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Notes on the submissions to the Portfolio Committee on the Rental Housing Amendment Bill

1. Regulatory role of the Minister

The Minister is indeed the policy and regulatory leader of the sector of human settlement. The committee should note that this is the role in which the Minister and the national executive take into account what the needs of people are and draft policy in the form of legislation, regulation and practice notes to ensure that the needs are satisfied.

This translation of the needs of the people is made a bit more complex as we have a decentralised governing system consisting of national, provincial and municipal levels. At each level there is an executive with an administrative head and department, and a legislative arm that has committees that do oversight over the manners in which policy is made and implemented.

The committee should guide the department and the stakeholders that make presentation to note the difference between policy, legislation and regulation. A number of submissions focus too much on regulatory matters that is in the ambit of how the administrative department at each level of government give effect to what the legislation says. This does not mean that we should not check that the legislation properly guides who must make regulation, and the time frames for its completion.

2. Setting norms and standards through regulations:

With regard to regulatory matters in the amendment bill and the principal act SALGA, as key stakeholder representing 278 municipalities makes a few points that may require attention:

1. that municipalities know the unique geographical circumstances better and should be the ones setting norms and standards;
2. that although the legislation states that the Minister must first consult the relevant parliamentary committee and every MEC (presumably via MINMEC) before making regulation, the Amendment Bill does not require that the Minister consult with municipalities before issuing these regulations;
3. that 12 months is too short a period for the Minister to make regulation and consult the MECs. They provide two reasons for this: (1) the scope of the

potential regulations is very wide - ranging from safety standards to rent limits - and the possibility of reaching consensus on such technical and controversial issues within one year is unlikely. (2) Given the dynamic nature of the rental market such regulations should not be a once-off exercise. The Amendment Bill should include provision for the regulations to be updated from time to time.

SALGA therefore recommended that the amendment bill should include a provision that states that

i) *all municipalities should be consulted on regulations which stipulate fire safety standards for backyards in their jurisdiction;*

ii) *regulations should not be a once-off exercise and the Amendment Bill should include a provision that regulations are to be updated t ensure applicability to the changing conditions on the ground.*

3. The matter of "backyarding"

SALGA has a problem that the legislation does not specifically include the concept "backyard dwellers" or what SALGA calls "backyarding".

They fear that this omission would lead to possible ambiguity with the phenomenon of backyard dwellers being addressed as a by-product without focusing on the specific needs of people in the informal rental market. As the amendment bill and principal act stands, the specific needs of backyard dwellers and landlords are addressed as a by-product of the provisions dealing with the formal rental market. The point is that where backyard renting takes place, regulation made by a national Minister may miss the specific problems experienced by poorer landlords and back yard renters.

In SALGA's submission they state that by "Simply applying regulations or legislation drafted with the private formal rental sector in mind, to informal backyard rental, will not work. The research into the informal rental sector has given clear evidence that the sector operates with different dynamics than the formal sector. Examples of potential issues arising from the application of this legislation to backyard rental:

- Will there be separate norms and standards for backyard rentals in the Minister's regulations? Will the definition of 'unfair practices' be different for formal and informal rental?
- Many backyard tenants have verbal arrangements with their landlords whereby they do not pay rent, but contribute to the household in other ways (e.g. childcare, contributions to utilities). And many tenants in backyards do not have written agreements with their landlords. Enforcing the requirement that backyard tenants have formal written leases will not only take massive manpower, it will also seriously distort and alter the backyard rental market, which capitalizes on the flexibility of lease arrangements.

- If a backyard tenant asks for lease to be put in writing, and the landlord then refuses to rent to this person, or puts them out, is the backyard tenant protected under the amended Act?"

A key issue that is raised in this regard is the issue of enforcement. SALGA feels that the current Amendment Bill enables the Minister to issue regulations setting specific caps on how much rent backyard landlords could charge. Subsection 1 of section 15, enables the Minister to issue regulations related to *"the calculation method for escalation of rental amounts and the maximum rate of deposits which may be payable in respect of a dwelling."*

The committee has to insist that SALGA as stakeholder keep in mind that while their points on the provision on regulations are important, they must allow the Minister as policymaker and regulator of the sector to make regulation.

It is important that the committee suggests to all stakeholders that there are different levels of regulation for each of the levels of government. National legislation such as the principal act and this amendment bill will designate national norms and standards to the national Minister. Together with MECs, the Minister would work with the department and the provincial heads of departments to decide on which set of regulations are best placed in national, provincial or local government sphere.

All stakeholders should therefore allow the national Minister to play her role of bringing together the provincial and local government policy and regulatory leaders and their implementing departments to make decisions of which level of regulations belong to which sphere. The matter of who would monitor implementation and ensure adherence to regulation is therefore a bit premature and the committee should state that this important matter will be discussed at another time and space.

In the same vein, 12 months are actually enough time to make regulation and consider relevant information and research. Furthermore, it is important that where the stakeholder feels that their specific issues related to backyard dwellers and poorer landlords have not been given attention to, they must bring it to the attention of the Minister and make solid recommendations to the Minister.

In this way, important matters can be addressed. These are captured in questions such as:

(i) how many shacks are allowed in a single backyard?
(ii) what size are backyard dwellings allowed to be?
(iii) what size should a backyard be before an owner can consider renting dwellings out?
(iv) The important matter of access to backyards so that fire and emergency service vehicles can access it requires regulation.

4. **The matter of the tribunal as appeals body**

The Legal Resource Centre (LRC) raises an important matter related to the functioning of this body to ensure dedicated, easily accessible, low cost appeals to the lowest income earners in society.

The committee should state clearly that it supports the use of three criteria related to the tribunal; that is, that the appeals body should be **dedicated**, **easily accessible** and **low cost**.

The matter is very serious as it has to do with ensuring that the appeals body can function consistently to address matters that affect landlords and tenants/renters. Renters belong to a category in society where the majority rent because they are not allowed to access to bonds by the financial sector. While a small percentage of renters do so out of free will, the larger number does so because they are excluded because their low-income disqualifies them from getting bonds with which to buy land and property.

One-member tribunals as in the case of the CCMA

With this in mind, the LRC recommended that the amendment bill spells out that the tribunal consist of the smallest number of members so that the absence of members does not make it dysfunctional. They recommend that the tribunal is set up following the model that functions successfully as in the case of the Council for Conciliation, Mediation and Arbitration that was brought to life by the Labour Relations Act 66 of 1995 (LRA).

The committee should put it to the LRC that they have duty to back up their recommendation with research that shows the type of training that addresses matters pertaining to rental housing property management and maintenance, housing development matters, consumer matters that includes a solid understanding of basic human rights as described in the Constitution. This research should include a possible training manual that describes the broad and specific skills set of tribunal members so ensure that the total complexity of rental matters in both the formal and informal (including "backyard dwelling") is captured. Finally, the research should state which institutions and possibly individuals would run such training courses and at which intervals they would be run for tribunals.

To ensure a fully dedicated, easily accessible and low cost tribunal, its members should be full-time rather part-time employed. In this case there are clearly also regulatory matters that should not necessarily be fully addressed by the legislation. These are norms and standards-setting issues (see section 15 (1) (b) and its sub-sub-sections) that fall in the ambit of the policy leader and regulator (national Minister in consultation with the Minister) and relate to safety, health, hygiene, basic living conditions, size, overcrowding and affordability.