



**PRESS RELEASE**  
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## **ERF 81 RESIDENTS RESIST PROPERTY POWER**

After almost two years of court hearings, a group of predominantly Black women living in a storeroom on public land owned by the Department of Defence (DOD) can finally rest easy without the threat of eviction proceedings hanging over their heads. The small group moved into the storeroom on a parcel of land known as “Erf 81”, a former military base located on the slopes of Signal Hill in the affluent neighbourhood of Tamboerskloof. A number of other occupiers moved onto the property out of desperation in 2019, while others have lived and worked on the property since it was abandoned as a military base in the 1980s – some for almost 25 years.

The occupiers, represented by the Ndifuna Ukwazi Law Centre, have resisted a court application for their eviction that was brought by an association of 70 residents of Tamboerskloof – the Tamboerskloof Residents’ Association (TRA). The Tamboerskloof Residents Association was established in 2018 to “address the illegal occupation at Erf 81 [and] prevent further invasion or illegal use of Erf 81”. After two years, the eviction application was finally withdrawn on 4 May 2021.

Despite its attempt to evict occupiers from Erf 81, the TRA does *not* own Erf 81. We need to be clear about the TRA’s conduct through this court application - it is an assertion of race and class privilege, resources and power in a manner not allowed in law, to try to displace and remove the poor, vulnerable and landless. This display of seemingly racially motivated NIMBYism (Not In My Backyard) is impermissible under South Africa’s Constitution and further legislation which protects the rights of occupiers and prioritises the redress of spatial apartheid through the promotion of spatial, racial and economic inclusion.

The Constitution provides for the right of access to adequate housing, which includes the right not to be arbitrarily evicted from one’s home. The Constitution has fundamentally altered the law governing evictions by granting various legal protections to people who have occupied land. In light of our historical and contemporary context of landlessness, the Constitution and Prevention of Illegal Eviction and Unlawful Occupation of Land Act (the PIE Act) recognise and actively protect the rights of occupiers above the interests of neighbouring NIMBYs.

Furthermore, the PIE Act is clear: *only* the owner or person in charge of a property is empowered to apply for an eviction application. In this matter, the TRA’s application amounted to an abuse of court process which effectively tried to reassert legal principles and stigmas from the bygone apartheid era, when the Prevention of Illegal Squatting Act gave (White) landowners and authorities wide-ranging powers to evict and destroy the homes of unlawful occupiers. This approach contributed to segregated towns and cities, the legacy of

which is still with us today. The Constitution and the PIE Act provide an important break from South Africa's shameful and divisive history of forced removals and evictions, and any attempt to circumvent people's human rights should not be tolerated by the courts. Our clients, and similarly situated people, are just as much a part of the city as those living in affluent neighbourhoods. Their place in the city extends beyond the privileged classes' reliance on them for labour and services - it includes the right to a home and to be protected from illegal evictions.

While the TRA has withdrawn its eviction application, it today approached the Western Cape High Court for an order asking the Minister of Defence to indicate whether she intends to take steps to evict the occupiers and prevent further unlawful occupation of the Erf 81 property.

Disha Govender, Head of the Ndifuna Ukwazi Law Clinic and attorney for the occupiers living in the storeroom, said:

*“While I am relieved that my clients no longer have the threat of this eviction application hanging over their heads, the reality is that the application should never have been brought against them in the first place. The law is clear that only the owner or person in charge of property is entitled to bring an eviction application and the TRA having the benefit of legal advice should have known this, yet they chose to launch the application when they are neither the owner nor the person in charge. The TRA also did not have authority to act on behalf of the owner - as they had tried to argue. In my opinion, this was an abuse of the court process at the expense of my clients, who are poor and vulnerable persons. If the TRA's concern was only about the orderly development of the site, then it should have brought its application only against the Minister from the beginning and not tried to pursue an eviction application. I'm left concerned by how the eviction application could have ever been entertained by the courts and what would have happened to our clients had they not been able to secure legal representation which is often the case for a lot of people.”*

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