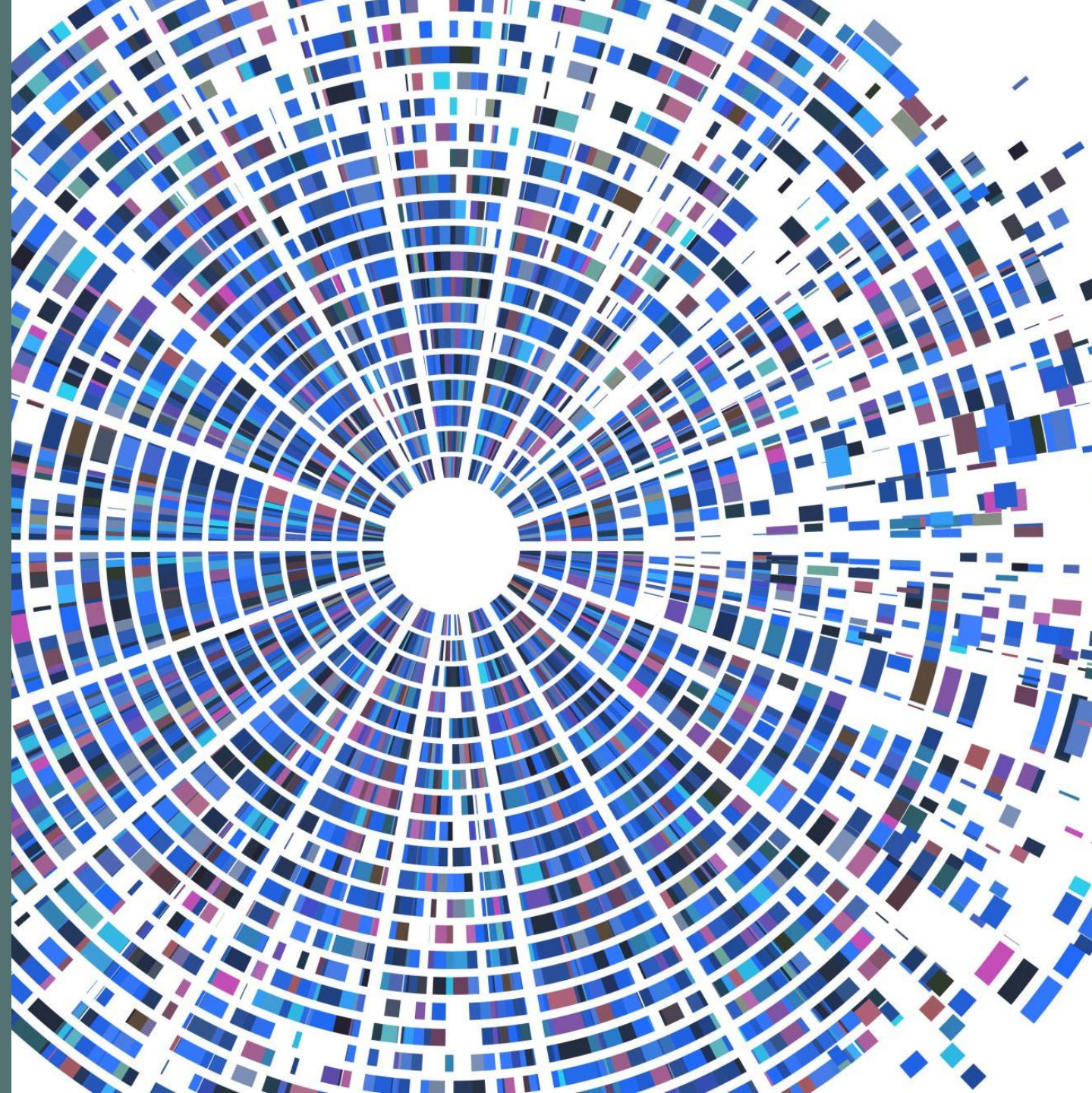


PROGRESSIVE REALISATION OR PROGRESSIVE DELAY?

WHAT RECENT COURT AND
PUBLIC PROTECTOR
DECISIONS MEAN FOR BASIC
SERVICE DELIVERY IN CAPE
TOWN



WAITING FOR CONSTITUTIONAL RIGHTS

- Section 26 - Right to adequate housing
- Section 27 - Right to sufficient water
- Section 24 - Right to an environment that is not harmful

For over thirty years government has relied on the doctrine of **progressive realisation** to justify gradual implementation because of limited resources.

Key question -
At what point
does
"progressive
realisation"
become
unconstitutional
delay?

PROGRESSIVE REALISATION: WHAT THE CONSTITUTION ACTUALLY REQUIRES

Progressive realisation does **not** mean:

- government can delay indefinitely
- budgets determine rights
- poorer communities wait while wealthier areas receive additional investment

Instead, constitutional jurisprudence requires:

- continuous progress
- reasonable measures
- prioritisation of those in greatest need
- equitable allocation of public resources

After three decades, courts appear increasingly willing to ask whether governments are genuinely prioritising constitutional obligations.

THE CONSTITUTIONAL COURT'S TAFELBERG JUDGMENT (2026)

The Court found that:

- the Western Cape Government unlawfully sold public land needed for affordable housing
- the City and Province failed in their constitutional obligations to address spatial apartheid
- high land values cannot justify avoiding affordable housing obligations
- government must report back with concrete implementation plans for affordable housing in the inner city.

Why this matters

The Court shifted the debate from: "Housing is difficult" to "Government must demonstrate measurable progress."

Access to 6000l of free water is for all intents and purposes dependent on having a formal dwelling

THE PUBLIC PROTECTOR ON WATER AND BASIC SERVICES

The investigation into Langa Flats and Khayelitsha found:

- maladministration
- constitutional failures
- persistent failures in sanitation
- inadequate water services
- failure to maintain infrastructure
- violation of residents' fundamental rights

Importantly, remedial action required authorities to implement corrective measures rather than simply acknowledge shortcomings.

Key message -
Basic municipal
services are
constitutional
obligations—not
discretionary
programmes.



A COMMON THEME

Tafelberg	Public Protector
Housing	Water & sanitation
Constitutional Court	Public Protector
Affordable housing delayed	Basic services neglected
Government must report progress	Government must implement remedial action

Together these decisions suggest a new judicial approach:

Rights require implementation—not merely policy.

DO MUNICIPAL BUDGETS REFLECT CONSTITUTIONAL PRIORITIES?

Public spending is more than an accounting exercise—it is a statement of priorities.

The Constitution requires the **progressive realisation** of rights to:

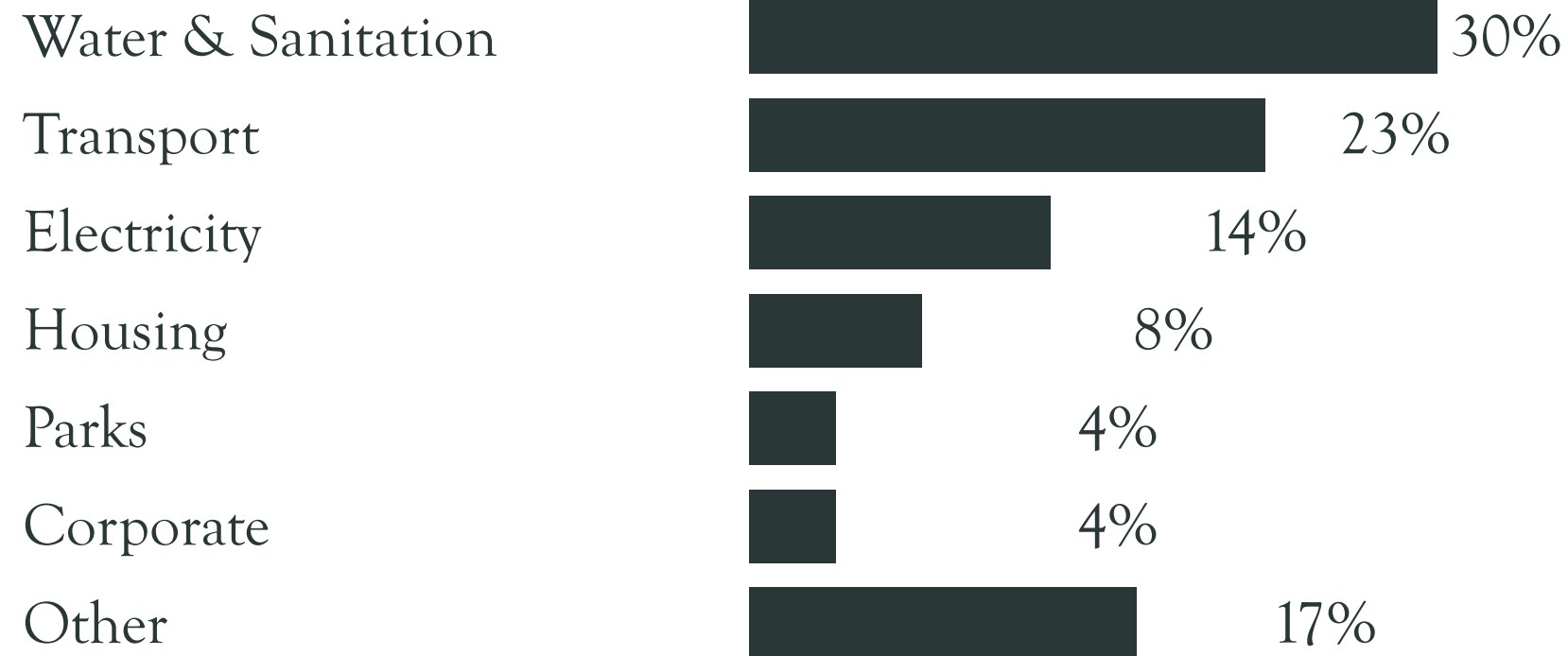
- Safe and sufficient water
- Adequate housing
- Basic sanitation
- A healthy environment

Recent decisions by the Constitutional Court and the Public Protector suggest that municipalities must increasingly demonstrate that their budgets reflect these constitutional obligations.

A RIGHTS-BASED BUDGETING FRAMEWORK

Budget Category	Purpose	Constitutional Priority
Water & Sanitation	Basic services	Direct constitutional obligation
Human Settlements	Affordable housing	Direct constitutional obligation
Electricity	Basic service	Direct constitutional obligation
Transport & Roads	Economic and social mobility	Supports rights
Recreation & Public Amenities	Quality of life	Important, but secondary once minimum rights are unmet
Corporate & Administrative Infrastructure	Municipal operations	Supports service delivery

CITY OF CAPE TOWN 2026/27 BUDGET



INFORMAL SETTLEMENTS: THE FORGOTTEN CONSTITUTIONAL QUESTION

Many residents remain **de facto excluded** because:

- settlements remain unrecognised
- infrastructure is considered temporary
- municipalities argue formal installation is impossible

Yet residents still require:

- water
- sanitation
- drainage
- refuse removal
- healthy environments

Recent decisions increasingly suggest constitutional rights attach to people—not to planning status.

IS PROGRESSIVE REALISATION BEING REDEFINED?

For many years the practical understanding was: Limited resources justify slow implementation.

Recent accountability decisions increasingly suggest that Government must demonstrate:

- ✓ reasonable budgeting
- ✓ equitable prioritisation
- ✓ measurable progress
- ✓ accountability for failures

The emphasis is shifting from **whether government has a policy** to **whether rights are actually being realised**.



THE CONSTITUTIONAL QUESTION

When communities continue to lack access to water, sanitation and adequate housing, should municipal budgets prioritise discretionary investments ahead of ensuring these minimum constitutional rights?

The issue is not whether transport, parks or public amenities are important.

The issue is whether, after more than 30 years of democracy, public expenditure demonstrates that constitutional rights are being prioritised before discretionary investments are expanded.



WHAT THIS MEANS FOR CIVIL SOCIETY

New opportunities include:

- using budget analysis as a constitutional accountability tool
- comparing spending priorities against constitutional obligations
- demanding implementation plans rather than promises
- monitoring compliance with court orders and remedial action
- challenging de facto exclusion of informal settlements



COMMUNITY VOICES:

The experiences shared today will help us understand:

- Are constitutional rights reaching communities?
- What barriers still prevent access to free basic water and sanitation?
- What happens when people live in informal settlements that remain excluded from planning and investment?
- What forms of accountability are still missing?

Because constitutional rights are ultimately measured not by judgments—but by whether people can safely turn on a tap, access dignified sanitation, and live with security and dignity.