

AN OPEN LETTER TO THE CONSUMER GOODS COUNCIL OF SOUTH AFRICA:

EGGSPOSING *FOUL PLAY* IN SOUTH AFRICA'S EGG INDUSTRY

27 FEBRUARY 2025

We, the undersigned organisations, represent concerned civil society and non-profit organisations committed to advocating for and advancing issues such as animal welfare and protection, environmental justice, and human rights, including consumer rights, respectively in South Africa.

Today, 27 February 2025, is internationally recognised as “World NGO Day” [Non-Governmental Organisations] which serves as a powerful reminder that civil society and non-profit organisations are fundamental to creating meaningful transformation globally. By promoting the interests of the most vulnerable and marginalised members of our society, our collective efforts demonstrate the essence of advocacy: working tirelessly to create a more just, compassionate, and sustainable world for all.

We write this open letter to the Consumer Goods Council of South Africa (“**CGCSA**”), which represents *consumer goods* entities – to draw attention to actions that we, as civil society, consider to be unfair and unethical to consumers and animals (specifically hens), and in relation to our constitutional rights, *foul play*. In the pursuit of ensuring transparency, accountability, and effective engagement going forward, we are sharing our concerns and requests.

Over the past few years, a number of the organisations listed as well as others acting in the public interest, have engaged, or attempted to engage, with role players within the South African egg industry including members of the CGCSA, regarding egg production practices and supply chain sourcing. Current industry practices include the use of cruel battery cages for egg laying hens. Battery cages confine hens to less than an A4 page of space each for the vast majority of their lives, with inadequate space for natural behaviours, exposing them to stress and health hazards. Currently, over 27 million hens produce eggs in South Africa and approximately 95% of them are kept in cages, impacting well over 25.5 million layer hens every year.

Our efforts to engage role players are accordingly aimed at improving the lives of animals, specifically hens in these cruel cages. Further, they seek to promote ethical and sustainable corporate practices, transparency and accountability for industry role players, as well as access to safe, nutritious, and affordable food for members of the public. Our engagements are rooted in seeking to uphold the protection of the constitutionally entrenched environmental rights, which include animal welfare, as well as other important rights for society, such as public health, access to information, freedom of expression, freedom of belief, and consumer protection, including freedom of choice.

Increasingly, our efforts are being met with opposition, in particular, obstruction and hostility from the CGCSA, revealing a need to *eggspose* these issues in the public domain and call for change in industry's practices

Specifically, we refer to statements made in a letter from the CGCSA to Southern African Faith Communities' Environment Institute (“**SAFCEI**”), titled ‘*Addressing Caged Egg Procurement Concerns*’ dated 11 March 2024, which used strong language with statements such as that SAFCEI is “*harassing and coercing*” [CGCSA] *members* and threatening legal actions because they described SAFCEI's engagement as “*tactics which amount to coercion and borders on encouraging uncompetitive behaviour.*” Law firm Cullinan & Associates sent a response letter on behalf of SAFCEI due to their threatening language and false claims, which has to date gone unanswered.

We also refer to statements made in a separate letter from the CGCSA to some or all of its approximately 12,000 members titled ‘*Animal Welfare Calls for a Ban of Cage Egg Production in South Africa*’, dated 9 May 2023. Attached to this letter was a short and unsubstantiated summary of a secret, poultry industry-funded study which allegedly found that South Africa is not ready to transition to cage-free egg production. The CGCSA urged its members to share this summary with “*lobby groups coercing them to make / adopt this change*”.

In the interests of transparency, all letters have been made publicly accessible on www.eggposure.org with personal information redacted.

OUR KEY CONCERNS

We believe statements and actions by CGCSA can be taken as an effort to suppress and harm civil society and NGO engagement. Such statements and actions could have the following impacts:

1. **Reducing consumer awareness and rights** including informed choice;
2. **Silencing and stultifying** of public interest and animal welfare and protection campaigns;
3. **Promoting a lack of transparency and accountability** in the egg industry and food system;
4. **Harming animal welfare and protection efforts**, and helping to perpetuate problematic, unethical and unsustainable systems;
5. **Discouraging effective engagement** with role players in the egg industry and Civil Society Organisations due to the protectionist stance by CGCSA;
6. **Constituting corporate bullying, undue influence** and potential collusion by a powerful industry representative body;
7. **Creating confusion and inconsistency** regarding the role and mandate of the CGCSA; and
8. **Diminishing constitutional rights and values**, which are accordingly contrary to the public interest.

OUR REQUESTS

In light of the above, we call upon the CGCSA to take the following actions in accordance with its byline, "Integrity. Excellence. Accountability.":

1. **Refrain from silencing and intimidatory tactics** towards CSOs/NGOs including legally threatening letters and methods such as strategic litigation against public participation;
2. **Promote transparency**, including on important consumer research and data and providing withheld studies by government and industry bodies such as the study conducted by the National Agricultural Marketing Council ("**NAMC**") on the purported costs of going cage-free ("**NAMC Study**");
3. **Incorporate animal welfare** within CGCSA's matters of concern and offerings to members, including as appropriate, the development of best practice guideline and/or standards;
4. **Promote consumer and constitutional rights and values** including those which assist with informed choice and promote the protection of the environment;
5. **Foster accountability** by retracting problematic statements and promoting open dialogue;
6. **Refrain from engaging in potentially collusive practices** by acting independently in the best interests of members without undue influence from other industry bodies; and
7. **Engage effectively** with the public and concerned organisations and encourage effective engagement by members, including through appropriate multi-stakeholder fora.

We look forward to receiving a response from the CGCSA to work towards a more just, equitable, accountable and sustainable food system in South Africa.

Note: A longer brief on the issues can be found [here](#) and below in **Appendix I**. The brief outlines in more detail the above issues and is non-exhaustive. We reserve the right to expand on these issues further and take appropriate action.

THE UNDERSIGNED



NATIONAL YOUTH NETWORK ON CLIMATE CHANGE



APPENDIX I: FULL LETTER

To: GS1 South Africa Trading as the Consumer Goods Council of South Africa

OPEN LETTER TO THE CONSUMER GOODS COUNCIL OF SOUTH AFRICA: EGGSPISING FOUL PLAY IN SOUTH AFRICA'S EGG INDUSTRY

We, the undersigned organisations, represent concerned civil society and non-profit organisations committed to advocating for and advancing issues such as animal welfare and protection, environmental justice, and human rights, including consumer rights, respectively in South Africa. We write this open letter to the Consumer Goods Council of South Africa (“CGCSA”), which represents consumer goods entities – to draw attention to actions that we, as civil society, consider to be unfair and unethical to consumers and animals (specifically hens), and in relation to our constitutional rights, foul play. In the pursuit of ensuring transparency, accountability, and effective engagement going forward, we are sharing our concerns and requests.

I. THE CGCSA, ITS MANDATE AND ROLE

Below we highlight key issues with the CGCSA and its mandate and role, which we believe to be potentially inconsistent and/or unclear. Additional examples are expanded on in subsequent parts.

Reach

The CGCSA is a non-profit organisation representing over 12,000 member companies in the consumer goods, retail, and services sectors in South Africa.¹ The CGCSA represents corporations and businesses operating within these sectors, including the egg industry.

Values and Mission

The CGCSA's byline is “*Integrity. Excellence. Accountability.*”² According to its website, the mission of the CGCSA is to help members trade better and build sustainable business through:

- *Advocacy, lobbying, engagement and collaboration on non-competitive industry matters;*
- *Sharing best practice standards;*
- *Focused regulatory and advisory services;*
- *Providing access to our hub of valuable industry insights; and*
- *Ensuring alignment with global Sustainable Development Goals and the National Development Plan.*³ (emphasis added).

Representative of the Egg Industry

According to its website, statutory board members of CGCSA are leaders of various corporations, including but not limited to Pick n Pay, Rainbow Chicken, Tiger Brands, Shoprite, Unilever, Spar, Famous Brands, and many others,⁴ all of which are major role players in the egg industry in South Africa. Many of these entities have been engaged directly by members of civil society in efforts to reduce caging of hens as an industry practice.

The CGCSA is listed as a stakeholder in the Poultry Sector Master Plan presentation to the Portfolio Committee on Agriculture,⁵ confirming it as a role player in the poultry industry. Furthermore, in the CGCSA letter to its members ‘*Animal Welfare Calls for a Ban of Cage Egg Production in South Africa*’, dated 9 May 2023 (the “**CGCSA Member Letter**”) and CGCSA SAFCEI Letter to SAFCEI, ‘*Addressing Caged Egg Procurement Concerns*’ dated 11 March 2024 (the “**CGCSA SAFCEI Letter**”), the CGCSA has itself confirmed its role as a representative of role players in the South African egg industry.

Role in Regulatory Matters and Stakeholder Engagement

¹ CGCSA LinkedIn <https://www.linkedin.com/company/consumer-goods-council-of-south-africa/> (accessed on 7 February 2025).

² Consumer Goods Council of South Africa (“CGCSA”) <https://www.cgcsa.co.za/> (accessed on 7 February 2025).

³ CGCSA <https://www.cgcsa.co.za/who-we-are/> (accessed on 7 February 2025).

⁴ Ibid.

⁵ Parliamentary Monitoring Group

https://static.pmg.org.za/240903dtic_presentation_on_Poultry_Master_Plan_03_Sept_2024.pdf (accessed on 7 February 2025).

The mandate of the CGCSA is to provide various services that, among others, include product labelling advice, regulatory advice and advocacy, and engagement with government departments and regulatory agencies.⁶ On its website, its service offerings include 'Legal Regulatory & Stakeholder Engagement', or "LRSE".

*"The role of the LRSE department is to shape the **legal, regulatory and policy environment through advocacy and lobbying** of key decision-makers to enable our members to trade better. We build and maintain strategic relationships with key and identified stakeholders to create an enabling environment for the viability and sustainability of the sector and our member organisations. We aim to create a supportive FMCG [Fast-Moving Consumer Goods] ecosystem, advocating for our members as a united voice of the industry on non-competitive matters."⁷ (emphasis added)*

"LRSE performs the following tasks:

- Anticipates and manages **policy and regulatory risks** through a risk register approved by the Policy and Advisory Committee and the CGCSA statutory board.*
- **Facilitate conversations** aimed at influencing decisions, change perceptions and behaviour of government, the media and other **key stakeholders**, to **drive innovation** and support the retail industry.*
- Mitigation of **policy/regulatory risks** on behalf of members and provides written submissions to influence outcomes."⁸ (emphasis added)*

The adversarial, legally worded CGCSA SAFCEI Letter, indicates that *"[t]he CGCSA's main role is to **advocate and lobby** on behalf of our members with relevant government departments, agencies and important structures such as local governments on policy and **regulatory matters** that affect our sector in particular, and the wider economy in general."* (emphasis added)

In the CGCSA Member Letter, however, it states: *"It is our considered view that calls for adopting cage free egg production is a **regulatory issue** which should therefore be directed to the **relevant authorities** who regulate egg production in the country."* (emphasis added)

Based on the above, there appears to be some inconsistency and/or hedging in the statements by the CGCSA: either the CGCSA concerns itself with regulatory matters relating to its members, or it does not – *and* – either it views caged eggs production as a regulatory issue, or it does not. If caged egg production is a regulatory issue (as stated by the CGCSA) and the CGCSA concerns itself with regulatory issues of its members (including facilitating conversations, engaging with key role players), then the CGCSA could (and should) engage on important regulatory-type matters with civil society on behalf of its members. If the CGCSA does not concern itself with regulatory issues, but views adopting cage-free production as a regulatory issue, then it is unclear why it is making statements to its members on this issue of caged egg production at all, and sending letters on their behalf on this matter.

Secondly, while the CGCSA appears to be committed to engaging with government, law enforcement, and industry regulatory bodies, it seems not to wish to prioritise engagement with civil society and consumers. Yet, consumers and civil society organisations acting on their behalf are fundamental to the industries represented by the CGCSA; without consumer support, these industries would not exist, never mind thrive. Therefore, neither consumers nor civil society organisations should be excluded from conversations and decision-making processes.

Thirdly, in the absence of specific regulation to this effect, any decision by an individual corporation whether or not to utilise cages within its own supply chain is an independent business / corporate policy issue. In such an instance, it is unnecessary and undue influence for the CGCSA to state that civil society mobilisation in respect of animal welfare and human rights, is coercive; to indicate that regulatory bodies must attend to this; and/or to direct or unduly influence how members should deal with such efforts.

Fourthly, methods of production of products (including the use of certain systems such as cages) are relevant to standards and best practices. As the CGCSA concerns itself with both the issue of standards and best practices, the CGCSA could utilise its role to ensure best practices relating to egg production and practices occurring within the egg value and supply chain. This is confirmed by the CGCSA statement on its website that: *"At the core of CGCSA's purpose is our vision to become the leading Consumer Goods industry platform for advocacy, collaboration and **best practice**"*

⁶ CGCSA <https://www.cgcsa.co.za/who-we-are/> (accessed on 7 February 2025).

⁷ CGCSA <https://www.cgcsa.co.za/what-we-do/> (accessed on 7 February 2025).

⁸ Ibid.

in South Africa and across Africa” (emphasis added). Rather, it has taken an obstructive approach and excluded certain methods of production.

In summary

As a representative body for the egg and poultry industry, including one which engages on regulatory and policy matters, the CGCSA plays a crucial role in corporate practices relating to production and consumer product supply chains, particularly within the egg industry. The issue of caged egg production accordingly intersects with various areas on which the CGCSA directly engages. The CGCSA (as well as related entity, the CGCSA Foundation) have shown a willingness to engage constructively on other issues, and have established platforms for facilitating effective discussions and collaborations. Yet, on this particular issue, they have taken a hard stance not only to engage negatively with civil society, but to discourage their members from engaging independently, while making threats against civil society if they pursue engagement.

II. REDUCING CONSUMER AWARENESS AND INFORMED CHOICE

Consumers have a right to make informed decisions about the products they purchase and consume. In accordance with a growing international trend,⁹ consumers in South Africa reportedly care about animal welfare when purchasing food.¹⁰ The lack of transparency in the egg industry, particularly regarding production methods and animal welfare standards, directly infringes on this right, and other rights provided in the Consumer Protection Act 68 of 2008 (“CPA”).¹¹ Without access to accurate information, consumers are unable to make choices that align with their values, health preferences, and ethical considerations.

The Supreme Court of Appeal has noted that:

*“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.”*¹² (emphasis added)

Moreover, on appeal to the Constitutional Court, the court recognised “the ongoing debate on animal rights and the importance of breathing life into public conversation to minimise animal suffering,” reinforcing the idea that discussions around animal protection are vital for societal progress.¹³ The Constitutional Court judgment highlights the importance of public discourse on ethical practices, as disclosing the truth about the cruel treatment of animals, information that is both accessible to and of interest to the public, is essential for raising awareness and fostering meaningful debate.

The lack of transparency in the South African egg industry, which will be elaborated on below, has the potential to undermine consumer rights protected by the CPA in several ways. For instance, it violates the right to information.¹⁴ By withholding critical details about production practices and environmental impacts, consumers are uninformed about the

⁹ National Sanitation Foundation (“NSF”) <https://www.nsf.org/news/nsf-reveals-americans-say-animal-wellness-important-rolepurchasing-decisions> (accessed on 7 February 2025) and *Scrambling for the Truth: Corporate Hypocrisy and Non-Transparency Relating to Environmental and Consumer Rights in the Egg Industry in South Africa* (September 2024) (“Supplementary Report”), accessible at: <https://www.eggssouthafrica.org/>.

¹⁰ NSF <https://www.nsf.org/za/en/news/new-research-finds-84-of-south-africans-demand-animal-wellness-from-food-companies> (accessed on 7 February 2025) and *Scrambling for the Truth: Corporate Hypocrisy and Non-Transparency Relating to Environmental and Consumer Rights in the Egg Industry in South Africa* (September 2024) (“Supplementary Report”), accessible at: <https://www.eggssouthafrica.org/>.

¹¹ The Consumer Protection Act 68 of 2008 (“CPA”), accessible at: https://www.gov.za/sites/default/files/32186_467.pdf.

¹² *Bool Smuts and Another v Herman Botha* (887/20) [2022] ZASCA 3 (10 January 2022), accessible at: <https://www.saflii.org/za/cases/ZASCA/2022/3.html>.

¹³ *Botha v Smuts and Another (CCT 40/22) [2024] ZACC 22; 2024 (12) BCLR 1477 (CC) (9 October 2024)*, accessible at: <https://www.saflii.org/za/cases/ZACC/2024/22.html>.

¹⁴ Section 22 of the CPA. This section requires that consumers must be provided with information that is appropriate to their transaction, ensuring that they can make informed decisions about the products they purchase.

realities of their food. This absence of information obstructs the right to choose,¹⁵ as consumers are unable to make informed decisions that align with their ethical values regarding animal welfare and sustainability. Furthermore, consumers may not receive fair value¹⁶ for their purchases if the true costs of unethical practices are not disclosed, particularly in light of the externalities not factored into egg production. Overall, this lack of transparency can limit consumers' ability to advocate for better practices,¹⁷ thereby diminishing their fundamental rights in the marketplace.

As an industry representative body, the CGCSA has certain duties not to perpetuate harms against consumers. In addition, in advocating for the sustainability of its own members involved in the egg industry, the CGCSA should advocate for practices which protect and promote consumer rights, or risk later challenges, which implicate members' triple bottom line.¹⁸

III. SILENCING CIVIL SOCIETY AND PROBLEMATIC TACTICS

By publishing this open letter on World NGO Day, we honour the global recognition of civil society organisations' vital role in advancing social justice and ethical practices. Through advocacy for human and consumer rights and the protection of vulnerable interests such as animal welfare, organisations like ours showcase the transformative power of principled and collective action. It is important for the CGCSA to understand that our voices matter and should not and will not be silenced.

In the CGCSA SAFCEI Letter, the CGCSA makes several statements which can be viewed as seeking to stultify or silence further attempts by SAFCEI to engage with and campaign against its members. The letter uses intimidating speech that makes threats of legal action.

The CGCSA states "*We therefore, urge SAFCEI [to] cease from harassing and coercing our members to reduce the procurement of caged eggs. We emphasize the importance of collaboration, dialogue, and systemic change in addressing these complex issues.*" (emphasis added). First and foremost, attempting to engage with corporations in good faith about their practices and conducting public awareness and public action campaigns should not be mislabelled as harassment or coercion, particularly when these same issues have been raised globally and alternative systems are used in many parts of the world.¹⁹ Civil society organisations are well within their rights to conduct such efforts, in alignment with their organisational objectives, as well as in light of constitutional values and rights – including the right to freedom of expression enshrined in the Constitution of the Republic of South Africa, 1996 ("**Constitution**"). This is particularly important where efforts have continued over years, in some cases decades, without any success.

The CGCSA further goes on to state "*Any further attempts to coerce or pressure our members will be met with appropriate action, including legal action and /or reporting the matter to the Competition Commission*" and "*We trust that SAFCEI will respect our position and desist from further interference in the affairs of our members for the reasons already mentioned above.*" (emphasis added). These statements constitute a direct threat of potential litigation unless a civil society organisation ceases campaigns and efforts. In our view, if such litigation were to be instituted, it could constitute what is referred to as Strategic Litigation Against Public Participation or "**SLAPP**". SLAPPs have been utilised as a weapon by corporations or industry bodies to silence criticism from activists, journalists, and civil society organisations.²⁰ As civil society organisations with limited resources, we should not be fearful of speaking out in good faith against harmful behaviour of large corporations, industry bodies and other role players in any industry, including the egg industry, for attempting to engage on matters in the public interest, and which we are trying to hold accountable.

CGCSA should note that in recent years, our courts have shown that they do not take lightly to SLAPPs. The Constitutional Court has recognised SLAPPs as an abuse of process aimed at silencing dissenting voices and has

¹⁵ Section 13 of the CPA. This section promotes consumer choice by prohibiting misleading advertising and deceptive marketing practices, thus allowing consumers to make informed decisions based on accurate information about products.

¹⁶ Section 41 of the CPA. This section prohibits false or misleading representations regarding the price or value of goods and services, ensuring that consumers receive fair value for their purchases.

¹⁷ Section 4 of the CPA. This section focuses on the promotion of consumer rights and responsibilities, ensuring that consumers are empowered to advocate for their rights and hold suppliers accountable.

¹⁸ *Scrambling for the Truth: Corporate Hypocrisy and Non-Transparency Relating to Environmental and Consumer Rights in the Egg Industry in South Africa* (September 2024) ("Supplementary Report"), accessible at: <https://www.eggssouthafrica.org/>.

¹⁹ The Humane League <https://thehumaneleague.org/article/cage-free-progress-worldwide> (accessed on 7 February 2025).

²⁰ GNHRE <https://gnhre.org/?p=12961> (accessed on 7 February 2025).

affirmed the validity of a legal defence against such tactics.²¹ Industry role players should be mindful of this legal precedent when engaging with civil society, ensuring that open dialogue and accountability are prioritised over intimidation.

As civil society, we take such threats seriously and the CGCSA would be well-advised to reconsider this counterproductive approach to our advocacy efforts.

IV. DISCOURAGING EFFECTIVE ENGAGEMENT

In addition to seeking to silence civil society organisations and discourage them from engaging with role players in the egg industry, including corporations which are CGCSA members – the CGCSA has encouraged its own members not to engage effectively when approached by civil society organisations.

In the CGCSA Member Letter, the CGCSA states: “*In 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 [the South African Poultry Association]) with lobby groups coercing them to make/adopt this change.*”²² (emphasis added). Again, we call out the use of accusatory words such as ‘coerce’ as a descriptor of engagement and campaigns. This is not an accurate depiction of corporate engagement in the public interest by non-profit and civil society organisations. Secondly, this approach seems to indicate that the NAMC executive summary, which will be discussed in more detail below, should serve as a resolution to a request for engagement. While we set out further below various issues with the NAMC Study, every individual corporation has its own economic, business and supply chain realities. Sharing an executive summary relating to an entire industry does not implicate the individual realities of each corporation. The NAMC Study should not serve as a blanket denial for engagement by hundreds of different entities, yet this appears to be the direction given by the CGCSA to its members. The wording “*member companies not ready to economically ban cage eggs as part of their business*” does little to cure this blanket type of denial. Further, it is notable that while “*...members are urged to continue to work with suppliers to improve the welfare of caged chickens for egg production in line with local and global standards*” (emphasis added), there is no similar encouragement for working with civil society organisations.

The CGCSA itself emphasises the need for dialogue, yet its statements in the CGCSA Member Letter undermine efforts of engagement between its individual members and civil society organisations and create an industry approach that inhibits rather than facilitates meaningful change.

V. CORPORATE BULLYING, UNDUE INFLUENCE, AND POTENTIAL COLLUSION

The CGCSA SAFCEI Letter contains unsubstantiated allegations of (SAFCEI's) solicitations in potential contravention of the Competition Act 89 of 1998,²³ (“**Competition Act**”). This approach is ironic, given that efforts by the CGCSA can be viewed as constituting corporate bullying, exercising undue influence and encouraging potential collusion by an industry representative body. Further, the CGCSA itself indicates that it does “[a]dvocacy, lobbying, engagement and collaboration on non-competitive industry matters” (emphasis added).

In the CGCSA SAFCEI letter, the CGCSA indicates that “*SAFCEI conduct and actions may in our view solicit our members to contravene the provisions of competition laws particularly Section 8(d) of the Competition Act, 1998 which prohibits abuse of dominance.*” As indicated, section 8(d) prohibits a dominant firm from engaging in the specific “exclusionary acts” specified in that subsection and does not apply to SAFCEI (nor civil society more generally), since SAFCEI is not a “dominant firm” as defined in the Competition Act.

Furthermore, the CGCSA SAFCEI Letter notes that: “*While we acknowledge SAFCEI's concerns regarding animal welfare and their desire to see the industry transition away from caged egg production, we must emphasise that our member companies cannot be singled out as the sole pilots or targets for such initiatives. The transition away from caged egg production requires a systemic change across the entire supply chain, from farm to fork, and cannot be achieved through coercive tactics targeting our members.*” and “*We would like to place it on record that this matter has already been addressed in previous engagements with SAFCEI. Responses were provided to SAFCEI's*

²¹ *Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others* (CCT 66/21) [2022] ZACC 37; 2023 (2) SA 68 (CC); 2023 (7) BCLR 779 (CC) (14 November 2022), accessible at: <https://www.saflii.org/za/cases/ZACC/2022/37.html> and *Mineral Sands Resources (Pty) Ltd and Another v Reddell and Others; Mineral Commodities Limited and Another v Dlamini and Another; Mineral Commodities Limited and Another v Clarke* (7595/2017; 14658/2016; 12543/2016) [2021] ZAWCHC 22; [2021] 2 All SA 183 (WCC); 2021 (4) SA 268 (WCC) (9 February 2021), accessible at: <https://www.saflii.org/za/cases/ZAWCHC/2021/22.html>.

²² CGCSA statement of May 2023 (Annexure “II”).

²³ The Competition Act 89 of 1998, accessible at: <https://www.gov.za/documents/competition-act>.

concerns, and it was made clear that any significant changes to production systems would require careful consideration and **collaboration across the industry**” (emphasis added) and “*We are concerned that despite the engagements and clarity provided regarding the need to involve the **entire value chain**, SAFCEI continues with its tactics which amount to coercion and borders on encouraging uncompetitive behaviour.*” (emphasis added)

As is illustrated above, the CGCSA appears to indicate that an individual corporation’s decision in favour of less harmful animal practices within its own supply chain is something that can only be done through collaboration across the industry. Yet, at least one of CGCSA’s retailer members, Woolworths, (with a representative on the CGCSA Statutory Board) has made the decision not to supply eggs from hens in cages – illustrating that it *is completely* possible for a *single* CGCSA member to make a decision to go cage-free *without* an entire industry wide commitment. In a similar vein, other role players in the egg industry, including but not limited to restaurants in South Africa have, as individual, sovereign, corporate entities made a decision to go cage-free *without* an industry wide commitment. Furthermore, across the world, nearly 1,200 food companies, including restaurants, retailers, and manufacturers²⁴ have made commitments to go cage-free. Such commitments would not have been possible if corporations were adopting the same limiting and incorrect approach of the CGCSA – i.e. that only one can do it, if all do it. Rather, this approach is indicative of a much larger issue – which is potentially in contravention of competition law.

On 26 November 2024, stakeholders in the egg supply chain, including industry representatives such as the South African Poultry Association (“**SAPA**”) and CGCSA, government and statutory representatives such as the National Agricultural Marketing Council (“**NAMC**”) and the Department of Agriculture, Land Reform and Rural Development (“**DALRRD**”), as well as civil society organisations, were invited by certain undersigned organisations to attend a Cage-Free and Farmed Animal Summit in Cape Town. The summit aimed to address challenges within the industry and explore potential collaborative solutions. Despite the importance of the dialogue, the CGCSA declined to attend, and, despite its previous attempts to engage on egg and poultry related matters with their members as aforementioned, the CGCSA indicated that the poultry industry was “*key more than the market in this dialogue*”.

The CGCSA’s actions to discourage civil society engagement with its members and failure itself to engage can be seen as a form of undue obstruction that poses a threat to the integrity of fair competition required by law in South Africa. By labelling the advocacy efforts of civil society organisations as “*coercive*” and threatening legal action against them, the CGCSA creates an environment where open dialogue is stifled, and ethical practices are undermined. These actions serve to maintain the *status quo* - which is harmful to the growth and development of the industry as well as public interest. This behaviour also runs counter to the objectives of the Competition Act, such as the promotion of fair competition and prevention of anti-competitive conduct.

The Constitutional Court has previously emphasised the importance of protecting public interest and fostering transparency in cases such as *Competition Commission v Pickfords Removals (Pty) Ltd*,²⁵ highlighting that collaboration between industry stakeholders and civil society is essential for maintaining a competitive marketplace. Therefore, the CGCSA’s approach seems not only to reflect a disregard for ethical advocacy but also jeopardises compliance with competition law principles in South Africa.

Furthermore, according to a working paper of the Competition Commission,²⁶ emerging farmers, including free-range and cage-free farmers, struggle to gain access to shelf space in retail markets.²⁷ Larger retailers often require long-term supply commitments and certifications that impose additional financial burdens on smaller producers, further limiting their ability to scale up operations.²⁸ The lack of support for emerging and small-scale farmers undermines their

²⁴ The Humane League <https://thehumaneleague.org/article/owa-fulfillment-release> (accessed on 7 February 2025).

²⁵ *Competition Commission of South Africa v Pickfords Removals SA (Pty) Limited* (CCT123/19) [2020] ZACC 14; 2020 (10) BCLR 1204 (CC); 2021 (3) SA 1 (CC); [2020] 1 CPLR 1 (CC) (24 June 2020), accessible at: <https://www.saflii.org/za/cases/ZACC/2020/14.html>.

²⁶ According to its website, “*The Competition Commission is a statutory body constituted in terms of the Competition Act, No 89 of 1998 by the Government of South Africa empowered to investigate, control and evaluate restrictive business practices, abuse of dominant positions and mergers in order to achieve equity and efficiency in the South African economy.*” Competition Commission <https://www.compcom.co.za/> (accessed on 7 February 2025).

²⁷ Mthombeni, S et al (2019) *An analysis of the barriers to entry and expansion limiting and preventing access to markets for emerging farmers*. Working Paper CC2019/03. Pretoria, South Africa: Competition Commission of South Africa, accessible at: <https://www.compcom.co.za/wp-content/uploads/2019/10/CC-201903-Mtombeni-S.-Bove-D.-Thibane-T.-Makgabo-B-An-analysis-of-the-barriers-to-entry-and-expansion-limiting-and-preventing-access-to-markets-for-emerging-farmer.pdf>.

²⁸ Ibid.

potential growth, and hinders the overall progress towards more ethical and sustainable agricultural practices in South Africa.

The CGCSA's approach also potentially disregards the aims of the Egg Master Plan, and the recently launched "first Egg Master Plan project", which aims to, among other goals, "*help farmers and other small-scale egg producers in the region...to supply eggs to formal markets, enhancing their market access*".²⁹

The CGCSA's inference that an entire industry must adopt changes simultaneously before any individual entity can do so may inadvertently foster collusion among its members. It also creates a space where individual corporations can hide behind the 'safe' umbrella of the CGCSA as an industry mouthpiece, while escaping individual scrutiny and responsibility for their own supply chain and decision-making. This creates a problematic environment where role players, including retailers, hesitate to pursue cage-free production due to fears of losing market share, thereby limiting consumer choice, stifling competition and preventing change.

The public has a vested interest in ensuring that the egg market remains competitive, innovative, and responsive to consumer demands for more ethical products. Proper enforcement of competition law in this sector is crucial for maintaining market integrity, fostering innovation, and ultimately benefiting consumers through fairer pricing and greater product diversity.

Instead of discouraging efforts for change, the CGCSA should ensure it is not encouraging, enabling or facilitating collusive behaviour, including among its members. A balance must be established where individual corporations can engage in discussions and engagements with civil society organisations to make changes and decisions relating to their own supply chain, while industry wide efforts can be explored in conjunction with other relevant role players. By fostering a platform that allows for this differentiated approach, the CGCSA would be more aligned with its mandate and role, while allowing for corporate sovereignty.

VI. LACK OF TRANSPARENCY AND ACCOUNTABILITY

There is a pervasive lack of transparency and accountability in the egg industry in South Africa.³⁰ These issues undermine various constitutional rights, as well as consumer rights. The CGCSA has exacerbated this through statements made in the CGCSA Member Letter, specifically as it pertains to the NAMC Study.

As the CGCSA is aware, SAPA, a mouthpiece of the poultry industry, commissioned the NAMC to conduct a study with the primary aim of assessing the viability of the South African egg industry if a policy is introduced to change the current cage production system to a cage-free system.

The CGCSA Member Letter, which includes a 6 page executive summary of the NAMC Study, states that "*Clearly, from the foregoing and other findings in the report, the current economic situation does not make it ideal to ban or switch to cage free eggs*" and in addition, encourages CGCSA members to share it when approached by "*lobby groups coercing them to make/adopt this change*" (emphasis added). To our knowledge, the CGCSA did not share, and to date, has not shared, the entirety of the NAMC Study with its members. The NAMC Study is not accessible to the public, and various civil society organisations have been attempting to access the study for over two years, since January 2023, without success.³¹ Despite numerous requests to obtain this study made by civil society organisations from the NAMC, SAPA, the CGCSA and the DALRRD, under the Promotion of Access to Information Act 2 of 2000 ("**PAIA**"),³² these entities have refused to grant access to the full NAMC Study, or have simply ignored the requests.

While the CGCSA did not, to our knowledge, participate in the development of the NAMC Study, the definition of a record under PAIA encompasses any recorded information that is in the possession (emphasis added) or under the control of a public or private body.³³ Given that the CGCSA has sent a letter to its members regarding the NAMC Study, the full study should be in its possession.

²⁹ Engineering News <https://www.engineeringnews.co.za/article/first-egg-master-plan-project-hatched-in-gauteng-west-rand-2024-09-27#> (accessed on 7 February 2025).

³⁰ *Laying Down the Facts: Animal Welfare Standards of the Companies Providing Your Favourite Foods* (August 2023, updated September 2024) ("Initial Report") and "*Scrambling for the Truth: Corporate Hypocrisy and Non-Transparency Relating to Environmental and Consumer Rights in the Egg Industry in South Africa*" (September 2024), ("Supplementary Report"), accessible at: <https://www.eggssouthafrica.org/>.

³¹ Including Animal Law Reform South Africa; Humane Society International Africa; and FOUR PAWS in South Africa.

³² The Promotion of Access to Information Act 2 of 2000 ("**PAIA**") accessible at: https://www.gov.za/sites/default/files/gcis_document/201409/a2-000.pdf.

³³ Section 1 of PAIA.

Without access to the full study, it is not possible to interrogate the findings including the methodology and research utilised. The executive summary of the NAMC Study contains inaccurate, vague, and inconsistent statements, and no references are included. For one, free-range is not the same as cage-free, yet these terms are utilised loosely throughout. In addition, the first page of the executive summary indicates that consumers in the USA are not willing to pay for the *“much more expensive free range eggs”* yet studies indicate otherwise.³⁴ Furthermore, the executive summary contains questions rather than answers in several instances. For example, in relation to water supply the following point is made: *“Water supply: The quality and the availability of water plays an important role. How do local authorities comply with this requirement, and can they be held accountable for the neglecting of South Africa’s water resources? The quality and availability of water are important to the industry”*. This is not conclusive, but rather a vague question. Another example is in relation to feed: *“The quality of feed: Feed plays a vital role in the industry. Although regulations exist on the quality of feed, the question remains whether the enforcement of the regulations is effective”*, which once again, appears to pose a question rather than a conclusive finding.

The study further highlights that *“The different pricing strategies of the different retailers are seen as a constraining factor”* indicating that retailers have an important role in the economic feasibility of transitioning, and particularly in light of the huge mark up by retailers on eggs. It is notable that retailers add **over 100%** mark up on egg sales.³⁵

While this is not the platform to probe the NAMC Study, the fact is that the study cannot be interrogated at all, because it is not available. The statements made by CGCSA in relation to the NAMC Study, further entrench it as a leading resource on the matter, perpetuating the issues raised by it. The inaccessibility of the NAMC Study, which ostensibly found that South Africa is not able to transition to cage-free egg production, is a major concern for civil society and members of the public, as its impact directly affects consumers.

Without public access to the NAMC Study, consumers are left in the dark, unable to critically engage with the study’s findings or hold the industry accountable for its practices, further entrenching the lack of transparency in the egg industry. This issue is particularly concerning given that SAPA receives funding from statutory levies on eggs paid by consumers, which are intended to support public initiatives like consumer education and research.³⁶

The NAMC Study’s inaccessibility also suggests a form of knowledge commodification, where research outcomes are available only to those who fund it,³⁷ exacerbating systemic inequities and reinforcing the opaque nature of South Africa’s food system. Furthermore, there is apprehension that the influence of funding sources may shape the direction and outcomes of such studies, potentially compromising their integrity and objectivity.³⁸

Refusal by egg industry role players to release the NAMC Study raises concerns about purported intellectual property and commercial interest claims being placed above public interest, and the protection of constitutional rights, and leaves the impression that the industry is trying to push its own agenda and narrative. We believe that transparency regarding this study is essential for informed decision-making among consumers and stakeholders alike. It is notable that over 4,000 members of the public have signed a petition calling for the public release of the NAMC Study.³⁹

The CGCSA states that it is *“uniquely placed to give members confidence in value chain transparency”* (emphasis added), yet in this instance, it has perpetuated the harm of a secret study. Now, role players will, on the direction of the CGCSA, repeat the process of sending a vague, unsubstantiated, unreferenced executive summary of a confidential

³⁴ Watagnet <https://www.watagnet.com/egg/egg-production/article/15525182/cage-free-eggs-slow-growth-broilers-will-consumers-pay-watagnet> (accessed on 7 February 2025).

³⁵ SA Poultry Powerpoint Presentation <https://www.sapoultry.co.za/wp-content/uploads/2023/06/7-Dr-Abongile-Balarane-SAPA-presentation-2023.pdf> (accessed on 7 February 2025).

³⁶ These levies are prescribed by the Marketing of Agricultural Products Act 47 of 1996 Regulations: 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, accessible at: https://www.gov.za/sites/default/files/gcis_document/202201/45771gon1679.pdf.

³⁷ For example, the University of the Witwatersrand reported that “Other research found that of 168 industry-funded studies, 156 (93%) showed biased results, all in favour of industry sponsors”. See University of Witwatersrand <https://www.wits.ac.za/news/latest-news/opinion/2024/2024-03/the-problem-with-big-companies-funding-health-research-in-sa.html#> (accessed on 7 February 2025).

³⁸ For example, the University of the Witwatersrand reported that “Other research found that of 168 industry-funded studies, 156 (93%) showed biased results, all in favour of industry sponsors”. See University of Witwatersrand <https://www.wits.ac.za/news/latest-news/opinion/2024/2024-03/the-problem-with-big-companies-funding-health-research-in-sa.html#> (accessed on 7 February 2025).

³⁹ FOUR PAWS <https://help.four-paws.org/en/egg-industry-laws-being-influenced-secret-report> (accessed on 7 February 2025).

study to civil society organisations that attempt to engage with it. Without a transparent approach, the CGCSA risks undermining the very principles of integrity and accountability it espouses.

Furthermore, the actions taken by the CGCSA and its reliance on the NAMC Study have significant implications that extend beyond South Africa to the broader African egg industry. Many corporations within the South African egg supply chain, which are also CGCSA members, are headquartered in or operate across various African countries. As one of the leading role players in the African egg industry, South Africa's practices could set a precedent that influences neighbouring countries where these corporations have a presence. The resistance to transitioning to cage-free egg production therefore not only impacts South African consumers, but also poses a barrier to animal welfare advancements across the continent.

VII. HARMING ANIMAL WELFARE AND PROTECTION AND PERPETUATING PROBLEMATIC SYSTEMS

Through its recent actions including the CGCSA Member Letter and the CGCSA SAFCEI Letter, the CGCSA is (in)directly fostering an environment which can harm animal protection and advocacy efforts, and perpetuate problematic, unethical and unsustainable systems.

In its 2023/2024 annual report,⁴⁰ CGCSA emphasises its mission to help members trade better by advocating for **sustainable** business practices and regulatory compliance. The report highlights several key areas of focus, including mitigating climate change impacts, participating in national efforts to reduce waste, and promoting water safety and conservation. However, the report is notably silent on issues of animal welfare, despite the growing recognition of its importance in sustainable and ethical food systems,⁴¹ development,⁴² and the recognition in both South African law⁴³ and international law⁴⁴ that animal welfare is connected to the environmental right. This omission raises questions about the CGCSA's commitment to comprehensive sustainability practices including for its members, particularly as movements towards more ethical treatment of animals gain global traction. In the CGCSA Member Letter, it indicates that: "*We support animal welfare efforts and best practices as adopted globally*" (emphasis added), yet its lack of reporting on this issue and approach to efforts to pursue greater animal protection illustrate a different story.

The cage-free egg movement is gaining momentum worldwide, with an increasing number of countries (over 30) and jurisdictions adopting bans on caged production, including the entirety of the European Union;⁴⁵ India; New Zealand; Germany; Switzerland; Bhutan; and Norway.⁴⁶ Since 2019, the majority of laying hens kept commercially in the EU have been in alternative systems, whether barn or free range.⁴⁷ In the USA the following states have banned or are phasing out battery cages: Arizona; California; Colorado; Massachusetts; Michigan; Nevada; Oregon; Rhode Island; Utah; and Washington.⁴⁸ Outside of the regulatory space, nearly 2,600 public commitments have been made by food

⁴⁰ CGCSA <https://online.flipbuilder.com/CGCSA/lvtm/> (accessed on 7 February 2025).

⁴¹ World Organisation for Animal Health <https://www.woah.org/app/uploads/2024/01/en-woah-visionpaper-animalwelfare.pdf> (accessed on 7 February 2025); Wawrzyniak, D(2023) Animal husbandry and sustainable agriculture: is animal welfare (only) an issue of sustainability of agricultural production or a separate issue on its own?. *animal*, 17, p.100880, accessible at: <https://www.sciencedirect.com/science/article/pii/S1751731123001775>.

⁴² Memorandum of Understanding between the Southern African Development Community (SADC) and the World Organisation for Animal Health (WOAH) <https://www.woah.org/app/uploads/2024/04/91gs-2024-wd-adm-10-mou-sadc-en-2.pdf> (accessed on 7 February 2025).

⁴³ *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), accessible at: <https://www.saflii.org/za/cases/ZACC/2016/46.html>.

⁴⁴ UN Environment Assembly 5 (UNEA 5.2) Resolutions, Resolution 1 <https://www.unep.org/resources/resolutions-treaties-and-decisions/UN-Environment-Assembly-5-2> (accessed on 7 February 2025).

⁴⁵ The European Citizens' Initiative (ECI) 'End the Cage Age' called on the European Commission to propose legislation to prohibit the use of cages for EU farmed animals. On 30 June 2021, the Commission decided to positively respond to the ECI. In its communication, the Commission sets out plans for a legislative proposal to prohibit cages for a number of farm animals. The proposal came as part of the ongoing revision of the animal welfare legislation under the Farm to Fork Strategy. Scientific opinions were adopted by EFSA on the welfare on a number of farmed animals, including laying hens, accessible: <https://efsa.onlinelibrary.wiley.com/doi/10.2903/j.efsa.2023.7789>.

⁴⁶ The Humane League <https://thehumaneleague.org/article/battery-cages> (accessed on 7 February 2025).

⁴⁷ European Commission, updated 2021. Eggs market situation dashboard. https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/eggs-dashboard_en.pdf (accessed on 7 February 2025).

⁴⁸ Watagnet <https://www.watagnet.com/egg/egg-production/article/15525182/cage-free-eggs-slow-growth-broilers-will-consumers-pay-watagnet> (accessed on 7 February 2025).

corporations around the world to remove cages from their egg supply chains.⁴⁹ Certain food companies that have already committed to cage free eggs have gone a step further to ask the EU Commission to phase out enriched cages.⁵⁰ This indicates a global trend towards cage-free and more ethical systems, which is expected to increase over the coming year(s).

Battery cage production is increasingly viewed as an unsustainable long-term option compared to cage-free systems, primarily due to growing animal welfare concerns and shifting consumer preferences.⁵¹ The reliance on caged systems without exploring options to transition exacerbates ethical issues and poses economic challenges for producers, making it less viable in the evolving agricultural landscape.⁵² Moreover, as consumers demand more humane treatment of animals,⁵³ producers using battery cages face potential reputational risks and market disadvantages, which further underscores the unsustainability of this production method.

Furthermore, the CGCSA indicates in the CGCSA Member Letter that "*members are urged to implement...enriched cages which improve the welfare of the egg layers*", however, enriched cages, though bigger and furnished, still restrict the natural behaviours of hens,⁵⁴ and studies show that the well-being improvements from enriched cages are minimal, and hens are still cramped, restricted, denied access to natural light, and are prone to disease.⁵⁵ Going cage-free, however, has massive welfare benefits.⁵⁶

Animal welfare is furthermore not an isolated technical question specific to the animal sector; rather, it affects society more broadly, with implications for human rights, animal and human health, the economy, the environment and sustainable development.⁵⁷

The law currently does very little to protect animal welfare in terms of positive regulations and standards.⁵⁸ Therefore, the role of the private sector in ensuring positive change until this gap is filled cannot be overemphasised.

On its website, one of the CGCSA's service offerings is 'Food Safety & Sustainability'⁵⁹ through its Food Safety & Sustainability Initiative ("FSSI"). CGCSA'S FSSI is "*dedicated to promoting the safety, responsible and sustainable production, importation, labelling, marketing, and selling of food and beverages*" (emphasis added) and "*actively engage with regulators, advocate on behalf of members and collaborate with other key stakeholders in matters related to legislation, science and technology*" (emphasis added). With one of its core areas being environmental sustainability.

It is our considered view that the issue of caged egg production falls squarely within the description of the FSSI and its pillars. If the CGCSA is truly committed to promoting safe, responsible and sustainable food processes, it should include animal welfare as one of its core components, implement policies, and create platforms for engagement on these issues.

VIII. DIMINISHING CONSTITUTIONAL RIGHTS, VALUES AND PUBLIC INTEREST

⁴⁹ Ibid.

⁵⁰ Poultry World <https://www.poultryworld.net/health-nutrition/food-companies-ask-eu-commission-to-phase-out-enriched-cages/> (accessed on 7 February 2025).

⁵¹ Faster Capital <https://fastercapital.com/content/Cage-Free-1> (accessed on 7 February 2025).

⁵² See for example Ryba, R., 2024. Evaluating the Economic Impacts of a Cage-Free Animal Welfare Policy in Southeast Asian and Indian Egg Production: A Systematic Review. *Evaluation Review*, p.0193841X241280681, accessible at: <https://pubmed.ncbi.nlm.nih.gov/39250717/>, which found that "Cage-free egg producers around the world tend to experience higher costs, but these costs are offset by higher revenues."

⁵³ NSF <https://www.nsf.org/za/en/news/new-research-finds-84-of-south-africans-demand-animal-welfare-from-food-companies> (accessed on 7 February 2025).

⁵⁴ The Humane League <https://thehumaneleague.org.uk/article/whats-the-difference-between-battery-cages-and-enriched-cages> (accessed on 7 February 2025).

⁵⁵ The Poultry Site <https://www.thepoultrysite.com/articles/enriched-cages-do-not-provide-a-life-worth-living-for-laying-hens> (accessed on 7 February 2025). and Our World in Data <https://ourworldindata.org/do-better-cages-or-cage-free-environments-really-improve-the-lives-of-hens> (accessed on 7 February 2025).

⁵⁶ Our World in Data <https://ourworldindata.org/do-better-cages-or-cage-free-environments-really-improve-the-lives-of-hens> (accessed on 7 February 2025).

⁵⁷ World Organisation for Animal Health <https://www.woah.org/app/uploads/2024/01/en-woah-visionpaper-animalwelfare.pdf> (accessed on 7 February 2025).

⁵⁸ *Laying Down the Facts: Animal Welfare Standards of the Companies Providing Your Favourite Foods*" (August 2023, updated September 2024) ("Initial Report"), accessible at: <https://www.eggssouthafrica.org/>.

⁵⁹ CGCSA <https://www.cgcsa.co.za/what-we-do/#FoodSafetySustainability> (accessed on 7 February 2025).

The (selected) issues surrounding the egg industry in South Africa, and CGCSA in particular, identified above, extend far beyond mere business practices; they touch on fundamental public interest concerns that affect consumers, animals, the environment, and society at large. The following points elucidate additional reasons why addressing these issues is not only important, but imperative for the well-being and flourishing of our communities and the integrity of our food systems.

Constitutional Rights

Our Constitution provides a strong legal foundation for addressing the issues raised in this open letter. Several key rights, values and principles are relevant:

- **Right to Environment:** Section 24 of the Constitution states that everyone has the right to an environment that is not harmful to their health or well-being. The Constitutional Court has established a connection between animal welfare and the right to environment and recognised that constitutional values dictate a more caring attitude towards animals, humans and the environment in general.⁶⁰ It has further recognised animals as sentient beings with intrinsic value as individuals worthy of protection.⁶¹ Egg production methods have varying environmental impacts, including effects on land use, water pollution, and greenhouse gas emissions.⁶² The public has a vested interest in understanding these impacts to make environmentally conscious choices and to hold the industry accountable for its environmentally harmful practices.
- **Right to Access Information:** The right to access information, as enshrined in Section 32 of the Constitution, is crucial for enabling civil society to be informed about practices that impact on their rights, including industry practices. The treatment of layer hens is a matter of growing public concern.⁶³ As society becomes more aware of animal sentience and the capacity for suffering in farmed animals, there is increasing demand for higher welfare standards.⁶⁴ The industry's lack of transparency prevents the public from making informed decisions that could drive improvements in animal welfare. The systematic denial of access to the NAMC Study and other relevant industry information effectively prevents informed public participation in discussions about food, specifically egg production methods and animal welfare standards. Access to information related to the egg industry enables consumers to make informed decisions, thereby enhancing their ability to exercise other consumer rights effectively.
- **Freedom of Expression:** Section 16 of the Constitution protects the right to freedom of expression, which includes freedom of the press and media and freedom to receive or impart information or ideas. This safeguards the ability of civil society to voice concerns about the egg industry without fear of retribution. However, efforts to silence and intimidate civil society organisations from engaging in public advocacy campaigns threaten the exercise of this right.
- **Right to Freedom of Religion, Belief and Opinion:** The Constitution guarantees the right to freedom of religion, belief and opinion in Section 15. Many consumers make purchasing decisions based on ethical considerations, including religious or philosophical beliefs about animal treatment.⁶⁵ Faith-based organisations have raised ethical objections to intensive farming practices on religious grounds, including members of SAFCEI.
- **Right to Food and Water:** Sections 27(1)(b) and (c) enshrine the right to have access to sufficient and safe food and water. Higher welfare farming can produce healthier animal products,⁶⁶ which advance the fulfilment of this right.

⁶⁰ *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), accessible at: <https://www.saflii.org/za/cases/ZACC/2016/46.html> referencing *S v Lemthongthai* [2014] ZASCA 131; 2015 (1) SACR 353 (SCA).

⁶¹ *Ibid* NSPCA 2016.

⁶² Guillaume, A et al (2022) Environmental impacts of egg production from a life cycle perspective. *Agriculture*, 12(3), p.355, accessible at: <https://www.mdpi.com/2077-0472/12/3/355>.

⁶³ For example, over 17 000 people signed a petition for McDonald's South Africa titled 'Stop the Suffering of Hens & Commit to Cage-Free Eggs!'. See Change.Org <https://www.change.org/p/mcdonald-s-south-africa-stop-the-suffering-of-hens-commit-to-cage-free-eggs-mcdonalds-sa-mcdonaldscruelty> (accessed on 7 February 2025).

⁶⁴ NSF <https://www.nsf.org/za/en/news/new-research-finds-84-of-south-africans-demand-animal-wellness-from-food-companies> (accessed on 7 February 2025).

⁶⁵ *Ibid*.

⁶⁶ Compassion in World Farming <https://www.ciwf.com/research/nutrition-report/> (accessed on 7 February 2025).

- **Right to Freedom from Violence:** Section 12(1)(c) of the Constitution provides for the right to live free from violence in both public and private sources. Intensive farming practices that cause animal suffering have been linked to increased violence in communities and domestic abuse.⁶⁷

Public Health Concerns

The conditions under which eggs are produced have direct implications for public health. The spillover of zoonoses into human populations stems ultimately from our ways of life and how they shape the human–animal interface: our diets, our intensive farming practices, our livelihoods, our behaviours; our cultures; our exploitation of the natural world and our destruction of the environment.⁶⁸ Higher welfare farming practices have been associated with reduced risk of foodborne illnesses⁶⁹ and decreased use of antibiotics, which is crucial in combatting antimicrobial resistance.⁷⁰ Avian flu is a major public concern and has led to tremendous loss – of life, business operations, and otherwise.⁷¹ By obscuring information about production methods, the industry potentially puts public health at risk.

Trust in Food Systems

The CGCSA’s actions discussed above could significantly undermine public trust in food systems. The CGCSA’s approach to engagement on critical issues like animal welfare and production methods can erode consumer confidence in the entire consumer goods sector. This erosion of trust extends beyond just the egg industry, potentially affecting public perception of food security and the integrity of South Africa, and other African countries’, broader food supply chain. An approach which can be seen to be non-transparent, prohibiting engagement, contrary to public interest, inconsistent and anti-competitive has the potential to threaten an entire industry’s social license to operate, potentially leading to broader implications for social cohesion and consumer-industry relations.

Given these multifaceted public interest concerns, it is imperative that these issues are addressed. As an organisation committed to fostering collaboration and best practices in the consumer goods industry, including the egg industry, the CGCSA is well-positioned to drive meaningful change for animals used for the production of food and other products, including the millions of layer hens in the country, for the consumers in South Africa and other countries in Africa, for the members it represents and for the civil society organisations advocating in the public interest. Our requests below outline a path forward to safeguard public interest, align industry practices with societal values and legal obligations and ensure transparency, accountability and integrity.

OUR REQUESTS

Industry role players should be aware that the courts, agencies, regulators and other protection bodies have the power to enforce greater transparency, accountability, and ethical conduct. Continued disregard for these could result in significant consequences, compelling the industry to reform its operations and align with fundamental rights and principles.

In light of the foregoing, we call upon the CGCSA to take the following actions in accordance with its byline, “*Integrity. Excellence. Accountability.*”:

⁶⁷ Nibert, D., 2013. *Animal oppression and human violence: Domestration, capitalism, and global conflict*. Columbia University Press, accessible at <https://books.google.co.za/books?>, and Porcher, J(2011) The relationship between workers and animals in the pork industry: A shared suffering. *Journal of Agricultural and Environmental Ethics*, 24(1), pp.3-17, accessible at: <https://link.springer.com/article/10.1007/s10806-010-9232-z>.

⁶⁸ The Lancet, Editorial, H5N1: international failures and uncomfortable truths, www.thelancet.com Vol 403 June 8, 2024 .

⁶⁹ Buncic, S et al (2009) Biological food safety in relation to animal welfare. In *Welfare of production animals: assessment and management of risks* (pp. 483-532). Wageningen Academic, accessible at: <https://brill.com/edcollchap/book/9789086866908/BP000024.xml> and Rostagno, M.H., 2009. Can stress in farm animals increase food safety risk?. *Foodborne pathogens and disease*, 6(7), pp.767-776, accessible at: <https://www.liebertpub.com/doi/abs/10.1089/fpd.2009.0315>.

⁷⁰ Manyi-Loh, C et al (2018) Antibiotic use in agriculture and its consequential resistance in environmental sources: potential public health implications. *Molecules*, 23(4), p.795, accessible at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6017557/>.

⁷¹ The Poultry Site <https://www.thepoultrysite.com/news/2023/10/avian-influenza-forces-south-africa-to-cull-2-5-million-broilers> (accessed on 7 February 2025).

1. **Refrain from silencing and intimidatory tactics towards CSOs/NGOs:** Refrain from threatening civil society organisations with legal action (including legally threatening letters, and methods such as strategic litigation against public participation) based on unfounded and unsubstantiated statements for their advocacy work. As discussed above, the Constitutional Court has confirmed that SLAPP lawsuits are regarded as an abuse of process;
2. **Promote Transparency:** In light of the CGCSA's reliance on and actions to promote the findings of the NAMC Study, the CGCSA should work with SAPA and the NAMC to have the NAMC Study publicly released (with relevant information redacted including personal information in accordance with the Protection of Personal Information Act 4 of 2013,⁷² PAIA, and other relevant legislation) allowing for independent review and analysis. Additional research which impacts on constitutional rights, consumer protection and public interest should be similarly shared;
3. **Incorporate Animal Welfare:** Formally include animal welfare within the CGCSA's purview of matters and issues for which it provides its service undertakings in respect of its members and include animal welfare and well-being as a consideration within environmental sustainability;
4. **Promote Consumer and Constitutional Rights:** To effectively promote best practices within the consumer goods industry, the CGCSA should ensure that it and its members prioritise the protection of consumer rights and uphold transparency and accountability in their business practices in accordance with constitutional rights, values and other regulation, in its role as an industry representative body to allow for informed choice.
5. **Foster Accountability:** Formally retract statements made to CGCSA members which discourage member engagement with civil society organisations and commit to supporting open dialogue on issues surrounding cage-free egg production and sourcing commitments;
6. **Refrain from engaging in potentially collusive practices:** Refrain from actions that may undermine fair competition, transparency, consumer protection, or justice, and should instead, ensure that all actions and decisions are guided by CGCSA's principles of "Integrity, Excellence and Accountability"; and
7. **Encourage Effective Engagement:** Establish a platform and framework for effective engagement and constructive dialogue with civil society regarding improved animal welfare and protection practices and industry transparency including as it relates to the transition away from cruel battery cages for egg laying hens. This could include the establishment of a multi-stakeholder forum that includes civil society representatives to address ongoing issues in the poultry (specifically egg) industry.

We reserve the right to expand on these issues further and take appropriate action.

The CGCSA, including in its capacity as a representative of the egg industry, has a responsibility to implement initiatives that enhance economic opportunities for local communities; advocate for fair practices; promote transparency and accountability among its members, and engage with stakeholders to create an equitable marketplace.

Through these efforts, the CGCSA would support community growth; foster trust and confidence among consumers in the products and services offered within the industry; can contribute to a more informed, healthy, and ethically conscious society, and a more accountable, transparent and responsible food system in South Africa and Africa more broadly.

⁷² Protection of Personal Information Act 4 of 2013, accessible at:
https://www.gov.za/sites/default/files/gcis_document/201409/3706726-11act4of2013popi.pdf.