welfare is essential to the enhancement of the environmental right. 🟠 The Selected Stakeholder's Internal Policies, correspondence and/or statements make mention of the importance of animal welfare, however, do not take a stance in respect of animal welfare being protected by the environmental right. 🔴 The Selected Stakeholder expressed the view (by denying or explicitly rejecting ALRSA's arguments) that the environmental right does not protect animal welfare considerations in respect of layer hens and/or chicks in the egg industry/ explicitly refused access or confirmed (whether explicitly or implicitly) that no such Internal Policies exist. ☐ The Selected Stakeholder was Non-responsive.
1.4: The Selected Stakeholder's Internal Policies, specifically regulate the sourcing of	🟢 The Selected Stakeholder's Internal Policies expressly include egg supply and phasing out of the use of battery cages.

INDICATOR	COLOUR-RATING
eggs and the phasing out of battery cages.	🟠 The Selected Stakeholder's Internal Policies either contain limited information on sourcing of eggs from battery cages and/or limited reference to Progressive Measures. 🔴 Internal Policies do not seek to regulate eggs and/or phasing out of battery cages, or the Selected Stakeholder refused to provide access to such Internal Policies. ☐ The Selected Stakeholder was Non-responsive.
1.5: The Selected Stakeholder's Internal Policies specifically regulate animal welfare in general (whether in addition to or to the exclusion of addressing welfare for chickens or egg supply).	🟢 The Selected Stakeholder's Internal Policies explicitly seek to advance animal welfare, in general, and include meaningful measures to achieve animal welfare. 🟠 The Selected Stakeholder's Internal Policies implicitly or explicitly seek to advance animal welfare in general, however lack meaningful measures to achieve animal welfare, in general. 🔴 The Selected Stakeholder either refused to provide access to any Internal Policies or confirmed that no Internal Policies exist, or its Internal Policies do not reference animal welfare in general or at all. ☐ The Selected Stakeholder was Non-responsive.
1.6: The Selected Stakeholder provided evidence of monitoring compliance with Internal Policies.	🟢 The Selected Stakeholder produced comprehensive records evidencing internal and third-party compliance with Internal Policies, demonstrating meaningful compliance monitoring. 🟠 The Selected Stakeholder produced limited records evidencing internal and third-party compliance with Internal Policies, demonstrating some degree of compliance monitoring. 🔴 The Selected Stakeholder was unable or explicitly refused to produce records evidencing internal and third party (non)compliance with Internal Policies, demonstrating a failure to meaningfully monitor and address (non)compliance / confirmed that no Internal Policies exist ☐ The Selected Stakeholder was Non-responsive.

CRITERIA 2 focused on whether a Selected Stakeholder provided access to Annual Reports that report on relevant animal welfare measures and access to their asset register and stock relative to the egg supply chain. The Annual Reports and asset and stock registers (if any) provided by Selected Stakeholders were carefully assessed to determine a colour-rating for Criteria 2. To rate Selected Stakeholders against this Criteria, we considered the following Indicators, and awarded a colour-rating as tabulated.

INDICATOR	COLOUR-RATING
2.1: The Selected Stakeholder provided access to Annual Reports.	🟢 The Selected Stakeholder provided access to Annual Reports. 🟠 The Selected Stakeholder provided some Annual Reports, however not for the full period of 2018 to 2022. 🔴 The Selected Stakeholder was unable or refused to provide access to any Annual Reports for the period of 2018 to 2022. ☐ The Selected Stakeholder was Non-responsive.
2.2: The Selected Stakeholder's Annual Reports contain reporting on Progressive Measures to address layer hen and chick welfare and Cruel Practices.	🟢 All Cruel Practices are explicitly prohibited and reported on in the Selected Stakeholder's Annual Reports. 🟠 Cruel Practices not explicitly prohibited, but Annual Reports report on progressive measures to address all Cruel Practices. 🔴 One or more Cruel Practices are neither explicitly prohibited nor reported on in Annual Reports in any way, raising accountability concerns relating to animal welfare/The Selected Stakeholder refused to provide access to any Annual Reports for the period of 2018 to 2022. ☐ Selected Stakeholder was Non-responsive.
2.3: The Selected Stakeholder provided access to records evidencing annual reporting on animal welfare more generally (for instance, concerning animal welfare beyond Cruel Practices).	🟢 The Selected Stakeholder's Annual Reports reference and/or report on animal welfare in general, including comprehensive layer hen and chick welfare reporting beyond Cruel Practices. 🟠 The Selected Stakeholder's Annual Reports reference and/or report on animal welfare, however this reporting is limited in respect of layer hens and chicks (i.e., does not go beyond Cruel Practices). 🔴 The Selected Stakeholder does not explicitly report on animal welfare generally or refused access to relevant reports or confirmed (implicitly or explicitly) that no such reports exist. ☐ Selected Stakeholder was Non-responsive.
2.4: The Selected Stakeholder's Annual Reports illustrated that accountability measures are in place aimed at compliance with and enforcement of their Internal Policies in	🟢 The Selected Stakeholder reported comprehensively on one or more measures aimed at ensuring compliance with and enforcement of their Internal Policies concerning animal welfare, for instance reporting on evidence of auditing, and inspections in respect of suppliers. 🟠 The Selected Stakeholder reported on one or more measures aimed at ensuring compliance with and enforcement of their Internal Policies concerning animal welfare, but such reporting was not comprehensive in that the Annual

INDICATOR	COLOUR-RATING
relation to suppliers and/or customers concerning animal welfare.	Report(s) contained no evidence of auditing and inspections in respect of suppliers. 🔴 The Selected Stakeholder did not report on any measures aimed at ensuring compliance with and enforcement of their Internal Policies in relation to suppliers and/or customers/ refused access to relevant information or confirmed (implicitly or explicitly) that no such information exist. ☐ The Selected Stakeholder was Non-responsive.
2.5: The Selected Stakeholder provided access to their asset register and stock relating to its sourcing of eggs [or egg production in respect of suppliers]. This includes the records of sales of both caged and/or free-range egg and/or egg by-products.	🟢 The Selected Stakeholder provided a comprehensive asset register and stock list related to egg sourcing or egg production, including records of sales of both cages and/or free-range products. 🟠 The Selected Stakeholder provided an asset register and stock list, however information related to records of sales of both cages and/or free-range products, including information related to suppliers and records of sales were omitted or redacted. 🔴 The Selected Stakeholder was unable or refused to provide information in terms of request. ☐ The Selected Stakeholder was Non-responsive.

CRITERIA 3 focused on whether a Selected Stakeholder presented evidence of (non) compliance in respect of Relevant Legislation and any record recording details of inspections by a Relevant Authority. The evidence of (non) compliance in respect of Relevant Legislation, and records detailing inspections by a Relevant Authority of each Selected Stakeholder (if any) were carefully reviewed before applying a colour-rating. To rate Selected Stakeholders against this Criteria, we considered the following Indicators, and awarded a colour-rating as tabulated.

INDICATOR	COLOUR-RATING
3.1: The Selected Stakeholder provided access to any record of (non)compliance with Relevant Legislation, including criminal charges, citations, breaches and warnings by the NSPCA.	🟢 The Selected Stakeholder acknowledged their obligations under all Relevant Legislation, and further provided records demonstrating compliance and/or provided confirmation that the Selected Stakeholder has not been the subject of complaints or reported irregularities. 🟠 The Selected Stakeholder acknowledged their obligations under, and demonstrated compliance with, some Relevant Legislation, and denied applicability of other Relevant Legislation and/or provided confirmation that the Selected Stakeholder has been the subject of complaints or reported irregularities

INDICATOR	COLOUR-RATING
	but has addressed those complaints or irregularities. 🔴 The Selected Stakeholder denied applicability of any Relevant Legislation and/or was unable or refused to provide records demonstrating compliance in respect therewith and/or has been the subject of complaints or reported for irregularities and has failed to address the complaints or irregularities. ☐ The Selected Stakeholder was Non-responsive.
3.2: The Selected Stakeholder provided any record recording details of inspections by a Relevant Authority.	🟢 The Selected Stakeholder acknowledged their obligations in respect of adherence to inspections by Relevant Authorities, and further provided records confirming compliance with Relevant Legislation following any inspections. 🟠 The Selected Stakeholder only acknowledged their obligation to submit to certain inspections by Relevant Authorities and denied applicability of others. The Selected Stakeholder provided records confirming compliance with those inspections they deemed to be applicable to them. 🔴 The Selected Stakeholder denied applicability of any of the requested records related to inspections by Relevant Authorities or was unable or refused to provide any records related thereto. ☐ The Selected Stakeholder was Non-responsive.

CRITERIA 4 focused on whether a Selected Stakeholder presented evidence of Adverse Findings. The evidence of Adverse Findings provided by a Selected Stakeholder (if any) were carefully reviewed before applying a colour-rating. To rate Selected Stakeholders against this Criteria, we considered the following Indicators, and awarded a colour-rating as tabulated.

INDICATOR	COLOUR-RATING
4.1: The Selected Stakeholder provided records of any Adverse Findings.	🟢 The Selected Stakeholder confirmed that no Adverse Findings have been made. 🟠 The Selected Stakeholder provided records of Adverse Findings, and confirmed they are taking necessary steps in response . 🔴 The Selected Stakeholder adopted an obstructive approach and/or refused to grant access to information in terms of this request / the Selected Stakeholder's claim that no Adverse Findings have been made is false based on information in the public domain.

INDICATOR	COLOUR-RATING
	☐ The Selected Stakeholder was Non-responsive.

CRITERIA 5 focused on whether a Selected Stakeholder has signed on to Relevant Commitments and the provision of evidence of the implementation thereof. The evidence of Relevant Commitments and progress in respect thereof provided by a Selected Stakeholder (if any) were carefully reviewed before applying a colour-rating. To rate Selected Stakeholders against this Criteria, we considered the following Indicators, and awarded a colour-rating as tabulated.

INDICATOR	COLOUR-RATING
5.1: The Selected Stakeholder provided evidence that they have signed on to an Animal Welfare Commitment.	🟢 The Selected Stakeholder confirmed that they have signed on to an Animal Welfare Commitment. 🟠 The Selected Stakeholder did not provide records confirming that they have signed on to Animal Welfare Commitments, however otherwise committed to sourcing cage-free eggs. 🔴 The Selected Stakeholder confirmed that it has not signed on to any Animal Welfare Commitments / refused or was unable to grant access to such records. ☐ The Selected Stakeholder was Non-responsive.
5.2: The Selected Stakeholder provided evidence as to whether its suppliers use battery cages and/or caged egg production systems [as suppliers].	🟢 The Selected Stakeholder provided evidence to the effect that it sources eggs from cage-free suppliers or produces eggs in a cage-free production system. 🟠 The Selected Stakeholder provided evidence that it sources eggs from battery cages and/or uses caged egg production systems, however Progressive Measures are in place. 🔴 The Selected Stakeholder sources eggs from battery cages and/or uses caged egg production systems. The Selected Stakeholder was unable or refused to provide information related to this request. ☐ The Selected Stakeholder was Non-responsive.
5.3: The Selected Stakeholder provided evidence of the progress towards meeting an Animal Welfare Commitment.	🟢 The Selected Stakeholder provided evidence of a reporting system to measure progress in the attainment of meeting an Animal Welfare Commitment. 🟠 No evidence of progress was provided by the Selected Stakeholder, however the Selected Stakeholder provided evidence of having signed on to an Animal Welfare Commitment.

INDICATOR	COLOUR-RATING
	🔴 The Selected Stakeholder confirmed that they have not made any Animal Welfare Commitments, and/or refused to provide evidence of any Animal Welfare Commitment nor evidence of reporting on progress towards any Animal Welfare Commitment. ☐ The Selected Stakeholder was Non-responsive.
5.4: The Selected Stakeholder provided evidence confirming the Selected Stakeholder has signed on to any Environmental Commitments.	🟢 The Selected Stakeholder is a party to Environmental Commitments and submitted evidence of progress in respect of fulfilment of this commitment. 🟠 The Selected Stakeholder provided evidence confirming Environmental Commitments, however, was unable or refused to provide progress in respect of said commitments. 🔴 The Selected Stakeholder refused or was unable to provide evidence of having signed on to any Environmental Commitment. ☐ The Selected Stakeholder was Non-responsive.
5.5: The Selected Stakeholder expressed the view that Relevant Commitments are Progressive Measures aimed at eliminating Cruel Practices.	🟢 The Selected Stakeholder provided evidence that Animal Welfare Commitments are Progressive Measures aimed at eliminating Cruel Practices and evidenced that it is taking active steps to fulfil Animal Welfare Commitments. 🟠 The Selected Stakeholder provided evidence that Animal Welfare Commitments are Progressive Measures aimed at eliminating Cruel Practices, however provided no evidence that it is taking active steps to fulfil Animal Welfare Commitments. 🔴 The Selected Stakeholder is resistant to the use of cage-free/free-range and cited economic, sourcing or other reasons therefor/provided evidence that it has not made Animal Welfare Commitments/provided evidence that it is not taking active steps to fulfil Animal Welfare Commitments/refused or was unable to provide evidence that it has made or is fulfilling Animal Welfare Commitments. ☐ The Selected Stakeholder was Non-responsive.

CRITERIA 6 focused on whether a Selected Stakeholder provided accurate and Comprehensive Public Statements.[742] Evidence of Public Statements provided by a Selected Stakeholder (if any) were carefully

742 "Comprehensive" means a Public Statement that addresses Progressive Measures and Cruel Practices of the Selected Stakeholder in detail, with full disclosure and the utmost transparency, for instance, not only disclosing Progressive Measures aimed at eliminating Cruel Practices, but also the extent to which the Selected Stakeholder remains complicit or a participant in Cruel Practices.

reviewed before applying a colour-rating. To rate Selected Stakeholders against this Criteria, we considered the following Indicators, and awarded a colour-rating as tabulated.

INDICATOR	COLOUR-RATING
6.1: The Selected Stakeholder provided access to Public Statement(s).	🟢 The Selected Stakeholder has provided evidence confirming that it has made Public Statement(s). 🟠 The Selected Stakeholder provided Public Statement(s); however this is only limited to free range/cage free sourcing and/or production and not a full accounting of all sourcing and/or production. 🔴 The Selected Stakeholder has confirmed it has made no Public Statement(s)/ refused to grant access to such record. ☐ The Selected Stakeholder was Non-responsive.
6.2: Public Statements are Comprehensive.	🟢 The Selected Stakeholder has made Public Statement(s) that is/are Comprehensive. 🟠 The Selected Stakeholder's Public Statement(s) is/are not Comprehensive. 🔴 The Selected Stakeholder has made no Public Statements/ refused to grant access to such record. ☐ Selected Stakeholder was Non-responsive.
6.3: The Selected Stakeholders' Public Statement(s) could be construed as Greenwashing, Humane-washing, or otherwise misleading to the public.	🟢 The Selected Stakeholders Public Statement(s) appear to be accurate. 🟠 The Selected Stakeholder's Public Statements were not or could not be substantiated. 🔴 The Selected Stakeholders' Public Statements made by the Selected Stakeholder could be construed (whether partially or wholly) as Greenwashing, Humane-washing, and/or otherwise misleading /the Selected Stakeholder confirmed that it has not made any Public Statements/the Selected Stakeholder refused or was unable to provide access to any Public Statements. ☐ The Selected Stakeholder was Non-responsive.

CRITERIA 7 focused on whether a Selected Stakeholder presented evidence of membership and compliance with an Industry Association. The records confirming membership and compliance with an Industry Association provided by a Selected Stakeholder (if any) were carefully reviewed before applying a colour-rating. To rate Selected Stakeholders against this Criteria, we considered the following Indicators, and awarded a colour-rating as tabulated.

INDICATOR	COLOUR-RATING
7.1: The Selected Stakeholder provided access to records confirming membership of Industry Association(s), if applicable.	🟢 The Selected Stakeholder has provided evidence confirming that it has made Public Statement(s). 🟠 The Selected Stakeholder provided Public Statement(s); however this is only limited to free range/cage free sourcing and/or production and not a full accounting of all sourcing and/or production. 🔴 The Selected Stakeholder has confirmed it has made no Public Statement(s)/ refused to grant access to such record. ☐ The Selected Stakeholder was Non-responsive.
7.2: The Selected Stakeholder provided records confirming compliance with animal welfare requirements of membership to Industry Association(s), if applicable.	🟢 The Selected Stakeholder has made Public Statement(s) that is/are Comprehensive. 🟠 The Selected Stakeholder's Public Statement(s) is/are not Comprehensive. 🔴 The Selected Stakeholder has made no Public Statements/ refused to grant access to such record. ☐ Selected Stakeholder was Non-responsive.

CRITERIA 8 focused on whether a Selected Stakeholder presented evidence of SABS/AGW Certification or Other Certification.[743] The provision of SABS/AGW Certification and/or Other Certification provided by a Selected Stakeholder (if any) were carefully reviewed before applying a colour-rating. To rate Selected Stakeholders against this Criteria, we considered the following Indicators, and awarded a colour-rating as tabulated.

INDICATOR	COLOUR-RATING
8.1: The Selected Stakeholder provided access to records illustrating SABS/AGW Certification.	🟢 The Selected Stakeholder has received SABS/AGW Certification. 🟠 The Selected Stakeholder confirmed that it has not received an SABS/AGW Certification, however provided records confirming that it is undertaking a certification process. 🔴 The Selected Stakeholder has confirmed that it does not have nor is it pursuing an SABS/AGW Certification / the Selected Stakeholder was unable or refused to provide evidence of an SABS/AGW Certification.

[743] Certifications, notices, letters and correspondence or other relevant documentation issued by any relevant third parties (other than SABS and/or AGW) such as the United Nations or a similar body in respect of animal welfare.

INDICATOR	COLOUR-RATING
	☐ The Selected Stakeholder was Non-responsive.
8.2: The Selected Stakeholder provided access to records illustrating Other Certification.	🟢 The Selected Stakeholder has made Public Statement(s) that is/are Comprehensive. 🟠 The Selected Stakeholder's Public Statement(s) is/are not Comprehensive. 🔴 The Selected Stakeholder has made no Public Statements/ refused to grant access to such record. ☐ Selected Stakeholder was Non-responsive.

CRITERIA 9 focused on Selected Stakeholders' efforts in relation to transparency. For instance, we searched each Selected Stakeholder's website to determine whether it contained readily available and easily accessible relative to this Initial Report, including a complete and up to date PAIA Manual. Based on our experience of the Selected Stakeholder during the stakeholder engagement process, we assessed whether the officials with whom we engaged demonstrated an understanding of, and willingness and ability to comply with PAIA and the right to access to information protected by section 32 of the Constitution. To rate Selected Stakeholders against this Criteria, we considered the following Indicators, and awarded a colour as tabulated.

INDICATOR	COLOUR-RATING
9.1: The Selected Stakeholders' website contained a readily available and easily accessible PAIA Manual.	🟢 The Selected Stakeholders' website contained a readily available and easily accessible PAIA Manual. 🟠 While not having a PAIA manual available on their website, the Selected Stakeholder's PAIA Manual is obtainable upon request. 🔴 The Selected Stakeholder has no PAIA Manual readily available or easily accessible as per statutory requirements / failed or was unable to provide a PAIA Manual on request.
9.2: The Selected Stakeholder's PAIA Manual designates an Information Officer.[744]	🟢 The Selected Stakeholders' PAIA Manual designates an Information Officer. 🟠 The Selected Stakeholder designated an Information Officer, however their contact information is not readily available, outdated and/or required further

[744] The person designated as an Information Officer in terms of the PAIA Manual of a Selected Stakeholder, often 'the head of a private body' as defined in s 1 of PAIA, and the person responsible for compiling and ensuring compliance with a private body's PAIA Manual.

INDICATOR	COLOUR-RATING
	investigation. 🔴 No records indicating that the Selected Stakeholder has designated an Information Officer could be found / were made available.
9.3: The Selected Stakeholders' PAIA Manual explicitly mentions animal welfare as a relevant subject or category of information/records and lists Animal Legislation.[745]	🟢 The Selected Stakeholders' PAIA Manual explicitly mentions animal welfare and lists a majority of the Animal Legislation. 🟠 The Selected Stakeholders' PAIA Manual contains limited reference to animal welfare and/or Animal Legislation. 🔴 No reference is made to animal welfare nor Animal Legislation in the Selected Stakeholder's PAIA Manual.
9.4: The Selected Stakeholder demonstrated an understanding of, and willingness and ability to comply with ALRSA's request for access to records.	🟢 The Selected Stakeholder was compliant and provided a detailed and compliant response to ALRSA's request for access to records. 🟠 The Selected Stakeholder provided a partially compliant response to ALRSA's request, and/or required further engagement in order to receive information. 🔴 The Selected Stakeholder objected to ALRSA's request and/or took a defensive/ obstructive approach in dealing with ALRSA's request and/or failed to respond despite several follow ups.

CRITERIA 10 was aimed at examining whether a Selected Stakeholder engaged with ALRSA in a cooperative manner during our stakeholder engagement. Whilst some Selected Stakeholders were willing to engage and supportive of enhancing animal welfare, transparency, and accountability in the Egg Supply Chain, we experienced others to be obstructive and tardy in their engagements with us. To rate Selected Stakeholders against this Criteria, we considered the following Indicator, and awarded a colour-rating as tabulated.

[745] Any judgments, decrees, rulings or other official statements containing findings against a Selected Stakeholder or their supplier or any other relevant third party in relation to non-compliance with or enforcement of Relevant Legislation or action against them by any Relevant Authority.

INDICATOR	COLOUR-RATING
10.1: The Selected Stakeholder was cooperative and transparent throughout ALRSA's engagements.	🟢 The Selected Stakeholder responded promptly, sought clarity where required, engaged telephonically, via email, or online meetings and generally demonstrated a cooperative stance, openness, and a willingness to engage. 🟠 The Selected Stakeholder indicated a willingness to engage and was partially transparent and cooperative in that it demonstrated some willingness to engage constructively with ALRSA (often only after following ups or further justification was provided), and/or explicitly and coherently invoked grounds of refusal in terms of PAIA as a basis to refuse to disclose information in respect of specific requests, such as information related to suppliers. 🔴 The Selected Stakeholder took an obstructive and uncooperative approach in respect of ALRSA's request in that it refused to engage constructively, and/or invoked grounds of refusal in terms of PAIA without providing an adequate or coherent justification. ☐ The Selected Stakeholder was Non-responsive.

PART C: RATING

Having evaluated the information relative to the Selected Stakeholders obtained through the Project against the Criteria and Indicators, the Selected Stakeholders' overall colour-rating was as follows:

SELECTED STAKEHOLDERS	OVERALL RATING
Major retailers	
(1) Pick n Pay, (2) Shoprite, (3) Spar	🟠
(4) Woolworths, (5) MassMart	☐
Fast food outlets and restaurants	
(13) Kauai, (16) Subway	☐
(6) Spur, (7) Rocomamas, (8) Mugg n Bean, (9) Wimpy, (10) Steers, (11) Nandos, (12) Papachinos, (14) KFC, (15) McDonalds, (17) Bidvest	🔴
Wholesalers	
(18) Tiger Brands, (19) Bakers, (22) Rhodes Food Group,	🔴
(20) Unilever, (21) Pioneer Food Group	☐
(23) Bidcorp* ***As amended in Version 2 of this Initial Report.**	🟠
Hotels	
(24) Sun International, (26) Southern SSun	🔴

SELECTED STAKEHOLDERS	OVERALL RATING
(25) City Lodge	🟢
(27) Hotel Verde, (28) Marriott Hotels	☐
(29) Hilton Hotels	🟠
Egg producers and equipment (cage and feed) manufacturers	
(30) Eggbert, (32) TopLay, (35) RCL Foods	☐
(31) Quantum Foods, (33) Big Dutchman, (34) AFGRI, (36) Meadow Feeds	🔴

The overall colour-rating was based on the more detailed evaluation set out in the tables below. The overall colour-ratings and our experiences during stakeholder engagement revealed "Good Eggs" and "Bad Eggs".

√ "GOOD EGGS"

KAUAI AND CITY LODGE

During our stakeholder engagement and rating, only two of the 36 Selected Stakeholders stood out as demonstrating a reasonable commitment to animal welfare and Progressive Measures given Cruel Practices.

Kauai evidenced that it sources free range egg products, providing proof of their suppliers' free-range certification, which includes explicit reference to free-range egg sourcing, the rationale therefore, as well as potential health benefits related to free range eggs as opposed to cage produced eggs. Although Non-Responsive in some respects, and despite being awarded a grey rating overall, Kauai's transparency about sourcing free-range eggs, and general openness in their communications with us, renders them a "Good Egg".

City Lodge was colour-rated green overall, due to their attitude to animal welfare, transparency and corporate accountability. Our engagements with City Lodge are exemplified by their statement:

> "*There has been much discussion around the subject of Layer Hens and the environment in which they are kept, specifically in respect of whether the Layer Hens are kept in cages. Eggs that are not cage-free are often cheaper and*

are more easily sourced, but the conditions in which the hens are kept are unacceptable to City Lodge Hotel Group and to support the suppliers of non-cage-free eggs goes directly against the values of the group. Our guests demand food that is safe, healthy, and grown sustainably. We acknowledge public concern and the wishes of our guests and are determined to ensure that our product supply chain is ethical and transparent…In January 2020, the group publicly committed to only serving 100% cage-free eggs throughout its operations by 2025. We partnered with Humane Society International-Africa (HSI-Africa) on its journey towards offering eggs and egg products sourced in this way. City Lodge currently serves approximately 1.4 million eggs annually of which 55% are cage-free".

Thus, City Lodge is deemed a "Good Egg".

X "BAD EGGS":

SPUR, ROCOMAMAS, NANDOS, PAPACHINOS, TIGER BRANDS, BAKERS, BID CORP, AFGRI, BIG DUTCHMAN, AND MEADOW FEEDS

Whilst 20 out of 36 Selected Stakeholders were awarded a red colour-rating overall, some stood out as particularly problematic in relation to their commitments to animal welfare, transparency and/or corporate accountability. These were deemed "Bad Eggs". The explanations below are not exhaustive, but rather illustrative of the problematic approach of Selected Stakeholders towards the Project.

Spur, Rocomamas and Nandos threatened legal action against ALRSA should we mention them in our Initial Report and claimed that we needed their consent to report on their commitments to animal welfare, transparency and corporate accountability. They not only denied that ALRSA was entitled to request access to information, but also sought to impinge upon ALRSA's right to freedom of expression in the public interest.

Papachinos adopted an obstructive stance in respect of our PAIA request, while further denying any involvement in the Egg Supply Chain. This is despite their menus containing numerous egg products and eggs served to their customers on a daily basis. ALRSA sent follow up emails to Papachinos, who objected to providing access and subsequently ceased responding to ALRSA's correspondence. The representative who claimed to be their Information Officer denied that there was any basis upon which ALRSA was entitled to engage with Papachinos in relation to animal welfare, transparency and corporate accountability.

Tiger Brands and Bakers were forthcoming regarding their sourcing of egg-related products but denied any involvement in the Egg Supply Chain. Tiger Brands claimed that it does not source whole eggs and only sources powdered eggs, often with other ingredients, while National Brands Limited in respect of Bakers reasoned that they merely "purchase egg pulp and spray-dried egg albumen powder". ALRSA finds it concerning that role-players in the Egg Supply Chain who purchase such egg products do not view themselves as having a role to play in advancing animal welfare issues, given that millions of chickens and Chicks are involved in the production of such egg products.

Bidcorp was the only Selected Stakeholder that requested a request fee in terms of PAIA (in the amount of ZAR140). ALRSA paid this fee despite requesting an exemption from this required fee as it is a non-profit organisation.*****

***Information related to Bidcorp which was included in Version 1 of the Initial Report has been removed from this paragraph. See the Revision Note on pages 281-283 below for further details.**

AFGRI and Big Dutchman denied involvement in the Egg Supply Chain despite being the manufacturers and distributors of cages and feed. Big Dutchman made this denial despite conceding:

> "*that the majority (approx. 90-95%) of our customers produce Pullets and eggs in our cages, with free range and barn eggs making up the balance, i.e. birds on the floor with feeding, drinking and nest boxes*".

Meadow Feeds: Meadow Feeds refused to provide access to the records requested in our PAIA request and denied any involvement in the Egg Supply Chain despite being "regarded as the market leader in the southern African animal feed industry" and producing "a variety of specialised diets and custom feed mixes for the livestock and game industries", including for chickens. Instead of responding, Meadow Feeds stated that "ALRSA has not properly explained how the information being requested is applicable to Meadow Feeds' business in the feed sector". This is despite ALRSA making it very clear that feed manufacturing has a direct bearing on the welfare of chickens, for instance with reference to the quality of feed.

What follows are tables that indicate the colour-ratings for Selected Stakeholders across all Criteria and Indicators, based on our stakeholder engagement process and assessment of the information provided (or lack thereof) by Selected Stakeholders.

INTERNAL POLICIES AND ANNUAL REPORTS (CRITERIA 1 AND 2)											
Indicators: Selected Stakeholder:	1.1 Access to animal welfare-relevant Internal Policies provided	1.2 Progressive Measures contained in Internal Policies	1.3 Acknow-ledgement that environmental protection and animal welfare are intertwined	1.4 Internal Policies regulate egg sourcing and phasing out of battery cages	1.5 Animal welfare (in general) provided for in Internal Policies	1.6 Compliance monitoring relating to Internal Policies	2.1 Access to Annual Report(s) provided	2.2 Annual Report(s) report on Progressive Measures to address Cruel Practices	2.3 Access to records evidencing animal welfare more generally	2.4 Annual Report(s) report on account-ability measures aimed at compliance and enforce-ment with internal Policies	2.5 Access to asset register and stock related to sourcing of eggs including sales of both caged and/or free-range eggs provided
Pick n Pay	🟢	🔴	🟠	🟠	🟠	🔴	🟠	🔴	🟠	🟠	🟢
Shoprite	🟢	🔴	🟠	🔴	🟠	🔴	🟢	🔴	🔴	🔴	🟢
Spar	🟢	🔴	🟠	🟠	🟢	🔴	🟢	🔴	🔴	🔴	🟢
Woolworths	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
MassMart	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
Spur	🔴	🔴	🔴	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴
Rocomamas	🔴	🔴	🔴	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴
Mugg n Bean	🟢	🔴	🟠	🟢	🟠	🔴	🟢	🔴	🔴	🟠	🔴
Wimpy	🟢	🔴	🟠	🟢	🟠	🔴	🟢	🔴	🔴	🟠	🔴
Steers	🟢	🔴	🟠	🟢	🟠	🔴	🟢	🔴	🔴	🟠	🔴
Nandos	🟢	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴
Papachinos	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴

INTERNAL POLICIES AND ANNUAL REPORTS (CRITERIA 1 AND 2)											
Indicators: Selected Stakeholder:	1.1 Access to animal welfare-relevant Internal Policies provided	1.2 Progressive Measures contained in Internal Policies	1.3 Acknow-ledgement that environmental protection and animal welfare are intertwined	1.4 Internal Policies regulate egg sourcing and phasing out of battery cages	1.5 Animal welfare (in general) provided for in Internal Policies	1.6 Compliance monitoring relating to Internal Policies	2.1 Access to Annual Report(s) provided	2.2 Annual Report(s) report on Progressive Measures to address Cruel Practices	2.3 Access to records evidencing animal welfare more generally	2.4 Annual Report(s) report on account-ability measures aimed at compliance and enforce-ment with internal Policies	2.5 Access to asset register and stock related to sourcing of eggs including sales of both caged and/or free-range eggs provided
Kauai	🟢	🔴	🟠	🟢	🟢	🟢	☐	☐	☐	☐	🟢
KFC	🟢	🟠	🟠	🟢	🟢	🔴	🟢	🟠	🟢	🟠	🔴
McDonalds	🟢	🔴	🟠	🔴	🟠	🔴	🔴	🔴	🔴	🔴	🔴
Subway	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
Bidvest	🟢	🔴	🔴	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🟠
Tiger Brands	🔴	🔴	🔴	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴
Bakers	🔴	🔴	🔴	🔴	🔴	🟠	🟢	🔴	🔴	🔴	🔴
Unilever	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
Pioneer Food Group	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
Rhodes Food Group	🟢	🔴	🔴	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🟢
Bidcorp *As amended in Version 2 of this Initial Report.	🟢	🔴	🟠	🔴	🔴	🔴	🟢	🔴	🟠	🔴	🟠

INTERNAL POLICIES AND ANNUAL REPORTS (CRITERIA 1 AND 2)											
Indicators: Selected Stakeholder:	1.1 Access to animal welfare-relevant Internal Policies provided	1.2 Progressive Measures contained in Internal Policies	1.3 Acknow-ledgement that environmental protection and animal welfare are intertwined	1.4 Internal Policies regulate egg sourcing and phasing out of battery cages	1.5 Animal welfare (in general) provided for in Internal Policies	1.6 Compliance monitoring relating to Internal Policies	2.1 Access to Annual Report(s) provided	2.2 Annual Report(s) report on Progressive Measures to address Cruel Practices	2.3 Access to records evidencing animal welfare more generally	2.4 Annual Report(s) report on account-ability measures aimed at compliance and enforce-ment with internal Policies	2.5 Access to asset register and stock related to sourcing of eggs including sales of both caged and/or free-range eggs provided
Sun International	🟢	🔴	🔴	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴
City Lodge	🟢	🔴	🟠	🟢	🟢	🟢	🟢	🔴	🟠	🟢	☐
Southern Sun	🔴	🔴	🔴	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🟠
Hotel Verde	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
Marriott Hotels	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
Hilton Hotels	🟢	🔴	🟠	🟠	🟠	🔴	🟢	🟠	🟠	🔴	🔴
Eggbert	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
Quantum Foods	🔴	🔴	🔴	🔴	🔴	🔴	🟢	🔴	🟢	🟠	🔴
TopLay	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
Big Dutchman	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴
AFGRI	🔴	🔴	🔴	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴
RCL Foods	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

INTERNAL POLICIES AND ANNUAL REPORTS (CRITERIA 1 AND 2)											
Indicators: Selected Stakeholder:	1.1 Access to animal welfare-relevant Internal Policies provided	1.2 Progressive Measures contained in Internal Policies	1.3 Acknow-ledgement that environmental protection and animal welfare are intertwined	1.4 Internal Policies regulate egg sourcing and phasing out of battery cages	1.5 Animal welfare (in general) provided for in Internal Policies	1.6 Compliance monitoring relating to Internal Policies	2.1 Access to Annual Report(s) provided	2.2 Annual Report(s) report on Progressive Measures to address Cruel Practices	2.3 Access to records evidencing animal welfare more generally	2.4 Annual Report(s) report on account-ability measures aimed at compliance and enforce-ment with internal Policies	2.5 Access to asset register and stock related to sourcing of eggs including sales of both caged and/or free-range eggs provided
Meadow Feeds	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴

COMPLIANCE WITH RELEVANT LEGISLATION AND EVIDENCE OF ADVERSE FINDINGS (CRITERIA 3 AND 4)			
Indicators: Selected Stakeholder:	3.1 Access to records of (non)compliance with Relevant Legislation, including criminal charges, citations, breaches and warnings by the NSPCA.	3.2 Records detailing inspections conducted by a Relevant Authority.	4.1 Access to records of Adverse Finding(s).
Pick n Pay	🟢	🟢	🟢
Shoprite	🟢	🟢	🟢
Spar	🟢	🟢	🟢
Woolworths	☐	☐	☐
MassMart	☐	☐	☐
Spur	🔴	🔴	🔴
Rocomamas	🔴	🔴	🔴
Mugg n Bean	🔴	🔴	🔴

COMPLIANCE WITH RELEVANT LEGISLATION AND EVIDENCE OF ADVERSE FINDINGS (CRITERIA 3 AND 4)			
Indicators: Selected Stakeholder:	3.1 Access to records of (non)compliance with Relevant Legislation, including criminal charges, citations, breaches and warnings by the NSPCA.	3.2 Records detailing inspections conducted by a Relevant Authority.	4.1 Access to records of Adverse Finding(s).
Wimpy	🔴	🔴	🔴
Steers	🔴	🔴	🔴
Nandos	🔴	🔴	🔴
Papachinos	🔴	🔴	🔴
Kauai	☐	☐	☐
KFC	🔴	🔴	🔴
McDonalds	🟢	🟢	🟢
Subway	☐	☐	☐
Bidvest	🟢	🟢	🟢
Tiger Brands	🔴	🔴	🔴
Bakers	🟢	🟢	🟢
Unilever	☐	☐	☐
Pioneer Food Group	☐	☐	☐
Rhodes Food Group	🟢	🟢	🟢
Bidcorp ***As amended in Version 2 of this Initial Report.**	🟢	🟢	🟢

COMPLIANCE WITH RELEVANT LEGISLATION AND EVIDENCE OF ADVERSE FINDINGS (CRITERIA 3 AND 4)			
Indicators: Selected Stakeholder:	3.1 Access to records of (non)compliance with Relevant Legislation, including criminal charges, citations, breaches and warnings by the NSPCA.	3.2 Records detailing inspections conducted by a Relevant Authority.	4.1 Access to records of Adverse Finding(s).
Sun International	🟢	🟢	🟢
City Lodge	🟢	🟢	🟢
Southern Sun	🟢	🟢	🟢
Hotel Verde	☐	☐	☐
Marriott Hotels	☐	☐	☐
Hilton Hotels	🟢	🟢	🟢
Eggbert	☐	☐	☐
Quantum Foods	🔴	🔴	🟠
TopLay	☐	☐	☐
Big Dutchman	🔴	🔴	🔴
AFGRI	🟠	🟢	🟢
RCL Foods	☐	☐	☐
Meadow Feeds	🔴	🔴	🔴

EVIDENCE OF RELEVANT COMMITMENTS AND CONTENTS OF PUBLIC STATEMENT (CRITERIA 5 AND 6)								
Indicators: Selected Stakeholder:	5.1 Records of Animal Welfare Commitments	5.2 Evidence of use of battery cage suppliers	5.3 Evidence of progress towards Animal Welfare Commitments	5.4 Evidence of records confirming Environmental Commitments	5.5 Selected Stakeholder regards Animal Welfare Commitments as Progressive Measure aimed at eliminating Cruel Practices	6.1 Access to any records of Public Statement(s)	6.2 Public Statement(s) are Comprehensive	6.3 Public Statement(s) could be construed as Greenwashing, Humane-washing or otherwise misleading
Pick n Pay	🔴	🔴	🔴	🟢	🟠	🔴	🟠	🔴
Shoprite	🔴	🔴	🔴	🟢	🔴	🟠	🟠	🟠
Spar	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴
Woolworths	☐	☐	☐	☐	☐	☐	☐	☐
MassMart	☐	☐	☐	☐	☐	☐	☐	☐
Spur	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴
Rocomamas	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴
Mugg n Bean	🟠	🟢	🟢	🔴	🟢	🟢	🟢	🟢
Wimpy	🟠	🟢	🟢	🔴	🟢	🟢	🟢	🟢
Steers	🟠	🟢	🟢	🔴	🟢	🟢	🟢	🟢
Nandos	🟢	🔴	🔴	🔴	🟢	🔴	🔴	🔴
Papachinos	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴
Kauai	🟠	🟢	☐	☐	☐	🟢	🟢	🟢

EVIDENCE OF RELEVANT COMMITMENTS AND CONTENTS OF PUBLIC STATEMENT (CRITERIA 5 AND 6)								
Indicators: Selected Stakeholder:	5.1 Records of Animal Welfare Commitments	5.2 Evidence of use of battery cage suppliers	5.3 Evidence of progress towards Animal Welfare Commitments	5.4 Evidence of records confirming Environmental Commitments	5.5 Selected Stakeholder regards Animal Welfare Commitments as Progressive Measure aimed at eliminating Cruel Practices	6.1 Access to any records of Public Statement(s)	6.2 Public Statement(s) are Comprehensive	6.3 Public Statement(s) could be construed as Greenwashing, Humane-washing or otherwise misleading
KFC	🟠	🟠	🔴	🟢	🟢	🔴	🔴	🔴
McDonalds	🟠	🔴	🔴	🔴	🟠	🔴	🟠	🟠
Subway	☐	☐	☐	☐	☐	☐	☐	☐
Bidvest	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴
Tiger Brands	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴
Bakers	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴
Unilever	☐	☐	☐	☐	☐	☐	☐	☐
Pioneer Food Group	☐	☐	☐	☐	☐	☐	☐	☐
Rhodes Food Group	🔴	🟠	🔴	🟢	🔴	🔴	🔴	🔴
Bidcorp *As amended in Version 2 of this Initial Report.	🔴	🔴	🔴	🔴	🔴	🟠	🟠	🟠
Sun International	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴
City Lodge	🟢	☐	🟢	🟢	🟢	🟢	🟢	🟢

EVIDENCE OF RELEVANT COMMITMENTS AND CONTENTS OF PUBLIC STATEMENT (CRITERIA 5 AND 6)								
Indicators: Selected Stakeholder:	5.1 Records of Animal Welfare Commitments	5.2 Evidence of use of battery cage suppliers	5.3 Evidence of progress towards Animal Welfare Commitments	5.4 Evidence of records confirming Environmental Commitments	5.5 Selected Stakeholder regards Animal Welfare Commitments as Progressive Measure aimed at eliminating Cruel Practices	6.1 Access to any records of Public Statement(s)	6.2 Public Statement(s) are Comprehensive	6.3 Public Statement(s) could be construed as Greenwashing, Humane-washing or otherwise misleading
Southern Sun	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴
Hotel Verde	☐	☐	☐	☐	☐	☐	☐	☐
Marriott Hotels	☐	☐	☐	☐	☐	☐	☐	☐
Hilton Hotels	🟠	🟠	🟠	🟢	🟠	🟢	🟠	🟠
Eggbert	☐	☐	☐	☐	☐	☐	☐	☐
Quantum Foods	🔴	🔴	🔴	🔴	🔴	🟢	🟠	🔴
TopLay	☐	☐	☐	☐	☐	☐	☐	☐
Big Dutchman	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴
AFGRI	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴
RCL Foods	☐	☐	☐	☐	☐	☐	☐	☐
Meadow Feeds	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴

MEMBERSHIP OF INDUSTRY ASSOCIATIONS AND EVIDENCE OF CERTIFICATIONS (CRITERIA 7 AND 8)				
Indicators: Selected Stakeholder:	7.1 Access to records confirming membership of Industry Association(s), if applicable	7.2 Evidence of compliance with animal welfare requirements of membership to Industry Association(s), if applicable.	8.1 Access to records illustrating SABS/AGW Certification	8.2 Access to records illustrating any applicable Other Certification
Pick n Pay	🟠	🟠	🔴	🔴
Shoprite	🟢	🔴	🔴	🔴
Spar	🟠	🟠	🔴	🔴
Woolworths	☐	☐	☐	☐
MassMart	☐	☐	☐	☐
Spur	🔴	🔴	🔴	🔴
Rocomamas	🔴	🔴	🔴	🔴
Mugg n Bean	🔴	🔴	🔴	🔴
Wimpy	🔴	🔴	🔴	🔴
Steers	🔴	🔴	🔴	🔴
Nandos	🔴	🔴	🔴	🔴
Papachinos	🔴	🔴	🔴	🔴
Kauai	☐	☐	☐	☐
KFC	🔴	🔴	🔴	🔴
McDonalds	🔴	🔴	🔴	🔴

MEMBERSHIP OF INDUSTRY ASSOCIATIONS AND EVIDENCE OF CERTIFICATIONS (CRITERIA 7 AND 8)				
Indicators: Selected Stakeholder:	7.1 Access to records confirming membership of Industry Association(s), if applicable	7.2 Evidence of compliance with animal welfare requirements of membership to Industry Association(s), if applicable.	8.1 Access to records illustrating SABS/AGW Certification	8.2 Access to records illustrating any applicable Other Certification
Subway	☐	☐	☐	☐
Bidvest	🔴	🔴	🔴	🟢
Tiger Brands	🔴	🔴	🔴	🔴
Bakers	🔴	🔴	🔴	🔴
Unilever	☐	☐	☐	☐
Pioneer Food Group	☐	☐	☐	☐
Rhodes Food Group	🔴	🔴	🔴	🔴
Bidcorp	🔴	🔴	🔴	🔴
Sun International	🔴	🔴	🔴	🔴
City Lodge	🔴	🔴	🔴	🔴
Southern Sun	🔴	🔴	🔴	🔴
Hotel Verde	☐	☐	☐	☐
Marriott Hotels	☐	☐	☐	☐
Hilton Hotels	🔴	🔴	🔴	🔴
Eggbert	☐	☐	☐	☐

MEMBERSHIP OF INDUSTRY ASSOCIATIONS AND EVIDENCE OF CERTIFICATIONS (CRITERIA 7 AND 8)				
Indicators: Selected Stakeholder:	7.1 Access to records confirming membership of Industry Association(s), if applicable	7.2 Evidence of compliance with animal welfare requirements of membership to Industry Association(s), if applicable.	8.1 Access to records illustrating SABS/AGW Certification	8.2 Access to records illustrating any applicable Other Certification
Quantum Foods	🟢	🟢	🔴	🔴
TopLay	☐	☐	☐	☐
Big Dutchman	🔴	🔴	🔴	🔴
AFGRI	🟢	🟢	🔴	🔴
RCL Foods	☐	☐	☐	☐
Meadow Feeds	🔴	🔴	🔴	🔴

TRANSPARENCY AND COOPERATION (CRITERIA 9 AND 10)					
Indicators: Selected Stakeholder:	9.1. Selected Stakeholders' website contained a readily available and easily accessible PAIA Manual	9.2 Selected Stakeholders' PAIA Manual designated Information Officer	9.3 Selected Stakeholders PAIA Manual explicitly mentions animal welfare as relevant subject or category of information/records and lists Animal Legislation	9.4 Understanding of, and willingness and ability to comply with ALRSA's request for access to records	10.1 Selected Stakeholder remained cooperative throughout ALRSA PAIA request and engagement
Pick n Pay	🟢	🟢	🔴	🟠	🟠
Shoprite	🟢	🟢	🔴	🟠	🟠
Spar	🟢	🟢	🔴	🟠	🟠
Woolworths	🟢	🟢	🔴	🔴	☐

TRANSPARENCY AND COOPERATION (CRITERIA 9 AND 10)					
Indicators: Selected Stakeholder:	9.1. Selected Stakeholders' website contained a readily available and easily accessible PAIA Manual	9.2 Selected Stakeholders' PAIA Manual designated Information Officer	9.3 Selected Stakeholders PAIA Manual explicitly mentions animal welfare as relevant subject or category of information/records and lists Animal Legislation	9.4 Understanding of, and willingness and ability to comply with ALRSA's request for access to records	10.1 Selected Stakeholder remained cooperative throughout ALRSA PAIA request and engagement
MassMart	🟢	🟢	🔴	🔴	☐
Spur	🟢	🟢	🔴	🔴	🔴
Rocomamas	🟢	🟢	🔴	🔴	🔴
Mugg n Bean	🔴	🟢	🔴	🔴	🔴
Wimpy	🔴	🟢	🔴	🔴	🔴
Steers	🔴	🟢	🔴	🔴	🔴
Nandos	🟢	🟢	🔴	🔴	🔴
Papachinos	🔴	🔴	🔴	🔴	🔴
Kauai	🔴	🔴	🔴	🟠	🟠
KFC	🟢	🟢	🔴	🟠	🟠
McDonalds	🟢	🟢	🔴	🟠	🟠
Subway	🔴	🔴	🔴	🔴	☐
Bidvest	🟢	🟢	🔴	🟠	🟢
Tiger Brands	🟢	🟢	🔴	🟢	🟢
Bakers	🟢	🟢	🔴	🟠	🟢

TRANSPARENCY AND COOPERATION (CRITERIA 9 AND 10)					
Indicators: Selected Stakeholder:	9.1. Selected Stakeholders' website contained a readily available and easily accessible PAIA Manual	9.2 Selected Stakeholders' PAIA Manual designated Information Officer	9.3 Selected Stakeholders PAIA Manual explicitly mentions animal welfare as relevant subject or category of information/records and lists Animal Legislation	9.4 Understanding of, and willingness and ability to comply with ALRSA's request for access to records	10.1 Selected Stakeholder remained cooperative throughout ALRSA PAIA request and engagement
Unilever	🔴	🔴	🔴	🔴	☐
Pioneer Food Group	🟢	🟢	🔴	🔴	☐
Rhodes Food Group	🔴	🔴	🔴	🟠	🟠
Bidcorp ***As amended in Version 2 of this Initial Report.**	🟢	🟢	🔴	🟠	🟠
Sun International	🟢	🟢	🔴	🟠	🔴
City Lodge	🟢	🟢	🔴	🟠	🟠
Southern Sun	🟢	🟢	🔴	🟠	🔴
Hotel Verde	🟢	🟢	🔴	🔴	🟢
Marriott Hotels	🔴	🔴	🔴	🔴	☐
Hilton Hotels	🔴	🔴	🔴	🟠	🟢
Eggbert	🔴	🔴	🔴	🔴	☐
Quantum Foods	🟢	🟢	🟠	🔴	🔴
TopLay	🔴	🔴	🔴	🔴	☐

TRANSPARENCY AND COOPERATION (CRITERIA 9 AND 10)					
Indicators: Selected Stakeholder:	9.1. Selected Stakeholders' website contained a readily available and easily accessible PAIA Manual	9.2 Selected Stakeholders' PAIA Manual designated Information Officer	9.3 Selected Stakeholders PAIA Manual explicitly mentions animal welfare as relevant subject or category of information/records and lists Animal Legislation	9.4 Understanding of, and willingness and ability to comply with ALRSA's request for access to records	10.1 Selected Stakeholder remained cooperative throughout ALRSA PAIA request and engagement
Big Dutchman	🟢	🟢	🔴	🔴	🔴
AFGRI	🟢	🟢	🔴	🔴	🔴
RCL Foods	🟢	🟢	🔴	🔴	☐
Meadow Feeds	🔴	🟠	🔴	🔴	🔴

PART D: ANALYSIS

As set out above, ALRSA's rating Criteria focused on the following:

1. Animal Welfare-centred Internal Policies
2. Annual Reporting on animal welfare and asset and stock register
3. Compliance with Relevant Legislation
4. Adverse Findings
5. Relevant Commitments
6. Public Statements
7. Membership to Industry Associations
8. Certifications

In the spirit of analysing corporate transparency and accountability we further included:

9. Transparency
10. Cooperation

Below we offer some analysis in respect of the rating exercise, linked to each Criteria.

ANIMAL WELFARE

ANIMAL WELFARE-CENTRED INTERNAL POLICIES

The majority of Selected Stakeholders provided access to Internal Policies Reports (26 out of 36). However, only 15 of the 26 Internal Policies provided included content relevant to animal welfare. Further, only 6 Selected Stakeholders provided Internal Policies that expressly address Progressive Measures, specifically related to the phasing out of cage egg sourcing. These were Famous Brands on behalf of Mugg n Bean, Wimpy and Steers respectively, Kauai, KFC and City Lodge.

No Internal Policies seek to tackle **all** Cruel Practices.

Some Selected Stakeholders' Internal Policies address animal welfare generally and beyond merely addressing Cruel Practices. For instance, KFC's "YUM!Brands Global Animal Welfare Policy" expressly recognises the Five Freedoms of Animal Welfare.[746] Furthermore, this policy states:

> "*Across our global footprint we rely on poultry, beef and pork as key animal protein ingredients. We will seek to target key areas as much as possible to drive leadership and advancements in collaboration with our suppliers. These key areas include: reduced mortality rates, improved animal health to minimize medicines required, especially antibiotics, animal mobility and leg health issues in poultry and reduction of stress, improved behaviours and minimization of painful procedures. We will work with our suppliers to*

[746] Internationally accepted standards of minimum care developed by Britain's Farm Animal Welfare Council in 1965 which include: freedom from hunger or thirst, freedom from discomfort, freedom from pain, injury or disease, freedom to express normal behaviour, and freedom from fear and distress.

ensure continuous improvement in these areas and will ensure that animal welfare remains a critical component of the suppliers selection process".

Further examples of Selected Stakeholders addressing animal welfare beyond Cruel Practices include City Lodge stating that it is investigating and considering "sourcing crate-free pork, which is sourced from sows that are not kept in gestation crates for the duration of their pregnancies". In respect of Layer Hens, City Lodge has partnered with HSI-Africa to transition to 100% cage-free egg sourcing, an undertaking achieved in 2020. HSI-Africa has been working with City Lodge and it publicly reports on City Lodge's animal welfare efforts.

Kauai claims that it is solely sourcing from certified free-range suppliers. It further claims to ensure that its suppliers have high animal welfare standards. This was confirmed by the provision of records confirming its suppliers' free-range status. Furthermore, Kauai indicated that it only sources from a limited number of suppliers (1 in respect of eggs and 2 in respect of broiler chicken). Kauai further provided access to a policy of one of its suppliers, titled "Animal Welfare at Elgin Free Range Chicken" which addresses various aspects related to animal welfare including animal health, housing and diet, brand integrity testing, darkness and sleep and stress reduction and avoidance of pain.

None of the Selected Stakeholders unequivocally acknowledged in their Internal Policies, Annual Reports, correspondence or otherwise that animal welfare and environmental protection are intertwined values. Quantum Foods stated that the environmental right and jurisprudence referred to in our request "all concern the protection of wild animals in terms of biodiversity legislation" and "to date, the courts have not extended the interpretation of the right to include the interests of poultry farmers for human consumption". This was the stance adopted by Quantum Foods in refusing to respond to various of our requests. In doing so, Quantum Foods refused to acknowledge that the environmental right and animal welfare in respect of Layer Hens and Chicks are intertwined values. We disagree, as the ***NSPCA* Case**, on which Quantum Foods placed reliance, involved the slaughter of two **domesticated** (as opposed to wild) animals (camels). Furthermore, the court did not limit its ruling pertaining to the applicability of the environmental right to animal protection exclusively to wild animals, but references animals more generally. Moreover, the court was concerned with the interpretation of the Animals Protection Act 71 of ("**APA**"), which regulates domesticated animals, such as farmed animals given its definition of "animal".

ANNUAL REPORTING ON ANIMAL WELFARE AND ASSET AND STOCK REGISTERS

Just over half of the Selected Stakeholders provided access to their Annual Reports (19 out of the 36). Only the Annual Reports of KFC and Hilton address Progressive Measures or Cruel Practices in any manner, whilst in addition to these two Selected Stakeholders, Pick n Pay and City Lodge address animal welfare generally in their reporting.

5 out of the 36 Selected Stakeholders provided access to their asset and stock registers related to its sourcing of eggs as well as sales of both caged and/or free-range eggs. Many of the Selected Stakeholders refused to provide access to this information stating that these records do not exist or invoking grounds of refusal in terms of PAIA. Where provided, asset and stock registers proved to be useful in that it provided insight into whether Selected Stakeholders sourced its eggs from caged or cage-free suppliers. Kauai was the only Selected Stakeholder whose asset register and stock documents confirmed that they solely source free range.

COMPLIANCE WITH RELEVANT LEGISLATION AND ADVERSE FINDINGS

Most retailers, wholesalers and hotels provided records confirming compliance or otherwise with Relevant Legislation and records relating to Adverse Findings. However, some fast-food outlets and restaurants refused to grant access to these records. Tiger Brands denied the applicability of Relevant Legislation to them.

RELEVANT COMMITMENTS

While only Nandos and City Lodge provided documentation expressly confirming that they have undertaken Animal Welfare Commitments, various other Selected Stakeholders, while not providing such records, have committed to transitioning to cage-free egg sourcing in policies or otherwise. This includes Famous Brands Ltd on behalf of Mugg n Bean, Wimpy and Steers, Kauai, KFC, McDonalds and Hilton Hotels. Only 9 Selected Stakeholders provided records confirming that they are party to an Environmental Commitment. They include Pick n Pay, Shoprite, Spar, KFC, Rhodes Food Group, Bidvest, Sun International, City Lodge, Southern Sun, and Hilton Hotels.

PUBLIC STATEMENTS

We define "Public Statements" as:

> "*A statement made by a Selected Stakeholder available in the public domain and provided to ALRSA in response to a request for access to information in which it discloses its sourcing practices in respect of the Egg Supply Chain (as a distributor or user thereof) and/or its production system in respect of eggs (as applicable). It does not include statements not provided to ALRSA*".

A Public Statement was viewed as "Comprehensive" if it:

> "*addresses Progressive Measures and Cruel Practices of the Selected Stakeholder in detail, with full disclosure and the utmost transparency, for instance, not only disclosing Progressive Measures aimed at eliminating Cruel Practices, but also the extent to which the Selected Stakeholder remains complicit or a participant in Cruel Practices*".

The majority of Selected Stakeholders did not provide Public Statements. Ideally, Public Statements would disclose to consumers current sourcing and production activities these Selected Stakeholders were undertaking within the Egg Supply Chain. Only Famous Brands on behalf of Mugg n Bean, Wimpy and Steers, Kauai, and City Lodge provided access to Comprehensive Public Statements. The multinational corporation, Hilton, provided access to Public Statements addressing its transition to cage-free egg sourcing. This Public Statement states that Hilton has a 43% transition to cage-free sourcing in Europe, Middle East & Africa. This is not viewed as Comprehensive, since it omits crucial information about South Africa and is vague and unclear. Further engagement with Hilton revealed that the sourcing of their eggs in South Africa is currently done from caged system suppliers.

INDUSTRY ASSOCIATION MEMBERSHIP AND CERTIFICATION

Very few Selected Stakeholders provided confirmation of membership of Industry Associations. Members of Industry Association include Shoprite, Quantum Foods, and AFGRI. Pick n Pay claimed to "subscribe to SAPA which is an industry body which guides and assists with self-regulation within the Poultry Industry" but did not provide proof of membership. Many Selected Stakeholders viewed Industry Associations as not applicable to them. Some Selected Stakeholders confirmed that **their suppliers** are members of Industry Associations, however, did not confirm any such membership in respect of themselves. These include

McDonalds, Tiger Brands, and Bakers. Other Selected Stakeholders confirmed that they are not a member of any Industry Association. They include Bidvest, Sun International, City Lodge Hotel Group, Hilton Hotels and KFC.

TRANSPARENCY

The majority of Selected Stakeholders have readily available and easily accessible published PAIA Manuals available on their respective websites, including: Pick n Pay, Shoprite, Spar, Woolworths, MassMart, Spur, Nandos, KFC, McDonalds, Tiger Brands, Bakers, Pioneer Food Group, Bidcorp, Bidvest, Sun International, City Lodge, Southern Sun, Hotel Verde, Quantum Foods, Big Dutchman, AFGRI and RCL Foods.

In instances where the Selected Stakeholders' PAIA Manual was not readily available or easily accessible on the Selected Stakeholder's website, we contacted various parties in order to obtain it. This included liaising with contact service representatives as well as members of staff. This caused delays in our stakeholder engagement. It further indicated a general lack of compliance with the relevant Selected Stakeholders' legal obligations in terms of PAIA. We were unable to successfully submit a PAIA request to Subway due to their PAIA Manual being inaccessible on their website. We made several attempts to contact Subway in order to seek information regarding their PAIA Manual and Information Officer via their contact section on their official website.

None of the PAIA Manuals examined specifically or expressly list animal welfare as a relevant category for the request of information, despite all Selected Stakeholders playing a role in the Egg Supply Chain and food system more broadly, including animal agriculture. The majority of the PAIA Manuals do not list any, or make only limited reference to Animal Legislation or Environmental Legislation as being applicable to their operations. Quantum Foods' PAIA Manual lists the Agriculture Products and Standards Act;[747] the Animal Diseases Act;[748] Livestock Improvement Act;[749] and the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act;[750] however does not list any Environmental Legislation.

Certain Selected Stakeholders provided statements and information in respect of suppliers, however redacted important information from their suppliers including their names, contact information or the number of eggs sourced from these suppliers. These Selected Stakeholders claimed that this redaction was justified in terms of POPIA. To clarify, only to the extent that our request entails disclosure of **personal information**[751] protected

747 No. 119 of 1990.
748 No 35 of 1984.
749 No 24 of 1985.
750 No 36 of 1947.
751 In terms of POPIA, "personal information" means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to -
Information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
Information relating to the education or medical, financial, criminal or employment history of the person;
Any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
The biometric information of the person;
The personal opinion, views, or preference of the person;

by POPIA may it be redacted from the relevant records. ALRSA contends that supplier names would not fall within the meaning of personal information in terms of POPIA. Such redactions were thus viewed as inconsistent with transparency, which informed the relevant Selected Stakeholders' overall rating in respect of the transparency and co-operation Criteria. ALRSA is of the view that failure to disclose supplier details indicates a lack of general understanding in respect of the obligations of a Selected Stakeholders in relation to animal welfare in the Egg Supply Chain.

Most Selected Stakeholders (16 out of 27 responsive Selected Stakeholders) refused to provide information regarding their suppliers, including records about their internal Egg Supply Chain and names of their suppliers. Some Selected Stakeholders relied on confidentiality provisions in their supply contracts and arrangements as a rationale for their refusal. This stance was deemed to indicate a lack of transparency and cooperation in respect of the relevant Selected Stakeholders.

Despite calls and email correspondence, including email correspondence through customer websites, some Selected Stakeholders did not respond to our PAIA requests at all. ALRSA sent numerous follow up emails to these Selected Stakeholders, highlighting that their non-response amounted to a refusal in terms of PAIA and as such, the Selected Stakeholder would be negatively rated in this Initial Report on that basis. Non-responsiveness informed the overall score of a Selected Stakeholder, particularly in respect of Criteria relating to transparency and cooperation.

COOPERATION

A few Selected Stakeholders were cooperative throughout our engagement with them by demonstrating openness and a willingness to engage meaningfully and constructively, namely Tiger Brands, Bakers, Bidvest and Hilton Hotels.

Several Selected Stakeholders initially adopted an uncooperative stance and as a "knee-jerk", invoked grounds of refusal in terms of PAIA as a basis to refuse the disclosure of information in respect of specific requests, including Shoprite, Spar, Pick n Pay and Rhodes Food Group. However, upon further engagement, these Selected Stakeholders provided additional information and engaged more openly.

Several Selected Stakeholders (8 of the 36) were completely Non-Responsive despite receiving our PAIA Requests, in that they furnished no access to information and did not engage with us. These were Woolworths, MassMart, Unilever, Pioneer Food Group, Marriott Hotels and Eggbert, TopLay and RCL Foods.

There were several responses received from Selected Stakeholders which indicated ignorance of their legal obligations in terms of PAIA by the Selected Stakeholders. For example, the designated information officer in terms of PAIA of a Selected Stakeholder asked: "What are my legal duties"? and "You keep on referring to our legal obligation. Please kindly send through valid reference to this".

A significant number of Selected Stakeholders (12 out of 36) adopted an obstructive approach.

Correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
The views or opinions of another individual about the person; and
The name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.

For instance, various Selected Stakeholders relied on one or more grounds of refusal in PAIA without providing a proper justification for doing so. Some did so without complying with PAIA's requirements, such as the duty to take all reasonable steps as soon as possible to engage with third parties when considering a request for access to a record that might be refused because it relates to confidential or commercial information of a third party.[752] PAIA states that the third party may, within 21 days after the third party is informed, make written or oral representations to the Selected Stakeholders why the request for access should be refused; or give written consent for the disclosure of the requested record.[753] These obligations arose in relation to our request for supplier information, but very little evidence of compliance therewith was provided.

Various Selected Stakeholders stated ignorance of or denied their involvement in the Egg Supply Chain. For example, several Selected Stakeholders identified as restaurants and fast-food chains expressly denied involvement in the egg supply chain. This despite serving eggs in their stores to their customers daily. Others denied any involvement in the Egg Industry despite being the producer to cages and the feed given to Layer Hens. This stance indicates a lack of holistic understanding of these Selected Stakeholders' obligations in respect of the environmental right as it relates to welfare at best, and represents wilful ignorance, at worst.

Some Selected Stakeholders attempted to "pass-the-buck" to their suppliers or Industry Associations in respect of our requests. This included our requests related to their PAIA Manual, Internal Policies and Animal Welfare Commitments, information that could reasonably be in the possession of a Selected Stakeholder, and not SAPA or a supplier. We received responses such as "[k]indly reach out to SAPA / our suppliers for the requested information" in response to our requests for access to information. Various Selected Stakeholders responded to our request for information related to their egg production and supply chain details by stating "we are not in possession of these records. We suggest you contact our suppliers and/or SAPA directly".

Certain wholesalers and food manufacturers claimed that they do not source raw eggs, but admitted to sourcing powdered eggs, including combined with other ingredients. As a result, they did not believe that they were a role player in the Egg Supply Chain. As such, they viewed many of our requests as "not applicable". ALRSA is of the view, however, that Selected Stakeholders sourcing powdered eggs still have obligations in respect of animal welfare. This includes adherence to Relevant Legislation, developing and publishing an Internal Policy related to responsible and ethical sourcing of these egg by-products with internal, and third-party compliance measures.

752 Section 71 of PAIA.
753 Section 71(e)(i) and (ii) of PAIA.

SECTION V

HATCHING A PLAN: RECOMMENDATIONS

ANIMAL LAW REFORM
SOUTH AFRICA

SECTION V: HATCHING A PLAN
RECOMMENDATIONS

PART A: CONCLUDING THOUGHTS

This Initial Report has provided a high-level overview of various aspects of the Egg Industry (and Poultry Industry more broadly) in South Africa including analysing data, facts, information, regulation and other aspects. Six pillars have been highlighted and discussed in the context of the Egg Industry, including Animal Welfare; Environment; Food Health and Safety; Consumer Protection; Social Issues and Rights, and Corporate and Business. Further, this Initial Report has identified and rated 36 (3 dozen) Selected Stakeholders within the Egg Supply Chain against a set of developed rating Criteria and Indicators with a focus on animal welfare, transparency and co-operation.

As the first of its kind exercise in Africa, several lessons have been learned, key findings have been made, and recommendations developed.

This final Section V of this Initial Report contains governance recommendations (both legal and non-legal) in respect of proposed tools and mechanisms, including for increased accountability and transparency of, and engagement with Corporations and improved welfare and well-being for the animals implicated in the Egg Industry. In addition, due to the fact that one of our aims of this Initial Report is to educate consumers and the public more broadly on animal welfare and well-being practices in and the regulation of the Egg Industry, some of the recommendations are aimed at consumers and /or the public. We believe in the adage, "knowledge is power" and by empowering consumers with knowledge related to Corporations' welfare practices, we can encourage consumers to demand meaningful action be taken by Corporations regarding their Layer Hen and Chick welfare practices as well as by the government relating to laws to protect them.

While these are not necessarily the "end-goal", the recommendations represent incremental steps that role-players in the Egg Supply Chain, members of the public, government, and others can take to achieve improvements.

One key takeaway from this Project is an increased appreciation for the use of legal avenues for requests for information (particularly PAIA) as a tool for animal advocacy more broadly. Whereas partners in OWA and the animal protection sector more generally tend to reach out to Corporations for information and engagement via email or social media, where a Corporation's response is optional, the use of legal tools such as PAIA Requests compels Corporations to respond and engage with such organisations and issues raised.

PART B: RECOMMENDATIONS

I. NON-LEGAL AVENUES AND TOOLS

RECOMMENDATION 1: ANIMAL WELFARE COMMITMENTS: CAGE FREE COMMITMENTS

ALRSA encourages the Selected Stakeholders who have not yet done so, as well as other stakeholders operating within the Egg Industry in South Africa to make cage free commitments.

For those Corporations who have already made such Animal Welfare Commitments, these must be fulfilled through transparent reporting on their progress and any deviations therefrom. Stakeholder engagement and compliance with PAIA is one way to monitor fulfilment.

RECOMMENDATION 2: OTHER CORPORATE COMMITMENTS TO IMPROVED ANIMAL WELFARE AND WELL-BEING, INCLUDING ALTERNATIVES

In addition to making specific Cage Free Commitments, Corporations can make additional commitments which will have positive impacts on animal welfare and well-being. For example, they can introduce an Internal Policy stating that they will only procure free-range eggs or avoid certain products, or that they will not support suppliers who undertake certain Cruel Practices or supply certain products. For example, Woolworth's Animal Welfare Policy states that they have been assisted in the development of badger-friendly honey and are also supporting the development of wildlife-friendly farming protocols. Notably, Pick n Pay has a sustainable seafood policy and in 2011, it became the first retailer in Africa to make the commitment to only sell sustainable seafood.

Understanding their role in animal welfare, and the links with the environmental right: We recommend that Corporations seek advice to better understand their role in animal welfare. This includes understanding how the environmental right links with animal welfare, and what this means for their obligations, including in terms of PAIA. Various Selected Stakeholders seem to have adopted an interpretation of the environmental right which excuses them of any obligation in respect of animal welfare, with some Selected Stakeholders viewing animal welfare as not being protected by the environmental right. This interpretation is not correct, in light of the ***NSPCA* Case** which confirmed that the environment and animal welfare are intertwined values.[754]

Alternatives: Corporations could go a step further by committing to the use of alternatives to animal-sourced foods. This includes, for example, providing non-animal sourced eggs (such as Just Egg) and products containing eggs with egg-alternatives.

754 At para 58.

Technologies: An additional measure could be specific investments into research and developments for technologies such as ovo-sexing.

Training: Corporations should undergo training, including on PAIA; issues of animal welfare; and the impact of the Egg Supply Chain on constitutional rights.

RECOMMENDATION 3: COMMITMENTS TO TRANSPARENCY

This Project has illustrated that there is a general lack of transparency among stakeholders in the Egg Industry on various issues, even after following appropriate legal processes. Corporations supplying foodstuffs, including eggs, to the public should operate in the spirit of transparency including in relation to their supply chain and sourcing. In particular, Selected Stakeholders should operate in a transparent manner, as the Supreme Court of Appeal states:

> "*Corporations operating within our borders, whether local or international, must be left in no doubt that in relation to the environment…there is no room for secrecy and that constitutional values will be enforced*".[755]

While there are numerous issues of relevance that could be highlighted in support of transparency, several specific recommendations have been included below as minimum requirements in moving towards a more transparent Egg Industry in South Africa:

Reporting on Animal Welfare: As Corporations operating in the Egg Industry, with an inevitable impact on the welfare and well-being of animals, stakeholders should be transparent about matters pertaining thereto. This can include position statements about Cruel Practices within their supply chains, or policies in respect thereof.

Reporting on Adverse Findings: Stakeholders should be required to publicly report on their activities to consumers and the public (online or in an otherwise accessible manner). Reporting should include warnings, citations, notices; letters and other forms of enforcement relating to their supply chains, issued by animal protection organisations including the NSPCA and SPCAs (without breaching the provisions of any other laws). Similarly, the NSPCA and SPCAs should publish a list of their inspections (with any personal and privacy information redacted, as appropriate) online and make these publicly accessible.

Reporting on Sourcing and Supply Chains: Corporations should be transparent about their sourcing and which role-players are part of their supply chains, including the sourcing of their products and animals. In addition to their own position, information relating to the animal welfare practices associated with others in the Egg Supply Chain should be provided. For example, in the case of eggs: the types of systems utilised, the diet of such animals, and otherwise. Consumers and members of the public will then be able to access such information and make more informed decisions about their purchases. Moreover, it is only truly possible to confirm adherence with a Cage Free Commitment on the part of a retailer if they are transparent about their supply chain.

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755 *Company Secretary of Arcelormittal South Africa and Another v Vaal Environmental Justice Alliance* (69/2014) [2014] ZASCA 184; 2015 (1) SA 515 (SCA); [2015] 1 All SA 261 (SCA) (26 November 2014).

PAIA Recommendations: We recommend that Corporations in the Egg Supply Chain enhance their understanding of and compliance with the PAIA process. At the most basic level, this means all actors within the Egg Industry should have an easily accessible and readily available PAIA Manual on their websites. This PAIA Manual should further comply with the requirements of PAIA, which demands that the manual give details of a designated information officer, as well as a comprehensive list of legislation and regulation in respect of which information may be requested. Animal Legislation and Environmental Legislation ought to be listed, given the adverse impacts of the Egg Supply Chain on animal welfare and the environment.[756] Information officers should undergo training as to what their duties are in terms of PAIA and other legislation.

RECOMMENDATION 4: ENGAGEMENT AND CO-OPERATION WITH ANIMAL PROTECTION / ANIMAL WELFARE SECTOR AND CIVIL SOCIETY ORGANISATIONS

It is recommended that Corporations within the Egg Industry cooperate and engage with the animal protection sector in an effective manner, as important representatives of civil society (including animal, human and environmental interests) on public interest matters. This includes responding to requests (for information or engagement through meetings) in a manner that is not hostile and remaining open to hear and discuss proposals put forward (including about Animal Welfare Commitments). Civil society organisations play a crucial role in assisting the public with the enforcement of their rights and in particular, alliances of various organisations (such as OWA).

On the other side of the spectrum, threatening litigation including strategic litigation against public participation (SLAPP suits) should not be countenanced, and where possible open channels of communication for legitimate requests and respectful interactions should be maintained.

RECOMMENDATION 5: THIRD-PARTY CERTIFICATIONS

It is recommended that Corporations make commitments to source from certified sources with higher welfare standards and aligned with best international practices. For example, Woolworth's Animal Welfare Policy states that they do not permit animal testing and their entire private label range of toiletries and cosmetics are endorsed by Beauty Without Cruelty (BWC).

Consumers should be informed of the existence of different Third-Party Certifications and what these standards actually require of producers, specifically in relation to eggs. This information should be made available by those stakeholders who supply eggs directly to the public – for example retailers, restaurants, fast food chains, hotels and others. This will ensure Consumers have knowledge of such Third-Party Certifications and what they mean.

Consumers can and should demand that Corporations source from and sell products including eggs that have the relevant third-party certification with higher welfare standards.

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756 Additional legislation referred to in this Initial Report, including in terms of the specific Pillars, should also be included for the sake of completeness, given the far-reaching implications of stakeholders operating in the Egg Industry in South Africa.

RECOMMENDATION 6: INTERNAL POLICIES

It is recommended that Corporations develop, publish and implement robust internal policies relating to animal welfare, environment, and issues implicated in the other Pillars (such as in relation to consumer protection; food safety and health, and social issues and rights).

Corporations should further reinforce their commitments and respective stances for enhancing animal welfare with the development of their own Internal Policies. This could include comprehensive Progressive Measures to address Cruel Practices, specifically regarding Layer Hens and Chicks. Internal Policies should contain specific references to harmful welfare practices and the stakeholder's response towards permitting, phasing out or, optimistically, the complete prohibition of common yet harmful Cruel Practices. Furthermore, these Internal Policies should be further monitored, updated and enforced regularly to its suppliers and customers, as applicable.

Consumers should be informed (by those stakeholders who supply eggs directly to the public – for example retailers, restaurants, fast food chains, hotels and others) of the Internal Policies of such stakeholders. Specifically, what the animal welfare, environmental and other internal policies say. Consumers can then demand and put pressure on Corporations to require them to source from and sell products including eggs that have the relevant third-party certification.

II. LEGAL AVENUES AND TOOLS: LEGISLATION

The following avenues and tools are legal in nature, and therefore generally need to be promulgated by the government. Nevertheless, consumers and members of the public have a key role to play in getting these issues on the political agenda or bringing them to the attention of Corporations in the Egg Supply Chain.

RECOMMENDATION 7: EXPLICIT RECOGNITION OF SENTIENCE

South Africa should expressly recognise the sentience of animals in law as many other countries have done, as further elaborated on in the Animal Welfare Pillar in Section III.

RECOMMENDATION 8: PROHIBITIONS: BATTERY CAGE BANS

South Africa should enact a legislative ban on the use of Battery Cages for Egg Laying Hens as several other countries have done, as further set out in the Animal Welfare Pillar in Section III above.

RECOMMENDATION 9: PROHIBITIONS: BEAK TRIMMING

South Africa should enact a legislative ban on the practice of beak trimming as several other countries have done, as further set out in the Animal Welfare Pillar in Section III above.

RECOMMENDATION 10: PROHIBITIONS: MALE CHICK CULLING

South Africa should enact a legislative ban on the culling of male Chicks as well as the methods of killing them as several other countries have done, as further set out in the Animal Welfare Pillar in Section III above.

RECOMMENDATION 11: PROHIBITIONS: OTHER CRUEL PRACTICES

South Africa should enact legislative bans on other Cruel Practices not specifically mentioned above but which are considered to be cruel and/or for which alternatives are available. This could include but not be limited to de-toeing

RECOMMENDATION 12: MANDATORY: POSITIVE LEGAL STANDARDS

South Africa should enact positive legal standards for chickens implicated in the Egg Industry, including setting out requirements aligned with the Five Domains. This is in addition to negative standards such as the prohibition of cruelty. Such standards must be legally binding and enforceable. These cannot exist merely as "soft laws" of voluntary standards.

RECOMMENDATION 13: MANDATORY REPORTING

The NSPCA (and other bodies enforcing legislation impacting the Egg Industry including but not limited to the APA) should be required to report on enforcement of the APA such as through the requirement to maintain a database of its inspections and any actions taken in respect of citations; warnings; notices; letters; and otherwise (without breaching the provisions of any other law). Consumers and members of the public should be able to access such a database to view which stakeholders and actors within their supply chain are included in the database and for what issues.

RECOMMENDATION 14: OVO-SEXING LEGISLATION AND EFFORTS

South Africa (particularly the Poultry Industry and Egg Industry) should initiate efforts in respect of ovo-sexing as well as investments into research and development for such technologies as other countries have done (as further described in the Animal Welfare Pillar in Section III above). Including requirements for this in legislation will ensure these efforts and investments are critical to reduce the suffering and killing of male Chicks.

RECOMMENDATION 15: REFORM ENVIRONMENTAL LAWS

Inclusion as listed activities and licensing: NEMA and various SEMAs impose duties of care upon stakeholders (including Layer Hen farms) to take reasonable measures to protect the environment, water resources, air quality, and to manage waste responsibly. However, the development of a poultry farm only requires the submission of a basic assessment for the environmental authorisation application under NEMA, while atmospheric emissions and waste management activities relevant to Layer Hen farms do not require any licences under NEM:AQA or NEM:WA.

Given the significant environmental impacts of factory farming, a full scoping and impact assessment should be required in order that the full extent and impact of the egg production process be properly assessed and considered by the DFFE and, where possible, legislative amendments should be considered to include the various activities undertaken by Layer Hen farms as listed activities under the applicable acts so that they are subjected to comprehensive licensing processes, including in terms of NEM:WA and NEM:AQA NEM:WA. NEM:WA, which provides for the management of contaminated land, and this, at least, is potentially a tool that can be used to compel Layer Hen farms to assess the extent of contamination caused by the activities on their farms, and to enable the relevant authorities to order for the remediation of such sites. However, this harm should be managed proactively, rather than reactively.

In addition, Animal well-being should also be expressly included as a consideration in the application process as well as in the licence conditions. This should be done in order to fulfil the DFFE mandate in respect of animal well-being as part of the constitutional environmental right.

Inclusion of well-being: It is recommended that the DFFE develops a uniform animal well-being framework in respect of all animals including wildlife and domesticated animals, especially animals used in industrial animal agriculture such as Layer Hens in the Egg Industry.

RECOMMENDATION 16: INCREASED ENVIRONMENTAL REPORTING: INCLUSION OF ANIMAL WELFARE (WELL-BEING)

It is recommended that the DFFE be obliged to conduct increased reporting on animal well-being, and not only wildlife crimes, as part of their NECERs, with express naming and shaming of Corporations that routinely commit Cruel Practices in the Egg Industry. This should be done with a level of urgency and seriousness, akin to the environmental impacts on natural resources such as water, land, water and air quality, and efforts to address climate change.

RECOMMENDATION 17: MITIGATION MEASURES IN CLIMATE LAW AND POLICY

It is recommended that climate change law and policy reform should introduce specific mitigation and adaptation measures due to the significant contributions of livestock systems to GHG emissions. These could include measures such as improving manure management, soil and nutrient management, water management, implementing cooling systems, improving livestock management, and feeding practices for animals, and modifying demand practices (such as dietary choices).[757]

III. ITEMS FOR FURTHER RESEARCH / NEXT PROJECT PHASE

Various topics discussed or introduced in this Initial Report warrant further research and exploration, and additional topics not covered, should also be further explored. A few initial suggestions

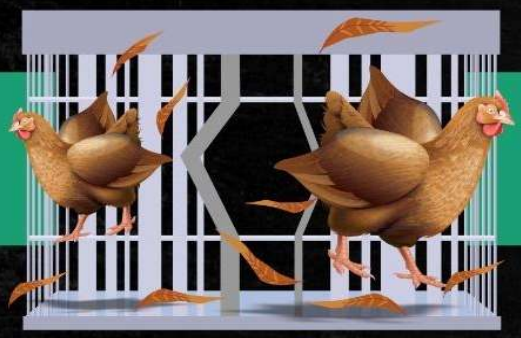
[757] The IPCC Special Report on Climate Change and Land: Food Security, available at https://www.ipcc.ch/srccl/chapter/chapter-5/.

1. Research on the true cost of moving away from Battery Cages and other caged systems for hens, not commissioned by the Poultry Industry;
2. Further research on the Pillars and specific interactions with the Egg Industry, more specifically South African based research;
3. More South African based research into the Egg Industry and Poultry Industry (as compared to foreign research and studies);
4. Research specific case law on aspects of the Egg Industry and Poultry Industry as well as cases involving Selected Stakeholders (in courts and through bodies such as the Advertising Regulatory Board);
5. Determine status of Egg Master Plan and potential interventions;
6. Follow up on SABS Draft Poultry Welfare Standards;
7. Critically review Stakeholder Mapping to include additional stakeholders and ALRSA's breakdown of the industry;
8. Critically review Selected Stakeholders for any additions, deletions, amendments;
9. Attend to any responses received from Selected Stakeholders and others in respect of this Initial Report;
10. Consider potential legal interventions in the upcoming Animal Welfare Bill for chickens implicated in the Egg Industry;
11. Review further competition issues arising from integrated systems;
12. Research the enforcement of other legislation; and
13. Others still to be determined.

HENS DESERVE TO FLOURISH!

ANIMAL LAW REFORM
SOUTH AFRICA

OPEN WING ALLIANCE®



All animals have intrinsic value and deserve to be legally protected. Chickens are intelligent, sensitive and social creatures.

THE FIVE DOMAINS OF ANIMAL WELFARE

Established to provide an approach to allow for a distinction for better physical and mental welfare conditions for animals under human control.

Provide a means of evaluating the welfare of an individual or group of animals in a particular situation, with a strong focus on mental well-being of these animals.

Cannot be achieved while common practices such as caged confinement, debeaking, male chick culling, and other harmful welfare concerns persist.

1 NUTRITION

Factors that involve the animal's access to sufficient, balanced, varied, and clean food and water.

2 ENVIRONMENT

Factors that enable comfort through temperature substrate, space, air, odour, noise, and predictability.

3 HEALTH

Factors that enable good health through the absence of disease, injury, impairment with a good fitness level.

4 BEHAVIOUR

Factors that provide varied, novel, and engaging environmental challenges through sensory inputs, exploration, foraging, bonding, playing retreating, and others.

5 MENTAL STATE

The mental state of the animal should benefit from predominantly positive states, such as pleasure, comfort, or vitality while reducing negative states such as fear, frustration, hunger, pain, or boredom.

APPENDIX I:

Selected PAIA Correspondence and Engagements with the NSPCA

NSPCA AS A STAKEHOLDER

Although not forming part of our 36 (or 3 dozen) Selected Stakeholders and rating against the Criteria and Indicators for purposes of the Stakeholder Component in Section IV of this Initial Report, ALRSA approached the NSPCA in November 2022 in order to request various information in terms of PAIA over a period between 2018 and 2022.

Selected PAIA correspondence and engagements with the NSPCA have been set out in further detail in this Appendix. However, this Appendix I does not constitute the totality of engagement with the NSPCA in relation to the Project. Only a few general observations are included in summary form for purposes of this Appendix. This Appendix I should be read together with Section III, the Animal Welfare Pillar, specifically, Part D thereof.

Our engagement with the NSPCA and corresponding research revealed issues with the enforcement of the Animals Protection Act in the Egg Supply Chain.

NSPCA ENGAGEMENT

These included requests for: "…any and all records in relation to inspections conducted by the NSPCA and any SPCA or unit of the NSPCA and/or complaints received by members of the public or otherwise which relate to any farmers, breeders, producers, suppliers, distributors retailers, and other stakeholders in the supply chain of the South African Egg Industry ("stakeholders") for the period of 1 November 2018 to November 2022 (the "**period**")."

More particularly:

1. A list of facilities which the NSPCA and/or SPCAs know to be stakeholders;
2. A list of each SPCA that the NSPCA oversees, including their contact details;
3. A list of facilities inspected during the above-mentioned periods which are stakeholders;
4. Reports, lists, tables, spreadsheets and other information relating to any non-compliance, warnings, citations issued to or other actions in respect of any stakeholder, in respect of violations of animal protection and welfare legislation and standards, including among others, instances of ill-treatment, abuse, neglect and death of chickens;
5. Reports, lists, tables, spreadsheets and other information relating to any non-compliance, warnings and citations or other actions in respect of any stakeholder, in respect of violations of animal welfare legislation and standards regarding Chicks including ill-treatment, abuse, neglect and death of Chicks;

6. Internal NSPCA guidelines, manuals, and any operational procedure documents for SPCAs or units of the NSPCA in relation to chicken welfare practices and compliance and enforcement efforts, particularly those relating to any stakeholder;
7. Enforcement reports, including lists, tables, spreadsheets and other information concerning any stakeholder;
8. Details of charges laid by the NSPCA against stakeholders in the Poultry Industry;
9. Details of court proceedings relating to the stakeholders which NSPCA has been involved with to any extent including but not limited to through the provision of evidence, providing testimony or otherwise which may include pleadings, notices, affidavits, orders, judgments, or any other court records;
10. Details of any successful or unsuccessful prosecutions in respect of the Animals Protection Act 61 of 1962 (as amended) in respect of stakeholders;
11. Correspondence with the National Prosecuting Authority ("NPA") regarding charges they have sought to pursue against any stakeholders; and
12. Details of *nolle prosequi* certificates issued by the NPA to the NSPCA in respect of cases related to any stakeholder.

On 8 December 2022, the NSPCA provided a notice of extension in respect of our request stating inter alia that "the request is for a large number of records and compliance with the original period (of our request) would unreasonably interfere with and otherwise frustrate the activities of the NSPCA". On 24 January 2023, ALRSA accepted the notice of extension and noted that the substantive response was due on 20 January 2023.

On 25 January 2023 in response to our initial request, and after payment of a fee, the NSPCA provided ALRSA with six documents, namely:

- NSPCA Statement of Policy.
- NSPCA Statement of Position.
- Contact list of SPCA's
- NSPCA Training Policy.
- List of Facilities.
- Report by FAPU

The NSPCA further refused to grant access to all of our requests stating "*the Council would not be in a position to grant access to information other than provided for above, which would deal directly with personal information or that we consider otherwise sensitive and protected from disclosure. The grounds upon which we would be entitled to rely, are provided for in sections 39 and 44 of the Promotion of Access to Information Act 2 of 2002*".

0n 7 March 2023, upon taking the opportunity to review the documents provided and take legal advice in respect of NSPCA's response, ALRSA responded with requests for further information, and a subsequent response was received by the NSPCA. ALRSA further sought a justification from the NSPCA in terms of the grounds of refusals invoked in respect of our request, noting that in refusing the NSPCA cannot merely cite the ground of refusal relied upon. Not all relevant correspondence is included herein, but a few examples are selected and highlighted.

In their letter response, NSPCA noted the following welfare concerns:

1. High stocking densities in layer cages, cull outlet cages, hawking cages and transportation crates;
2. Broken cages and transportation crates which cause injuries;
3. Inadequate protection from heat, cold and weather at facilities and during transportation;
4. Unacceptable hygiene conditions;
5. Lack of external parasite control;
6. Unsuitable transportation;
7. Selling of compromised end-of-production birds;
8. Lack of humane emergency slaughter equipment and protocols;
9. Illegal slaughter / dull knives;
10. Lack of veterinary/medical attention;
11. Unacceptable handling of poultry;
12. Lack of feed and water;
13. The drop from the sorting carousel for day-old Chicks at hatcheries was too high resulting in birds falling onto hard surfaces which could cause injuries;
14. Handling of day-old Chicks at hatcheries was unacceptable and birds were thrown during sorting; and
15. Macerators are not effective enough to humanely cull unwanted/deformed day-old Chicks.

NSPCA STATEMENT OF POLICY

The NSPCA indicates that is strongly opposed to farming practices which cause suffering or distress to animals.

According to Policy Positions provided to ALRSA in terms of the PAIA process, the following are notable (emphasis added):[758]

PHYSICAL ALTERATION

> "*The SPCA is opposed to the physical mutilation and/or alteration of any animal unless it is undertaken for therapeutic veterinary reasons, bona fide conservation or security reasons, where there are no other options available. Any procedures undertaken should be for the benefit of the animal, using methods that do not cause pain, suffering, distress or lasting harm*".
>
> Physical mutilation and/or alteration involves the modification, removal or destruction of a part of an animal.
>
> Physical alteration of farmed animals is predominately carried out in an attempt to "adapt" animals to inappropriate husbandry systems or to overcome problems associated with inappropriate husbandry systems. Such responses include the castration of piglets, calves and

758 At para 3.10.

lambs without the administration of pain relief, **de-beaking of laying hens**, tail amputations, and teeth nipping of piglets".

FARMING PRACTICES / SYSTEMS

"*The SPCA is opposed to forms of farming, farming systems and animal husbandry practices which causes or may cause pain, suffering, distress or lasting harm*".

Currently, most animals produced for consumption are farmed in intensive farming systems. Many of the facilities/systems and management methods implemented compromise the well-being of the animals, in that they are kept in confined spaces, surgically mutilated as a management tool, behaviourally deprived and/or are given feed containing additives such as growth stimulants, antibiotics and hormones to boost production. Methods of inspecting and providing humane care for individual animals is rendered virtually impossible given the existing management and housing structures."

The SPCA firmly believes that the systems employed should suit the needs of the animals and that advanced technology and knowledge in the agricultural sector have made it possible to implement farming practices and systems to ensure that the well-being of farmed animals is not sacrificed in the interests of production".[759]

END OF LIFE

"*The SPCA is opposed to the use of inhumane methods to kill any animal. An animal must either be killed instantaneously, or stunned and killed by a method that they do not detect, or stunned by a method that they do not detect and then killed without recovering consciousness; or stunned by a method that they detect but that is not aversive and then killed without recovering consciousness. Stunning is the initiation of unconsciousness and should be instantaneous, not detected or not aversive. Handling prior to slaughter should promote the animal's well-being. Regardless of the circumstances, purpose and use of animals, the SPCA believes that the death of any animal should be done in a humane manner, which includes but is not limited to:*

- *Slaughter of farmed animals: The SPCA is opposed to any form of slaughter that does not kill an animal instantaneously, or render an animal unconscious and insensible to pain through pre-stunning. Pre-stunning procedures differ in respect of the species concerned and may be electrical, gaseous or mechanical. While the SPCA acknowledges and respects the traditions, cultures and religions of South Africa, there is no acceptable reason for handling or slaughtering an animal in an inhumane manner;*

- *Use of aversive substances: The SPCA is opposed to the use of aversive substances to pre-stun as well as to kill any animal. The opposition to the use of such substances is not limited to slaughter, but also extends to the control of animals regarded as problem or damage-causing animals. The aversive qualities of many gases result in significant suffering, cause pain and a feeling of suffocation.*

759 At para 4.1.

- *Recovering consciousness: Any method that does not kill an animal instantaneously, but instead renders an animal unconscious and insensible to pain, requires a secondary suitable method to ensure the death of an animal before it regains consciousness.*

- *The SPCA advocates that the death of any animal should only be carried out by a skilled, trained and competent person exercising great compassion*".[760]

In its Annual Reports, in terms of the confinement of other animals, such as pigs, the NSPCA notes that it "stands by the belief that sows should be out of crates and able to behave naturally in environments that are conducive to their welfare" and mentions issuing warnings for sows being kept in crates in the 2017 – 2018 NSPCA annual report, it notes that farmers have been complying with warnings to remove pigs from gestation crates. It also mentions that it will continue to fight against claims made by top retailers who label their pork as "sow friendly pork" or "kinder to sows".

In its Annual Reports, the NSPCA states in respect of hatcheries that it has been advocating for Layer Hens to be allowed to live more humane and free lives and it will not accept any compromise on conditions that do not afford chickens to live a life that is in line with the Five Freedoms.[761] Despite this, the NSPCA states that practices such as male chick culling is an industry norm all over the world and the NSPCA ensures that every hatchery has a verifiable disposal method for unhatched eggs, male and deformed Chicks that are unsaleable.[762] In respect to the relevant stakeholders of the Egg Industry, the NSPCA states "[m]any popular egg and chicken producers and retailers in South Africa are keeping their consumers in the dark regarding the conditions their chickens are kept in."[763]

However, the records received from the NSPCA in terms of ALRSA's PAIA Requests (as set out in further detail below) indicate that the following Cruel Practices are not specifically reported on Battery Cages, de-beaking; toe clipping; etc.

List of Facilities

The NSPCA's List of Facilities included inspections conducted and findings in connections thereto provided by the NSPCA stated that from – November 2018 - 30 November 2022 the NSPCA and individual SPCA's conducted inspections on the following facilities in all nine provinces:

i. 47 Hatcheries
ii. 211 Layer Farms
iii. 167 Cull Outlets
iv. 1034 Chicken Hawkers

Notably, there were several issues with the reporting by the NSPCA with regards to the inspection database they provided to us (as an Excel spreadsheet setting out the Name of the SPCA; the type of

760 At para 3.11.
761 https://nspca.co.za/nspca-refutes-layer-hen-cage-sizes-in-south-africa/.
762 https://nspca.co.za/farm-animal-protection/hatcheries/.
763 https://nspca.co.za/nspca-refutes-layer-hen-cage-sizes-in-south-africa/.

facility (e.g., Chicken Hawkers; Layer Farms; Cull Outlets; and Hatcheries); the Facility Name, Area and Welfare Concerns) between 2018 and 2022. A few of these include that, in some instances:

1. **Missing Information:** There was missing information or blank spaces including under "Welfare Concerns" (i.e., if none were found these should be consistently confirmed so);
2. **Inconsistent:** The Reporting was not consistent;
3. **Incomplete:** The Reporting was incomplete and lacked sufficient details to make it meaningful: for example:
    a. Only the word "Handling" was included;
    b. In some cases, only the word "Yes" was included with no further information about what kinds of welfare issues were found;
    c. "Vetenary [Veterinary] problems" were included;
    d. Other terms without explanation included: "CHICKENS INJURED"; "Condition of ex layers"; and others.
4. **Reporting otherwise Unclear**: In some instances, it was not possible to ascertain what was identified, for example: "SIDE NETS/SAWDUSG"; "Educate cull procedure feeding"; "IMPROPER WAY OF"; "disinfectant/not Jays fluid"; "DUE TO THEFT IT WAS PERMANENTL";
5. **Number of Animals:** No information was provided regarding the total number of animals, nor the number of animals impacted by the welfare issues were not identified (for example it just said: "Swollen eyes" and therefore unclear if this was one or more animals;
6. **Actions Taken:** No Information was provided about the types of actions taken when welfare issues were identified (i.e., was a warning issued, a notice, a letter, or otherwise) although in some instances it appears that there was a need for "emergency slaughter";
7. **APA Infringement**: It was unclear whether the Welfare Issues identified were considered to be in breach of the APA;
8. **Cruel Practices Accepted**: From the records provided – not once in the Welfare Issues were issues around "Battery Cages", "De-beaking" were included as issues. This appears to mean that the NSPCA does not view such issues as infringements of the APA (even though this is arguably challengeable – see our comments on the APA above). In a few cases "Maceration" was reported as a Welfare Concern**;**
9. **No Welfare Concern or None or even "Good"**: In many cases, it was reported that there was "NO WELFARE CONCERN" or "None" or even the words "Good", which seems to indicate read with the NSCPA's other documents the animals inspected were all in good condition living in alignment with the Five Freedoms; and
10. **Refused Entry**: Several instances were reported where the inspectors were refused entry. It is unclear what happens in such an instance and what kind of follow up action can be taken by the SPCA in this regard.

Some reports contained more detailed information in order to ascertain potential APA infringements, in the "Welfare Concerns" column, which was helpful, for example: "illegal abattoir/ Slaughter No protection against weather elements, overcrowding, Lack of provision of water & food, Hygiene, Poor Management, sick, bruised & Loss of feathers, Joint problems".

However, in most instances it was difficult to ascertain although it was apparent that there were welfare concerns. Examples of the types of reporting on welfare issues include the following direct extracts:

"No shade" | "One with eye infection" | "No water" | "5 had swollen faces"| "CAGES SMALL AREA DIRTY" | "low vegetation/shade" |" fly infestation, cages in a dirty condition" | "Sprawl legs" | "Deformed birds, no drinking water" | BIRD FLU | "7 were sick" | Four moribund birds found in cages" | CHICKENS IN BAD CONDITION and various others.

Based on the NSPCA response to our request, the use of Battery Cages does not appear to be a welfare concern and is not reported on unless there are issues therewith, including for example that these cages are broken, or the stocking density does not comply with NSPCA standards.

The welfare concerns recorded during these inspections by the NSPCA contained high stocking densities in layer cages, cull outlet cages, hawking cages and transportation crates; broken cages and transportation crates which cause injuries; inadequate protection from heat, cold and weather at facilities and during transportation; unacceptable hygiene conditions; lack of humane emergency slaughter equipment and protocol; illegal slaughter / dull knives; unacceptable handling of poultry and lack of feed and water.

The NSPCA noted that upon discovering a welfare concern "written warnings were issued, and follow-up inspections conducted and where no compliance was achieved, prosecution ensued."

As such, the NSPCA provided reference numbers related to cases involving poultry and poultry facilities:

i. CAS 40/7/2012 - Piet Retief (finalised in September 2021)
ii. CAS 22/12/2018 - Koster
iii. CAS 245/04/2019 - Kagiso
iv. CAS 32/05/2020 - Mooi River

FOLLOW UP REQUEST / CORRESPONDENCE

Following on from the response to ALRSA's initial request to the NSPCA and the documents received, further questions were asked, and information requested, to which the NSPCA replied.

ALRSA Query:
1. How does the NSPCA define a "welfare concern" in the context of the inspections conducted by the "skilled inspectors" forming part of the NSPCA's Farmed Animal Protection Unit (FAPU)? What are the specific criteria used by the inspectors? What legislation, if any, is utilised, in determining what constitutes a welfare concern?

NSPCA Response: "*1. How does the NSPCA define a "welfare concern" in the context of the inspections conducted by the "skilled inspectors" forming part of the NSPCA's Farmed Animal Protection Unit (FAPU)? What are the specific criteria used by the inspectors? What legislation, if any, is utilised, in determining what constitutes a welfare concern?" – A welfare concern shall mean a contravention or potential contravention of the Animals Protection Act 71 of 1962, such as inadequate housing, feed, water, shelter or freedom of movement, injury, etc. 6.2. Skilled Inspectors shall mean Authorised officers in terms of Section 8(1) of the Animals*

Protection Act 71 of 1962. A copy of the NSPCA training policy shall be attached hereto as a courtesy, even though you overextend the original request and exceed a mere request for access to a record".

ALRSA Query:
2. More specifically, when the FAPU's Inspectors inspect facilities:

a. Do they regard the housing of chickens in cages (specifically "Battery Cages") to fall within the definition of a welfare concern?
b. Do they regard de-beaking to fall within the definition of a welfare concern?
c. Do they regard culling of day-old male Chicks to be a welfare concern?
d. What methods of culling are considered appropriate by the NSPCA / non-reportable?
e. How do they assess the quality of the food and water provided to chickens in relation to chicken welfare?
f. What (in centimetres squared) constitutes a "small cage"?
g. What constitutes an "overcrowded" or "overstocked" cage?
h. What constitutes "proper protection against weather elements"?
i. What constitutes "neglect"?
j. What constitutes a "handling" concern?

NSPCA Response: "*In reply to 2. More specifically, when the FAPU's Inspectors – We understand Battery Cages are a standard practice, and does not mean we condone same. We ask you to apply your mind when it comes to issues of definition, it goes without saying that a lack of food, water, shelter and injuries all constitute welfare concerns. It also bears mentioning that where you ask us for an opinion, we are not obliged to reply. Where we indicate "welfare concerns" it must be interpreted to mean notable and actionable concerns.*

The culling of any animal is a welfare concern if the cull is not necessary to prevent further suffering and if the animal is not humanely euthanised. Water must be potable and sufficient, and food must fully satisfy the nutritional purpose for the species involved. The SPCA is opposed to forms of farming, farming systems and animal husbandry practices which causes or may cause pain, suffering, distress, or lasting harm".

ALRSA Query:
3. In relation to the criteria against which FAPU Inspectors inspect facilities, when does a concern become reportable and/or actionable?
5. What steps are required to be taken by Inspectors against facilities where welfare concerns are identified? Whilst we appreciate that you may not be able to detail the precise steps against each facility, please provide the protocol and/or standard operating procedure that Inspectors are required to follow.
6. What monitoring and compliance measures does the NSPCA implement where welfare concerns are identified?
7. Are inspections only conducted at facilities or are transportation/transit methods also monitored and reported upon?

NSPCA Response: "*In reply to paragraphs 3, 5 ,6 and 7 – In all facilities where there are notable welfare concerns, inspectors may, depending on the circumstances, issue warnings or other notices for corrective action or exercise any power conferred upon them in terms of the Animals Protection Act 71 of 1962*".

ALRSA Query:
4. What qualifications and skills are required to be an Inspector of the FAPU? Please provide training materials for these Inspectors.
11. Could you provide the records produced following individual inspections that are captured in the spreadsheet provided, which presumably are more detailed? Could you also explain the methodology of each inspection? Do inspectors complete a form? Could you provide an example? We reiterate our request for training manuals and instructions for FAPU Inspectors.
14. We reiterate our request for training manuals and standard operating procedures of the NSPCA, etc. which could be responsive to at least some of the questions we have raised.

NSPCA Response: "*In reply to paragraphs 4, 11, and 14 – As previously stated, the NSPCA training policy will be attached to this document, which you may then peruse. We reiterate that our standard operating procedures cannot be furnished on the basis that it forms part of our investigative techniques. We can however inform that Inspectors will issue written notices where contraventions are observed. The inspectors would make use of a checklist when inspection these types of facilities*".

ALRSA Query:
8. Can we infer that when nothing is included in the "animal welfare concerns" column of the spreadsheet you provided to us, there were no animal welfare concerns identified relating to that facility?
9. Did the NSPCA attend to any inspections at abattoirs?

NSPCA Response: "*In reply to paragraphs 8 and 9 – The absence of "no welfare concern" shall only mean that at the time of inspection there were no actionable welfare concerns. The NSPCA inspects all facilities including abattoirs. The approach obviously blends the interests of the animals welfare against the need for them to be intensively farmed, and that such farming is conducted in accordance with the provisions of the Animals Protection Act 71 of 1".*

ALRSA Query:
10. Are FAPU Inspectors required to report the number of animals suffering from each of the conditions identified in each facility or just that these issues are present at a facility, without noting the number of animals suffering?

NSPCA Response: "*In reply to paragraph 10 – The Inspector would note the number of animals if it was necessary to do so and was reasonably quantifiable. It depends on the circumstances*".

ALRSA Query:
12. Who (which official) is responsible for preparing the spreadsheet?
13. Please could the NSPCA provide a list of each of the SPCA's and contact details that the NSPCA oversees, with any personal information redacted.

NSPCA Response: "*In reply to paragraph 12 and 13 – The spreadsheet was compiled by the farm animal protection unit collectively and not a single person. Although the contact lists of all the SPCA's in the country can be easily found on our website, we will include a list herein for the sake of completeness*".

ACKNOWLEDGMENTS AND LEGAL

ANIMAL LAW REFORM SOUTH AFRICA

Animal Law Reform South Africa ("**ALRSA**") is South Africa's first and only dedicated animal law non-profit organisation. ALRSA envisages a society whose laws, courts, enforcement agencies and private entities advance the protection and flourishing of humans, non-human animals and the environment, and are held accountable.

ALRSA operates through three key Pillars being: **Animal Flourishing; Social Justice; the Law.**

ALRSA undertakes its work through three main "Mechanisms", namely:

Education & Research; Legislative & Policy Reform; Litigation & Legal services.

Through these Mechanisms, ALRSA aims to contribute to the development of a robust animal law ecosystem in South Africa **which recognises the intrinsic worth of non-human animals as sentient beings.** Our work is grounded in our understanding that it is critical for a context-sensitive approach to be taken to the furtherance of animal protection in South Africa, and that the impact of our work is enhanced through an intersectional understanding of animal flourishing, social justice and environmental protection.

ALRSA is a civil society organisation and registered non-profit company and NPO acting in the public interest.

ACKNOWLEDGEMENTS

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Our work is in part funded by a grant from the Open Wing Alliance ("**OWA**"). Read more on their website: https://openwingalliance.org/.

CO-AUTHORS' DISCLAIMER

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Li-Fen Chien is an Independent Consultant with Animal Law Reform South Africa. She holds a Master of Laws Degree (LL.M) in Environmental Law from the University of the Western Cape. Li-Fen is a non-practising legal practitioner with over 10 years of professional experience, mostly focused on environmental and corporate law. *Primary contributions: Animal Welfare Pillar and Environmental Pillar of Section III of this Initial Report*.

***PLEASE READ OUR LEGAL AND DISCLAIMERS SECTION.**

PLEASE CONSULT OUR GLOSSARY FOR A LIST OF DEFINED TERMS. Unless the context otherwise requires, capitalised terms have the meanings ascribed to them in the Glossary.

Recommended citation: Animal Law Reform South Africa, *Laying Down the Facts* (August 2023). Available at: www.animallawreformsouthafrica.org

This Initial Report and other information relating to the Project are accessible at: www.animallawreformsouthafrica.org

We welcome comments, corrections, suggestions on and proposed amendments to this Initial Report including by the Selected Stakeholders.

We remain committed to engaging in an open and transparent manner in respect of this Initial Report. We reserve the right to amend this Initial Report.

Please email: outreach@animallawreform.org

LEGAL AND DISCLAIMERS

The focus for the Project is on the large scale, industrialised and intensive animal agricultural and production sector, specifically in relation to chickens in the Egg Industry, and where relevant other poultry (including broilers, among others). As such, this Initial Report does not include the informal sector, nor small scale and subsistence farming operations. Where appropriate, examples of other farmed animals, or examples from other jurisdictions have been incorporated, particularly where such information is not readily nor easily available in the South African context.

While government and public bodies have an essential role to play in ensuring the well-being and welfare of animals as well as the protection of the environment and human rights, the focus of this Initial Report is largely on the role of the private sector, specifically Corporations. Aspects of governmental and public body regulation and policies are highlighted and discussed; however, these aspects are not the focal point of this Initial Report.

As an organisation focused primarily on animal law, this is the predominant lens through which this Initial Report has been drafted and should be considered, i.e., the centering of animals, their interests, and their intrinsic worth in the dialogue. While social justice and environmental protection are critical components of the work of ALRSA, more research has been done in these areas as there are already a number of important organisations focusing on these aspects. As such, this Project aims to fill a gap within current research to additionally include animals and their welfare, flourishing and protection into this discussion, and the legal and policy tools which can be used to do this. This Initial Report does not intend to defame or harm the reputation of any company mentioned within.

This Initial Report is as a result of the preliminary research and the review performed by ALRSA and the co-authors and commenter as at the published date. It is published as at 3 August 2023 and is intended to provide only a summary of issues which may be relevant to the topic. It is limited in scope based on various factors. This is a non-exhaustive report intended to stimulate debate, research and law reform in the area of animal law and food systems and requiring further context and information in relation to all of the issues included herein.

ALRSA has focused on selected regulatory aspects and has not considered all legal, economic, political, social, environmental, technological, and other relevant aspects pertinent to some of these issues. All such factors should be considered when pursuing any further work or research.

It is also important to note that the focus of this Initial Report is on industrialised animal agricultural operations and practices occurring therein. Given the various types of systems, these all have different considerations and consequences. Statements, observations and recommendations do not and will not apply to small scale and extensive farming systems nor to other less harmful methods of animal agriculture including egg production and should not be constituted as allegations.

It is explicitly recognised that animal agriculture including egg production is not all conducted in the same manner, and it is dependent on the particular farmer, facility, method of farming, geographic location and various other factors. Therefore, only generalised statements and recommendations are made focusing on harmful potential impacts of industrialised animal agriculture and are representative of what is understood in that context which may not be applicable to or appropriate for all animal agriculture and animal production, nor appropriate to all of the role-players and stakeholders mentioned in this Initial Report. Statements made will not apply to all facilities and stakeholders and should not be construed as such.

This Initial Report does not contain a detailed description of all relevant laws and policies, papers and each document reviewed. Its purpose is to set out those legal issues which ALRSA considers to be material. Reliance should not be

placed solely on any of the summaries contained in this Initial Report, which are not intended to be exhaustive of the provisions of any document or circumstances. ALRSA reserves the right to amend and update this Initial Report including in light of new information and comments received.

Unless otherwise expressly agreed by ALRSA in writing, no person is entitled to rely on this Initial Report and neither ALRSA nor the co-authors or commenter shall have responsibility or liability to any party, whether in contract, delict (including negligence) or otherwise relating hereto.

This Project has been conducted and this Initial Report drafted by a civil society organisation in the public interest. In particular, with regard to the protection of guaranteed constitutional rights in mind and in exercising of ALRSA's freedom of expression as contained in the Constitution of the Republic of South Africa, 1996.

ALRSA is registered and established as a non-profit company and non-profit organisation. It is neither a registered law firm nor a law clinic. This Initial Report does not constitute legal advice.

Any views and opinions expressed in this Initial Report are those of the relevant co-author or commenter and do not necessarily reflect the views or positions of any entities they represent. Such opinions, views, comments, and expressions are protected under the right to freedom of expression as provided for in the Constitution. Neither ALRSA nor the co-authors or commenter accept any liability for any indirect or consequential loss or damage, or for any loss of data, profit, revenue or business (whether direct or indirect) in each case, or reputational damage, however caused, even if foreseeable.

Any resources or referenced materials, sources or sites included in this Initial Report do not constitute endorsement nor do ALRSA and/or the co-authors or commenter accept any responsibility for the content, or the use of same and we shall not be liable for any loss or damage caused or alleged to be caused by or in connection with use of or reliance on any content, goods or services available on or through any other resource.

None of the statements made or information presented in this Initial Report shall be considered as allegations against any person or entity, including the Selected Stakeholders of contravention of or offences in terms of any South African or international law and/or regulation. ALRSA declares that it has no malicious intent to defame, disparage, or harm the reputation of any person or entity, including the Selected Stakeholders, mentioned in this Initial Report. ALRSA aims to promote constructive dialogue and encourage responsible practices concerning animal welfare.

END.

REVISION NOTE I: SEPTEMBER 2024

This revision note documents the updates made to the report titled *Laying Down the Facts: Animal Welfare Standards of the Companies Providing Your Favourite Foods*, originally published by ALRSA in August 2023 ("**Version 1 of the Initial Report**") and republished with these amendments in September 2024, regarding Bidcorp, a Selected Stakeholder featured in the report. The revision aims to uphold transparency and accountability throughout the reporting process of ALRSA's Corporate Accountability Project.

ALRSA'S ENGAGEMENT WITH BIDCORP

On 25 November 2022, ALRSA submitted a request for access to information from Bidcorp under PAIA. On 23 December 2022, Bidcorp requested that ALRSA pay a fee to process the request. In the same correspondence, Bidcorp refused to provide the requested records but stated it would reconsider if additional documents were supplied by ALRSA ("**Bidcorp's Refusal Letter**").

On 13 February 2023, ALRSA responded, urging Bidcorp to reconsider its decision, rebutting the grounds for refusal, and stressing the importance of transparency and accountability when engaging with civil society. ALRSA requested a response by 20 February 2023 on an urgent basis. Bidcorp did not respond by this deadline. The Initial Report was therefore prepared based on the correspondence received from Bidcorp as of 20 February 2023.

Following the publication of the Initial Report in August 2023, ALRSA commenced the second phase of its multi-phase Corporate Accountability Project. As part of this phase, ALRSA submitted a request for access to information from Bidcorp on 4 December 2023. Bidcorp responded on 20 December 2023, alleging that certain statements in the Initial Report regarding Bidcorp were inaccurate and requested written confirmation that the inaccuracies had been corrected.

CORRECTIONS REQUESTED BY BIDCORP

Bidcorp claimed that:

1. Version 1 of the Initial Report incorrectly implied that Bidcorp was not entitled to request a PAIA fee, emphasising that no exemption exists for non-profit organisations to pay a request fee under the law.
2. Version 1 of the Initial Report falsely asserted that Bidcorp did not respond to its request for information after receiving payment from ALRSA, as it submitted a response on 13 March 2023.

ALRSA maintains that the statements on page 236 of Version 1 of the Initial Report, regarding Bidcorp's PAIA fee request and being the only stakeholder to do so, are factually accurate. As such, no amendments are required in this regard.

However, we acknowledge Bidcorp's subsequent, belated correspondence received on 13 March 2023 ("**Bidcorp's Belated Response**"), which granted ALRSA partial access to the requested records. In light of this, and in the spirit of constructive stakeholder engagement, we issue this revision note to reflect the impact of Bidcorp's Belated Response on the Initial Report.

CHANGES MADE TO THE INITIAL REPORT IN RESPECT OF BIDCORP

The following amendments have been made in Version 2 of the Initial Report in respect of Bidcorp:

DESCRIPTION OF AMENDMENT	PAGE NUMBER: VERSION 1 OF THE INITIAL REPORT	PAGE NUMBER: VERSION 2 OF THE INITIAL REPORT
Amended the overall rating for Bidcorp: changed from **Red** to **Orange**.	12	12
Amended the overall rating for Bidcorp: changed from **Red** to **Orange**.	234	234
Removed statement regarding ALRSA's correspondence with Bidcorp post-payment of the PAIA request fee: "*[o]nly for Bidcorp, a major Corporation, to then refuse access to any of the records requested on spurious grounds and with limited justification. Upon ALRSA making this payment, and providing further substantiation for our request, Bidcorp acknowledged receipt of the requested payment and undertook to respond to our request but did not do so beyond this acknowledgement*."	236 & 237	237
Amended ratings for Indicators 1.1, 1.3, 2.1, 2.3 and 2.5 of Rating Criteria 1 and 2: Internal Policies and Annual Reports changed from **Red** to **Green**, **Orange**, **Green**, **Orange**, and **Orange** respectively.	238	238
Amended ratings for Indicators 3.1–3.2 and 4.1 of Rating Criteria 3 and 4: Compliance with Relevant Legislation and Evidence of Adverse Findings changed from all **Red** to all **Green** ratings.	241	241
Amended the colour rating for Indicator 5.3 of Rating Criteria 5 and 6: Evidence of Relevant Commitments and Contents of Public Statement changed from **Green** to **Red**. ***Note** – The Green rating awarded to Bidcorp for	244	244

DESCRIPTION OF AMENDMENT	PAGE NUMBER: VERSION 1 OF THE INITIAL REPORT	PAGE NUMBER: VERSION 2 OF THE INITIAL REPORT
Indicator 5.3 in Version 1 of the Initial Report was incorrectly awarded; it should have been a Red rating.		
Amended the colour rating for Indicator 6.1-6.3 of Rating Criteria 5 and 6: Evidence of Relevant Commitments and Contents of Public Statement changed from **Red** to **Orange**.	244	244
Amended the ratings for Indicators 9.4 and 10.1 of Rating Criteria 9 and 10: Transparency and Cooperation Compliance changed from **Red** to **Orange**.	249	250

REVISION NOTE II: NOVEMBER 2024

This revision note formally documents updates to the report *Laying Down the Facts: Animal Welfare Standards of the Companies Providing Your Favourite Foods*, published by ALRSA in August 2023 ("**Version 1 of the Initial Report**"), and updated in September 2024 ("**Version 2 of the Initial Report**"). The revision addresses references to the "Egg Labelling Regulations" ("**Version 3 of the Initial Report**") that previously stated or implied that indicating production methods (such as "caged," "barn," or "free-range") is mandatory. This update clarifies that including egg production methods on labels is, in fact, optional. Amendments specifically addressing these changes are detailed in the table below.

CHANGES MADE TO THE INITIAL REPORT IN RESPECT OF THE EGG LABELLING REGULATIONS

The following amendments have been made in this Version 3 of the Initial Report in respect of the Egg Labelling Regulations:

PAGE NUMBER: VERSION 2 OF THE INITIAL REPORT	PAGE NUMBER: VERSION 3 OF THE INITIAL REPORT
99-100	99-100
185-186	185-186

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