



TERMS OF REFERENCE:

INVESTIGATIVE INQUIRY INTO ACCESSIBILITY OF PUBLIC TRANSPORT IN GAUTENG FOR PEOPLE WITH DISABILITIES

INTRODUCTION

1. The South African Human Rights Commission (**'the Commission'**) has initiated an investigation into Accessibility of Public Transport In Gauteng For People With Disabilities. This is in accordance with its objectives to promote: respect for human rights; a culture of human rights; and protection, development and attainment of human rights.
2. Disability is imposed by society when a person with a physical, psychosocial, intellectual, neurological and/or sensory impairment is denied access to full participation in all aspects of life, and when society fails to uphold the rights and specific needs of individuals with impairments. Whether it's a physical disability, a mental health issue or an 'invisible' disability, they are all up against barriers when it comes to carrying out their daily routines. A public transport system should aim to provide dignified travel to passengers with disabilities and there are constitutional implications for transport planning, which affect the right to safety, equality, dignity and freedom of movement. Land-based transport should therefore include all groups of people in society.
3. Instead of having to react to each discriminatory incident as and when they occur, with the learnings and information gathered during the investigation, the GPO aims to craft medium to long term interventions that will instil, in the transport sector, a culture of human rights and produce mechanisms that promote equality and prevent unfair discrimination. And in doing so, ensuring ease of access and navigation for persons with disabilities.
4. The Commission has deemed it appropriate and in the public interest to conduct its investigation through a formal inquiry, in accordance with sections 13 and 15 of the South African Human Rights Commission Act 40 of 2013 (**'the SAHRC Act'**) and Chapter 4 of the Commission's Complaints Handling Procedures (**'the Procedures Manual'**)

BACKGROUND

5. In May 2023, the Commission received a referral of a complaint from the Johannesburg High Court sitting as an Equality Court. The complaint was lodged by Transport User's Group of Persons with Disabilities South Africa ("TUGSA"). The complaint relates to the accessibility of busses, trains, and taxis for people with disabilities. The Complainant alleges that the current environment at railway stations, bus stations and taxi ranks pose a danger to commuters with disabilities. The Complainant views the current state of affairs within the public transport system as a form of unfair discrimination on the basis of disability as commuters with disabilities are not free to enjoy all the services on offer due to inaccessibility.
6. Persons with disabilities experience three main types of interrelated barriers:
 - social (including high cost, lack of disability awareness, and communication difficulties);
 - psychological (such as fear for personal safety); and
 - structural (including infrastructure, operations and information).
7. It is for these reasons that the Commission took the view that the complaint raises a prima facie systemic violation and wishes to call on all stakeholders to work to together with the Commission to eliminate barriers to travel.

THE MANDATE, POWERS AND FUNCTIONS OF THE COMMISSION

8. The SAHRC is a state institution established in terms of section 181 of the Constitution to strengthen constitutional democracy in South Africa. Its mandate, as contained in section 184 of the Constitution, is to promote the respect and protection of human rights. It is also empowered to monitor and assess the observance of human rights in South Africa.
9. Section 184(2)(a) and (b) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the country and to take steps to secure appropriate redress where human rights have been violated.
10. In addition to the Commission's powers under section 184(1) and (2) of the Constitution, the SAHRC has additional powers and functions prescribed by national legislation including the SAHRC Act and the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ('PEPUDA').

11. Section 13(3) of the SAHRC Act states that the Commission is competent to investigate, on its own initiative or on receipt of a complaint, any alleged violation of human rights.
12. Section 15(1)(a) of the SAHRC Act states that pursuant to the provisions of section 13(3) the Commission may, in order to enable it to exercise its powers and perform its functions conduct or cause to be conducted any investigation that is necessary for that purpose.
13. On 1 January 2018, the Commission's Procedures Manual were promulgated in accordance with sections 15(6) and (7) of the SAHRC Act. Article 3(1) of the CHP states that the Commission is competent to investigate on its own initiative or on receipt of a complaint, any alleged violation of human rights.
14. Section 15(5) of the SAHRC Act states that if it appears to the Commission during the course of an investigation that any person is being implicated in the matter being investigated, the Commission must afford such person an opportunity to be heard in connection therewith by way of giving of evidence or the making of submissions and such person or his or her legal representative is entitled, through the Commission, to question other witnesses, determined by the Commission, who have appeared before the Commission in terms of this section.

LEGAL AND REGULATORY FRAMEWORK

15. The **UN Convention on the Rights of Persons with Disabilities (CRPD)** requires its parties to take appropriate measures so that persons with disabilities have access, on an equal basis with others, to the physical environment, to transportation, to information and communication including information technologies and systems, and other facilities and services open or provided to the public both in urban and rural areas.
16. The **Constitution** provides that "the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including...disability." Further, no person may unfairly discriminate directly or indirectly against anyone on one or more of the listed grounds. Furthermore, discrimination on one or more of the listed grounds listed is unfair unless it is established that the discrimination is fair.
17. The **Promotion of Equality and Prevention of Unfair Discrimination Act (2000)** references universal design, universal access and reasonable accommodation as tools to achieve disability equality through safe, equal and dignified access. In particular, section 9 of the Act provides that no person may unfairly discriminate against any person on the ground of disability, including (a) denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society and (b) 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.

18. The DoT's **Moving South Africa study (1999)** identified barriers to all forms of transport for special categories of passengers. In 2007, the Department of Transport (DoT) developed the **Public Transport Strategy** to help guide, support and monitor municipalities in implementing accessible public transport systems, and 13 major municipalities were selected to test the implementation of the Integrated Public Transport Network (IPTN): Johannesburg, Cape Town, Tshwane, Ekurhuleni, Nelson Mandela Bay, Buffalo City, eThekweni, Polokwane, Rustenburg, Mbombela, Msunduzi, and Mangaung. A thirteenth was added in 2013/4, George. The Public Transport Network Grant (PTNG) was aimed at helping municipalities to accelerate the construction and improvement of accessible, affordable, integrated, efficient and sustainable public transport networks within the 20-year timeframe provided in Moving South Africa

19. The **National Land Transport Act (2009)** mandates universal access in public transport. In 2016, in pursuit of this aim, the DoT published the Comprehensive Integrated Transport Plan, as well as the first standards for pedestrian crossings in line with White Paper on the Rights of Persons with Disabilities requirements. The DoT developed the **Universal Design Access Plan (UDAP)** for the 13 IPTN municipalities to record and measure progress towards a universally accessible transport system.

20. The revised **White Paper on National Transport Policy (2021)** vision is to provide safe, accessible, reliable, effective, efficient, environmentally sustainable and fully integrated transport operations and infrastructure that will best meet the needs of passengers and pedestrians, improving levels of services at a cost and in a fashion that supports government strategies for economic and social development, whilst being environmentally and economically sustainable.

21. With regard to development the **National Land Transport Strategic Framework (2023-2028)** highlights that:
 - 21.1. “[a] relationship exists between land use development and in many respects, land use development is unlocked by the provision of high-quality integrated transport infrastructure and services.

 - 21.2. The Framework further provides that what is needed is more people focused infrastructure investment, such as (a) upgrading infrastructure networks in major urban areas and towns that support sustainable and universally accessible transport use and (b) developing universally accessible, quality public spaces, pedestrian walkways and efficient, affordable and safe public transport networks for use by all.

21.3. The Framework sets out strategic priorities to apply transport planning in achieving social, health, economic and environmental outcomes progressively. This, however, is an integrated approach and the outcomes link Provincial and Municipal Transport, Spatial Planning and Bulk Infrastructure Master Plans.

22. In the **Department of Transport Revised Strategic Plan (2020/21 – 2024/25)**, the Department identified fundamental priority areas to focus on during the 2020-2025 Medium Term Strategic Framework period as follows, inter alia:

- Public transport that enables social emancipation and an economy that works
- Accelerating transformation towards greater economic participation

23. As stated above, making public transport accessible is about inclusion but it is also about empowerment of persons with disabilities. The **White Paper on the Rights of Persons with Disability (2007)** provides that “empowerment” refers to processes, procedures and actions aimed at affording access, equal treatment, inclusion, participation, accountability and efficiencies. It is premised on encouraging, and developing the skills for self-sufficiency, with a focus on eliminating the need for charity or welfare in individuals and groups. From a disability perspective this means empowering or developing the skills and abilities amongst persons with disabilities and/or their care givers to effectively communicate their socio-economic needs to others in society, advocate and lobby for these needs to be met, represent themselves and actively participate in all decision-making processes on matters that directly impacts on their lives. Empowerment is therefore identified as a core cross-cutting theme for enabling persons with disabilities to avail of and access all socio-economic development opportunities and rights that exist.

24. The **Implementation Strategy to guide the provision of accessible public transport in South Africa (2009)** provides that the public transport system needs to be easy to use for all people, and not just able-bodied people. The concept of “Universal Design” is closely related to Universal Access, which is a design philosophy that ensures that products are user-friendly, work for people of all ages and abilities and supports easy access. To elaborate further:

24.1. Universal access is the goal of enabling all citizens to reach every destination served by public roadways and public transport services. Wherever possible, facilities should be designed to allow safe travel for young, old and disabled persons who may have diminished perpetual or ambulatory abilities. Universal access implies that the system should be accessible to all special needs passengers, including those who are physically-, visually-, and/or hearing-impaired, as

well as those with temporary disabilities, the elderly, children, parents with strollers and other load-carrying passengers.

24.2. Universal design means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design. Universal design should not exclude assistive devices for particular groups of persons with disabilities where this is needed. Universal design uses the following design principles:

- Equitable use
- Flexibility in use
- Simple and intuitive
- Perceptible information
- Tolerance for error
- Low physical effort
- Size and space for approach and use

25. Accordingly, this investigation is conducted in terms of the abovementioned constitutional and legislative framework.

THE SCOPE AND OBJECTIVES OF THE INQUIRY

26. The purpose of the Commission's existence is, as stated above, to "*(a) promote respect for human rights and a culture of human rights; (b) promote the protection, development and attainment of human rights; and (c) monitor and assess the observance of human rights in the Republic.*"

27. The Constitution, the SAHRC Act and the Procedural Manual empowers the Commission to fulfill its obligations through monitoring, investigating, researching, educating, lobbying, advising and reporting, on matters where human rights may have been violated.

28. The Commission believes that any inquiry undertaken must be approached from a non-adversarial position (an inquisitorial position). The Investigation will not proceed from the basis of specific allegations and intends on examining the accessibility of public transport sector in Gauteng as a whole. The intention of the Commission is to find the best means of promoting human rights.

29. The objectives of the inquiry are to, amongst others:

- 29.1. Assess the extent of the challenges of people with disabilities face in accessing public transport in Gauteng;
- 29.2. Examine the root causes of the challenges in accessing public transport in Gauteng for people with disabilities;
- 29.3. Assess the impact of the inadequate or lack of accessibility to public transport on people with disabilities and their enjoyment of fundamental human rights;
- 29.4. Taking into consideration the historic challenges faced by persons with disabilities in accessing public transport and the constitutional imperative to make public transport for all accessible, the issues to be considered in this investigation is to determine whether the current state of affairs amount to unfair discrimination, and if so, whether any limitation of rights is justifiable;
- 29.5. To examine whether State actors have taken adequate steps to progressively realise the socio-economic rights in issue;
- 29.6. Examine the planning, budgeting and implementation of policies and legislation that should address accessibility issues and universal access;
- 29.7. Explore the role that various actors have played in causing this prima facie violation;
- 29.8. Explore the role that various actors can play in bringing about the desired changes, including necessary and appropriate modification and adjustments to ensure persons with disabilities enjoy or exercise on an equal basis with others of all human rights and fundamental freedoms; and
- 29.9. Make findings, recommendations and directives aimed at addressing the prima facie violations.

PROCEDURE

30. As stated above, the Commission has deemed it appropriate and in the public interest to conduct its investigation through a formal Inquiry. The proceedings will be inquisitorial in nature. The Inquiry be presided over by panellists who will ask questions to the witnesses and proceedings will be recorded.
31. The Commission will receive both written and oral submissions from stakeholders for the purposes of the inquiry.

32. In terms of article 10(5) of the Commission's Procedure Manual and section 15(5) of the SAHRC Act, the Commission has determined that all parties will be given an opportunity to make further written submissions after the conclusion of the final sitting of the Inquiry, for a period of **21 working days**, to address any issues raised in the Inquiry which they would like to respond to;
33. The Commission has determined that the proceedings should be open to the members of the public and the media having regard to:
- 33.1. The public interest nature of this matter; and
 - 33.2. The constitutional obligations of the Commission to observe the principles of accountability, openness and transparency.
34. Parties may be legally represented, but oral submissions must be made by the parties themselves.
35. The Commission will accept written submissions from parties and interested individuals or groups until **6 November 2023.**
36. The hearings are expected to take place virtually and at the Commission's Braamfontein offices **from 20 to 22 November 2023.**

THE HEARING PANEL

37. In accordance with article 10.3.1 of the Procedures Manual, the panel will comprise the following persons:
- 37.1. Provincial Manager of Gauteng
 - 37.2. Senior Legal Officers
 - 37.3. Legal Officers