



SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

File reference number: EC/1415/0248

In the matter between:

B J VAN DEN BOOGAARD

COMPLAINANT

and

KOUGA LOCAL MUNICIPALITY

RESPONDENT

REPORT

1. Introduction

1.1. The South African Human Rights Commission (the 'Commission') is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa, 1996 (the 'Constitution').

1.2. The Commission is specifically required to:

1.2.1. Promote respect for human rights;

- 1.2.2. Promote the protection, development and attainment of human rights; and
- 1.2.3. Monitor and assess the observance of human rights in the Republic.
- 1.3. Section 184 (2) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the Republic.
- 1.4. The South African Human Rights Commission Act, 40 of 2013 as amended (the 'Act') provides the enabling framework for the powers of the Commission.
- 1.5. Section 15 (1) of the Act determines the procedure to be followed in conducting an investigation regarding the alleged violation or threat to a fundamental right.

2. Parties

- 2.1. The Complainant in this matter is B. J. van den Boogaard, an adult male who is currently residing in Wavecrest, Jeffrey's Bay, Eastern Cape and who is the Chairperson of a nonprofit organisation (NGO), called the Organisation for and from People with Disabilities South Africa. ('Complainant')
- 2.2. The Respondent is the Kouga Local Municipality, a local municipality established in terms of the provisions of the Local Government Municipal Structures Act, 117 of 1998 with its offices located at Thornhill, Jeffreys bay, Eastern Cape. ('Respondent')

3. The complaint

- 3.1. On the 4th November 2014, the Commission's Eastern Cape Provincial Offices received a complaint from the Complainant.
- 3.2. The Complainant lodged the complaint in his personal capacity as well as in a representative capacity on the behalf of the NGO.
- 3.3. The Complainant made the following allegations:
 - 3.3.1. That persons in wheelchairs and persons with certain other disabilities are unable to access the Dolphin Beach ("the Beach"), because certain facilities for such access to the beach do not allow for such access. The Dolphin Beach (Main Beach), is located in Jeffreys' Bay which is regarded as a Blue Flag beach ('Main Beach').
 - 3.3.2. The challenges in accessing the beach include, but are not limited to the following:
 - 3.3.2.1. All the landing areas on the wheelchair ramps that lead to either the toilet facilities or the beach are not flat;
 - 3.3.2.2. That the structural makeup of the wheelchair ramps do not comply with standards provided for by the International Organisation of Standardisation ('ISO') and the South African National Standards authority ('SANS');
 - 3.3.2.3. In addition the ramps further do not comply with Blue Flag beach criteria, specifically the hand rails on the ramps are shaped incorrectly and do not conform to standards provided by ISO and/or SANS;
 - 3.3.2.4. At various parts of the ramp and/or platform there are no hand rails;
 - 3.3.2.5. That the ramp leading onto the beach is not flush with the beach as there is an unreasonable height difference between the end of the ramp and the beach for wheelchair users and as a result are dependent on members of the public to assist such wheelchair users onto the beach;

- 3.3.2.6. That various portions of the platform on the ramp leading to the beach poses a danger to persons with disabilities;
- 3.3.2.7. That existing toilets for persons with disabilities are often locked and thereby inaccessible as there is no assistance from municipal workers who are able to unlock the said toilets;
- 3.3.2.8. That the door leading into the disabled toilet is a sliding door and thereby does not conform to ISO and/or SANS regulations; and
- 3.3.2.9. Despite the above concerns being brought to the Respondent's attention, no remedial action has yet been implemented.

4. Preliminary assessment

- 4.1. The Eastern Cape Provincial Office made a preliminary assessment of the complaint and made the following determinations:
 - 4.1.1. That the allegations set out in the complaint constituted a *prima facie* violation of the following provisions of the Constitution:¹
 - 4.1.1.1. The right to equality in terms of section 9 of the Constitution
 - 4.1.1.2. The right to human dignity in terms of section 10 of the Constitution.
 - 4.1.2. That the alleged violation fell within the mandate and jurisdiction of the Commission.
 - 4.1.3. That the alleged violation merited a full investigation in terms of the Complaints Handling Procedures of the Commission.

¹ Constitution of the Republic of South Africa, of 1996

5. Steps taken by the Commission

5.1. The methodology used by the Commission's Eastern Cape Provincial Office when investigating the alleged human rights violations included correspondence with the Respondent and an inspection *in loco*.

5.2. Correspondence between the Commission and the Respondent

5.2.1. The Commission's Eastern Cape Provincial Office dispatched the following correspondence to the Respondent:

5.2.1.1. A letter dated the 17th June 2015 setting out the allegations received by the Complainant; and

5.2.1.2. A reminder letter dated the 14th July 2015 requesting that a response to the allegations be provided to the Commission to which no response was received.

5.3. Inspection in loco:

5.3.1. On the 3rd of September 2015, an investigator from the Commission's Eastern Cape Provincial Office proceeded to the beach to conduct an inspection in *loco* and verify the allegations put forward by the Complainant.

5.3.2. The following observations were recorded:

5.3.2.1. That in terms of the complaint, the Complainant refers to ramps, one of which leads towards the toilet facilities and the other which leads towards the beach which impede access to the Beach and to the toilets.

5.3.2.2. With regards to the ramp leading to the toilets and the toilet facilities themselves, the following observations were made:

- a. At one end of the ramp, a flat landing area for wheelchair users was noted;
- b. The ramp and handrails are made of wood. The handrails have squared off edges;
- c. Users proceeding up the ramp would face challenges attributable to the slightly steep gradients;
- d. A flat landing area is noted prior to turning left onto the ramp heading down towards the toilet facilities;
- e. The investigator made enquiries regarding access to the toilet facilities designated for persons with disabilities from two municipal workers at the site;
- f. The municipal workers advised that the toilet facilities designated for persons with disabilities² was locked³ so as to prevent beach goers without disabilities from abusing the toilet facilities in a way that inhibits people with disabilities from utilising same;
- g. The municipal workers insisted that they would be more than happy to leave the said toilet facilities unlocked and that if it were not for people with disabilities complaining about the abuse of the toilet facilities, then same would be left unlocked and thus accessible.
- h. The actual toilets did not have pull handles to enable opening or closing of the sliding doors; nor could they be locked from the

² Both female and male ablution blocks consist of designated toilets for persons with disabilities

³ By means of a padlock

inside when in use; with both male and female toilets requiring force to be applied to open and close them.

5.3.2.3. With regards to the ramp leading to the beach, the following observations were made:

- a. The ramp has a flat landing area, posing difficulties for persons with wheelchairs, who are not able to access the ramp with the ease created through a slight gradient.
- b. The ramp proceeds towards a large wooden landing area with wooden squared off hand rails.
- c. A large landing area is situated in between two sets of ramps and sits approximately half a meter above the beach. The portion of the landing area facing the ocean does not have adequate barriers to prevent people with disabilities from falling from the landing area onto the beach. The absence of barriers poses various risks to people with disabilities, specifically, but not limited to those who are partially or completely blind.
- d. A stretch of a meter of the large landing area leading onto the beach has no hand rails again introducing challenges for people with disabilities, specifically wheelchair users.
- e. The paved walkway leading to the ramp which leads to the beach was obstructed by a fixed concrete waste bin hampering and/or preventing wheelchair users from accessing this ramp to the beach.

5.3.3. The pictures below reflect the observations by the Commission.

'Photograph A'



The top landing area leading to the toilet facilities.

'Photograph B'



Visible gradient on an incline which creates challenges when wheelchair users are making their way up the ramp. The wooden squared off hand rails on either side of the ramp are also visible.

'Photograph C'



Padlocked doors preventing access into the designated toilet. The absence of pull handles to open and/or close the sliding door is evident.

'Photograph D'



Photograph of the ramp leading to the beach, which consists of large rounded off wooden hand rails to the right of the ramp.

'Photograph E'



Photograph depicting the access point to the beach from the large landing area which does not have any form of barrier creating challenges for persons with disabilities, specifically those who are partially or completely blind.

'Photograph F'



The last stretch of the ramp leading to the beach. The last meter of which has no hand rails on either side which would provide a measure of control over speed.

'Photograph G'



The cement waste bin obstructing the walk way which is utilised by wheelchair bound persons.

6. Applicable legal framework

6.1. The Constitution⁴

6.1.1. Section 1 (a) states that the Republic of South Africa is one, sovereign, democratic state founded on the following values of human dignity, the achievement of equality and the advancement of human rights and freedoms.

6.1.2. Section 9(1) states that everyone is equal before the law and has the right to equal protection and benefit of the law

6.1.3. Section 9 (3) states that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual

⁴ Constitution of the Republic of South Africa, of 1996

orientation, age, disability, religion, conscience, belief, culture, language and birth.

6.1.4. According to Section 9 (4) no person may unfairly discriminate directly or indirectly against anyone based on, amongst others, their disability.

6.1.5. Section 10 states that everyone has inherent dignity and the right to have their dignity respected and protected.

6.1.6. Section 156 (1), which deals with the powers and functions of municipalities, states that a municipality has executive authority in respect of, and has the right to administer the local government matters listed in Part B of Schedule 5 which refers to beaches and amusement facilities.

6.2. Domestic Legislation

6.2.1. **Promotion of Equality and Prevention of Unfair Discrimination Act⁵ ('PEPUDA')**

6.2.1.1. PEPUDA defines discrimination as:

'Any act or omission, including policy, law, rule, practice, condition or situation which directly or indirectly-

(a) Imposes burdens, obligations or disadvantage on, or

(b) Withholds benefits, opportunities or advantages from any person on one or more of the prohibited grounds.'

6.2.1.2. Section 9 of PEPUDA states that no person may unfairly discriminate against any person on the ground of disability which includes:

- (a) denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society;*
- (b) contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility;*
- (c) failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.'*

6.2.2. National Building Regulations and Building Standard Act⁶

- 6.2.2.1. Section 17 of the National Building Regulations and Building Standard Act ('National Standards Act') together with Part S dealing with facilities for persons with disabilities, set out the requirements as well as guidelines for facilities for people with disabilities.
- 6.2.2.2. Part S2 (1) (e) states *"any commonly used path of travel shall be free of obstacles which limit, restrict or endanger the travel of persons with disabilities, or which prevent persons with disabilities from accessing the facilities provided in the building and the presence of such obstruction shall be made evident in a suitable manner to persons with impaired vision."*

7. Key International Instruments

7.1.1. Convention on the Rights of Persons with Disabilities⁷

- 7.1.1.1. Article 2 defines Reasonable Accommodation as the *'means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to*

⁶ Act 103 of 1977

⁷ UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007

ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms’.

7.1.1.2. Article 9 states the following:

‘1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;*
- (b) Information, communications and other services, including electronic services and emergency services.’*

7.1.2. **UN Committee on Economic, Social and Cultural Rights⁸**

Clause 9 states the following:

‘The obligation of States parties to the Covenant to promote progressive realization of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstaining from taking measures which might have a negative impact on persons with disabilities. The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality

⁸ General Comment No. 5 (2006): Persons with disabilities

within society for all persons with disabilities. This almost invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required.'

7.2. **Regional Legal Instruments**

7.2.1. **The African Charter on Human Rights⁹**

Article 18 states the following:

'The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.'

7.3. **National Policies**

7.3.1 **White Paper on the Rights of Persons with Disabilities¹⁰**

The white paper on the rights of persons with disabilities, is a welcomed articulation of policy reforms seeking to achieve substantive equality for persons with disabilities. Of particular relevance to the investigation herein, the policy provides clarity about the development of standard operating procedures for mainstreaming disability; sets out the norms and standards in terms of which discriminatory barriers should be removed; and broadly outlines stakeholder responsibilities. The WPRPD was launched at the National Disability Summit which was organised by the DSD to analyse and convert the White Paper into realisable outcomes through practical implementation. It is the articulation of commitment to practical implementation which has particular reference in this matter.

⁹ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982),

¹⁰The White Paper on the Rights of Persons with Disabilities (WPRPD) by the Department of Social Development was approved by Cabinet on December 2015.

7.3.1. Disability Rights Charter of South Africa¹¹

Article 10 states the following:

'All new environments shall be accessible and safe to disabled people and all reasonable steps shall be taken to make existing built environments accessible and safe.'

7.3.2. The Department of Public Works Disability Policy Guidelines ('Policy Guidelines')

The following are the guideline principles in terms of this policy:

- (a) Self Representation - to ensure the involvement of persons with disabilities and their organisations to attain the successful implementation of this Policy Guideline.
- (b) Inherent Dignity - to ensure promotion and protection of the inherent dignity and human rights of persons with disabilities.
- (c) Enabling Environment - to facilitate the progressive realisation of access to services and infrastructure by persons with disabilities.
- (d) Recognition of Diversity - to recognise and respond to the special needs of persons with disabilities in their diversity.

This Policy Guideline recognises the access needs of all diverse disabilities, including lighting, sound, signage, tactile, ramp, parking, ablution facilities, lifts, etc.

7.4. Policies, Programmes and Standards

¹¹ December 1992

7.4.1. Blue Flag Beach Criteria and Explanatory Notes 2015 ('Blue Flag Beach Criteria')

7.4.1.1. The Blue Flag programme is run by the Foundation for Environmental Education¹² for the assessment and improvement of beaches and marinas. The Respondent is a participant in the program and Main Beach is regarded as a Blue Flag beach.

7.4.1.2. Amongst the criteria recommended in the program, Criterion 33¹³ provides for the following:

- a. *'...that all Blue Flag beaches have facilities that allow access by the physically disabled granting them access to the beach, surrounding buildings, and the restroom facilities. It is a Blue Flag requirement that at least one beach in every municipality must provide these facilities. It is a Blue Flag recommendation that at this beach, if possible, there is access to the water.'*
- b. *'Access to the beach should be facilitated by access ramps adapted to users with various disabilities. It is recommended that the ramp design and material fit the natural environment and wherever possible, environmentally friendly materials should be used, i.e. recycled composite plastics.'*

7.4.1.3. *'Facilities should be designed for wheelchair and other disabled users and should comply with the ISO Standard Code for Access. The beach must comply with national regulations regarding access and facilities for people with disabilities. In addition, parking areas should have reserved spaces for disabled parking.'*

¹² An international non-governmental, non-profit organization.

¹³ Which states that at least one Blue Flag beach in each municipality must have access and facilities for the physically disabled

7.4.2. South African National Standards 10400-S:2011 ('SANS Standards')¹⁴

- 7.4.2.1. Section 4.6.2.1 of the SANS Standards, which refers to door handles, provides that *'any handle fitted to a door leading to any toilet facility shall be that of the lever type, the lever in this instance should be at least 150 mm long and shall be installed at a height not exceeding 1 meter above floor level.'*
- 7.4.2.2. Section 4.8.1 of the SANS Standards, which refers to ramps, clearly states that *'any ramp or series of ramps shall provide a safe, comfortable and convenient route for wheelchair users.'*
- 7.4.2.3. Continuing with ramp standards, section 4.8.2 (a) states that any ramp provided for in terms of the SANS Standards *'shall have a gradient, measured along the centre line, that is not steeper than 1:12m'*
- 7.4.2.4. Section 4.8.2 (f) states that any ramp provided for in terms of the SANS Standards shall *'have a handrail on both sides of the ramp or, where the width is greater than 2,4 m, a central handrail in accordance with the requirements of 4.10 where the gradient is steeper than 1:15m;'*
- 7.4.2.5. Section 4.10 of the SANS Standards, which refers to handrails, specifically figure 12 (b)¹⁵ indicates that typical handrail profiles are that of circular profile or elliptic profile.

¹⁴ Part S: Facilities for persons with disabilities

¹⁵ Which provides for typical profiles of handrails

7.5. Case law

The test for unfair discrimination has clearly been articulated by the Constitutional court in the case of *Harksen v Lane NO and Others*¹⁶.

7.5.1. In distilling the test¹⁷, the Constitutional court articulated the considerations to be taken account as listed below.

- (a) The position of the complainants in society and whether they suffered in the past from patterns of disadvantage, whether the discrimination in the case under consideration is on a specified ground or not;
- (b) The nature of the provision or power and the purpose sought to be achieved by it. If its purpose is manifestly not directed, in the first instance, at impairing the complainants ..., but is aimed at achieving a worthy and important societal goal, such as, for example, the furthering of equality for all, this purpose may, depending on the facts of the particular case, have a significant bearing on the question whether complainants have in fact suffered the impairment in question. ... The fact that all these groups were regarded as being particularly vulnerable in our society, and that in the case of the disabled and the young mothers, they belonged to groups who had been victims of discrimination in the past, weighed with the Court in concluding that the discrimination was not unfair;
- (c) With due regard to (a) and (b) above, and any other relevant factors, the extent to which the discrimination has affected the rights or interests of complainants and whether it has led to an impairment of their fundamental human dignity or constitutes an impairment of a comparably serious nature”.

¹⁶ 1997 (11) BCLR 1489 (CC)

¹⁷ Ibid at para 51

7.5.2. In the case of ***Singh v Minister of Justice and Constitutional Development***¹⁸ the complainant was a partially blind person who challenged the decision of the Magistrates Commission to turn down her application to become a Magistrate on the basis of her visual impairment.

The Court highlighted the importance of section 9 of the Constitution as well as PEPUDA together with protocols signed by the Government of the Republic of South Africa dealing with promoting the position of people with disabilities for the achievement of substantive equality.

7.5.3. In the case of ***National Coalition for Gay and Lesbian Equality v Minister of Justice***¹⁹ Ackermann J at paragraph 62 stated that equality includes '*the full and equal enjoyment of all rights and freedoms*, the achievement of which depended on the obligation on the State to '*promote the achievement of such equality*' through legislative mechanisms so as to protect all categories of persons.

7.5.4. In the case of ***MEC for Education: Kwazulu Natal, Thulani Cele: School Liaison Officer, Anne Martin: Principal of Durban Girls' High School and Fiona Knight: Chairperson of the Governing Body of Durban Girls' High School v Naveeneethum Pillay***²⁰ Langa CJ at paragraph 74 highlighted the need for reasonable accommodation to be afforded to people with disabilities as more often than not people with disabilities are unable to access or participate in public or private life as the means to do so are designated for able-bodied people.

7.5.5. In the case of ***Standard bank of South Africa v The Commission for Conciliation, Mediation and Arbitration, Commissioner E Myhill N. O.***

¹⁸ 2013 (3) SA 66

¹⁹ (CCT11/98) [1998] ZACC 15; 1999 (1) SA 6

²⁰ CCT 51/06 (2007) ZACC 21

and D Ferreira²¹ Pillay D. J, stated that the '*Integration and inclusion in mainstream society aims not only to achieve equality but also to restore the dignity of people with disabilities*'.

7.5.6. In the case of **Willem M Prinsloo v Gerhardus Stephanus van der Linde and The Minister of Forestry and Water Affairs**²² the Constitutional Court made reference to the fact that equality means nothing if it does not represent each person's worth as a human being regardless of differences. It further stated at paragraph 32 "*Equality means that our society cannot tolerate legislative distinctions that treat certain people as second-class citizens, that, demean them, and that treats them as less capable for no good reason or that otherwise offends fundamental human dignity.*"

8. Legal analysis

8.1. The discrimination alleged falls within a listed ground in PEPUDA.

8.2. Having established the conditions as alleged by the Complainant, the Commission was satisfied that sections of the ramps leading to the toilet facilities as well as the ramp leading to the beach do not conform to the standards set by the Standards Act, Policy Guidelines, SANS Standards and the Blue Flag Beach Criteria which are *inter alia*, aimed at ensuring that people with disabilities have access to the toilet facilities, have access to the beach as well as surrounding buildings.

8.3. The Standards Act read with Part S2 clearly indicates that commonly used pathways used for travel is required to free of obstacles which limit, restrict or

²¹ Held in the Labour Court of South Africa, Case no: JR 662/06 at para 65

²² CCT 4/96

endanger the travel of persons with disabilities. The Commission confirms that at the various portions of the ramps which have been highlighted does inhibit the accessibility and endangers those persons with disabilities when utilising the ramp.

- 8.4. The Blue Flag Criteria further entrenches the fact that the access ramps should be adapted to persons with disabilities and that the facilities should be designed for wheelchair and other disabled users and to comply with the ISO Standard Code for Access.
- 8.5. In terms of 4.8.1 of the SANS Standards all ramps or series of ramps shall provide for a safe, comfortable and convenient route for wheelchair users and further emphasises the fact that any challenges and/or risks to persons with disabilities utilising the ramps should be removed. The SANS Standards further indicates that any ramp shall have a gradient not steeper than 1:12m which the Commission emphasizes is not the case at various parts of the ramps.
- 8.6. The Commission further noted that the existing handrails on the ramp leading towards the toilet facilities are in contravention to the required standards as set out in section 4.10 of the SANS Standards. The standards require that handrails bear profiles that are of a circular profile or that of an elliptic profile and not of the flat squared off handrails being utilised currently.
- 8.7. The large landing area of the ramp leading to the beach has no handrails or any barrier in any form to prevent persons with disabilities (including minor children and the elderly for that matter) from falling from the landing area onto the beach. Additionally, there are no handrails on the last section of the ramp leading to the beach.

- 8.8. Beaches in South Africa should, bar only exceptionally in specific instances such as for reasons of safety of the public, be accessible by all. The conditions above impose significant risks and impediments to persons with disabilities who wish to access the beach independently and safely. In general, the absence of any facilitative access infrastructure would require such a person to request the assistance of third parties to assist them access the beach. The barriers to access to the beach for able bodied persons do not exist, but may in the current instance pose such burden on persons with disabilities such as to cause them to waive the right to access a natural resource with which South Africa is blessed.
- 8.9. With regard to the toilet facilities, the Commission made various observations which pose a great number of challenges for persons with disabilities, specifically but not limited to, wheelchair users.
- 8.10. During the inspection the Commission noted that both the male and female toilet facilities designated for persons with disabilities were locked by means of a padlock. Access to the facilities could only be obtained through a request to a municipal worker. The Commission was advised that this was prompted by instances where able bodied beach goers abuse the said toilet facilities which then resulted in the facilities being locked. It is noted that municipal workers are not permanently based at the facility. Thus, while the purpose motivating the municipality to restrict access to the toilets is sound, adequate measures have not been put in place to ensure that persons needing to use the toilets are guaranteed access at any time.
- 8.11. In addition the toilet facilities do not comply with the recommended SANS Standards which require levers on doors to facilitate access and privacy of the users. In addition the SANS Standards at paragraph 4.12.2 (a) states that the door of the toilet facility shall open outwards thus requiring the use of a

door to gain access to the toilet facility and not the sliding door currently in place.

- 8.12. The conditions preventing access to the toilets and ease of use invariably has a negative impact to the dignity of persons with disabilities who seek to use the facility.
- 8.13. Case law and guiding frameworks promoting accessibility dictates that measures be taken to accommodate persons with disabilities. These measures have not been adopted in this instance. Based on the observations by the Commission, it would be extremely difficult to establish any plausible justification for the limitation of the rights of persons with disabilities in the present case.
- 8.14. Based on the absence of reasonable justification, and in the absence of suitable measures to ensure that persons with disabilities are able to freely enjoy their rights to access the beach, the Respondent has failed to honour its responsibility to ensure accessibility and use of the beach to persons with disabilities.
- 8.15. The lack of handrails at various parts of the ramps, the steep gradients at various parts of the ramps, the non-existence of a grab bar which would enable wheelchair users to open and/or close the sliding door leading into the toilet facility, obstacles within pathways which are used by wheelchair bound persons, in sum, impose burdens to persons who are wheelchair bound including those who have limited walking abilities and are thereby disadvantaged when seeking to use the Respondent's facilities. Such persons are forced to rely on the assistance of others which is likely to adversely

impact on their self-worth, and to reinforce feelings of being secondary citizens rather than equal.

9. Findings

9.1. Based on the analysis set out above the Commission makes the following findings:

9.1.1. Walkway:-

9.1.1.1. The walkway which is utilised by members of the public, specifically wheelchair users, contains obstacles in the form of a cement waste bin which obstructs and/or prevents wheelchair users from proceeding along the walkway thus hampering their route to the toilet facilities and/or beach.

9.1.2. Ramps:-

9.1.2.1. Gradients at the commencement of the ramp leading to the toilet facilities and to the beach, are steeper than that of the required gradient of 1:12m.

9.1.3. Handrails:-

9.1.3.1. The absence of handrails at two points of the ramps are inconsistent with recommendations in the SANS Standards. In addition, handrails in place do not conform to the SANS Standards, rendering them unsuitable for their purpose in respect of persons with disabilities.

9.1.4. Landing area:-

9.1.4.1. The large landing area on the ramp leading to the beach does not have proper structures and/or rails and/or barriers which would ensure the

safety of, wheelchair users, persons who are blind or partially blind, or frail persons and the elderly (including children).

9.1.5. Toilet facility designated for persons with disabilities, specifically wheelchair users:-

9.1.5.1. The door leading into the toilet facility designated for wheelchair users is a sliding door, requiring the use of force to be opened. The sliding mechanism did not allow the sliding door to open and/or close in a fluid, single motion.

9.1.5.2. The sliding door did not have any form of grab bar and was locked with the use of a standard padlock.

9.1.5.3. It was further noted that when opening and/or closing the said sliding door, challenges cropped up as and the municipal worker himself, let alone a person in a wheelchair, encountered challenges while trying to slide the door open.

9.1.5.4. The sliding door did not have any form of lever with which to open and/or close the sliding door.

9.1.6. The right to equality for persons with disabilities has been violated.

9.1.7. The Respondent has not reasonably accommodated the needs of persons with disabilities, thereby effectively denying their ability to independently and safely access the beach and to use public ablution facilities.

- 9.1.8. The Respondent has not put in place any interim measure permitting the full and free exercise of the Complainants right to access the beach and to use the designated public toilets.

10. Recommendations

- 10.1. In terms of section 13 (1) (a) (i) of the Act the Commission is entitled to make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution.
- 10.2. In view of the findings set out in paragraph 9 above, the Commission recommends the following:
- 10.2.1. That the Respondent take heed of the White Paper on the Rights of Persons with Disabilities to secure reforms in its operations in general. In this regard, the Commission provides herewith the Disability Toolkit it has developed to support the Respondent in its implementation and monitoring of the rights of persons with disabilities.
- 10.2.2. The Respondent remove the cement waste bin depicted in photo 'l' from its current location, and takes steps to ensure that the pathway/s leading to the toilet facilities and the beach are free of any obstacles which may hamper wheelchair users from accessing the toilet facilities and the beach. Respondent to ensure that this is effected within 5 (five) days of receipt of this report.

- 10.2.3. That the Respondent undertakes an assessment of conformity with the SANS Standards in respect of the gradient of the ramps and landing areas within 30 (thirty) days of receipt of this report.
- 10.2.4. That handrails be erected, attached or affixed to the wall running alongside the ramps in accordance with the specifications set out in section 4.10 of the SANS Standards. This to be effected within 30 (thirty) days of receipt of this report.
- 10.2.5. That the doors to the designated toilets be made to conform to the standards contained in 4.12.2 of the SANS Standards and to be effected within 30 (thirty) days of receipt of this report.
- 10.2.6. That the Respondent implement measures to ensure access to the toilets is available at all times.
- 10.2.7. The Respondent is required to provide the Commission with a report within two (2) months of receipt of this report detailing its compliance with these recommendations.

11. Appeal

You have the right to lodge an appeal against this decision. Should you wish to lodge such an appeal, you are hereby advised that you must do so in writing, within 45 days of the date of receipt of this finding, to:

The Chairperson, Adv. M. L. Mushwana
South African Human Rights Commission
Private Bag x2700

Houghton

2041

SIGNED AT Johannesburg ON THIS THE 10 DAY OF August 2016

B. J. Malatji

COMMISSIONER B. MALATJI

SOUTH AFRICAN HUMAN RIGHTS COMMISSION