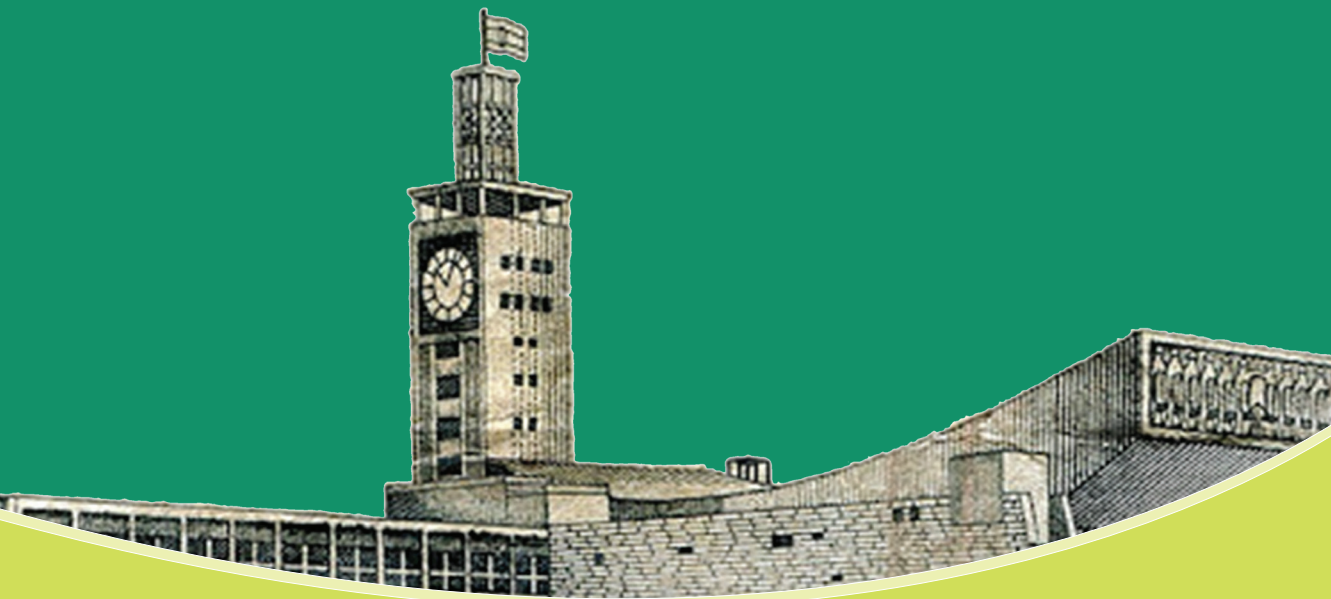




Parliament of Kenya

The National Assembly

Process of Debate in the House



Fact Sheet
No. 7

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The Clerk of the National Assembly
Parliament Buildings
Parliament Road
P.O. Box 41842-00100
Nairobi, Kenya

Tel: +254 20 221291, 2848000

Email: clerk@parliament.go.ke

www.parliament.go.ke

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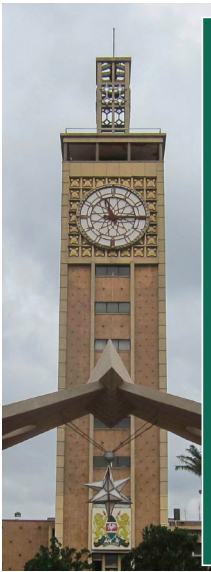
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This Factsheet on **Process of Debate in the House** is part of the Kenya National Assembly Factsheets Series that are supposed to enhance public understanding, awareness and knowledge of the work of the Assembly and its operations. It is intended to serve as easy guide for ready reference by Members of Parliament, staff and the general public. The information contained here is not exhaustive and readers are advised to refer to the original sources for further information.

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FactSheet

07

Process of Debate in the House

Article 95 (2) of the Constitution provides that the National Assembly deliberates on and resolves issues of concern to the people. Secondly, the primary function of legislatures world over is to legislate on any matter for the development and good governance of the country. These roles and many others are mainly executed through Parliamentary debates, deliberations and resolutions. Matters requiring the decision of the House are always decided by putting the question from the Chair (the Speaker) once a Motion has been made by a Member.

The key stages of arriving at a decision include:

1. Moving of a motion
2. Seconding of the motion
3. Proposing of the question by the Chair
4. Debate, if any
5. Amendments, if any
6. Reply by the Mover
7. Putting of the question
8. Collection of the voices by the Chair, or division

Once the Mover concludes moving his or her motion, the Chair proposes the question (by repeating the terms of the motion) and then debate ensues.

Debates provide opportunities for Members to discuss government policies, proposed new laws and deliberate on current issues. They allow Members of Parliament to deliberate on the concerns and interests of their constituents. Members of Parliament can also speak about issues brought to their attention by the public. Debates are designed to assist MPs to reach an informed decision on any subject matter.

When the debate ends, the Chair puts the question, collects the voices and then



Members in plenary during debate on a Motion before the House.

announces the result that either the ‘ayes’ or the ‘nays’ have it. If the Chair’s decision is challenged, the House proceeds to a division (i.e. electronic voting) to determine which side has the majority votes.

Right after proposing and before putting of a question on the main motion, amendments may be proposed and the same procedure as that of arriving at a decision on a motion is followed in proposing and deciding on them.

It is important to note that following the moving of Motions and proposing of questions, putting of questions are often proceeded with debate.

MOTIONS

A Motion is a proposal made for the purposes of extracting a decision of the House. They may be substantive or subsidiary. Substantive motions are self-contained (stand-alone) while subsidiary motions may be:

- (a) Ancillary – dependent on an order of the day;
- (b) Motions made for the purposes of superseding questions, such as motions for adjournment of a debate; and
- (c) Motions dependent on other motions, such as amendments

Manner of Debating Motions

(a) Notices of Motion

Manner of giving notice:

Motions are considered tabled when they are handed over at the Table of the House and read out by the Member giving notice to the Plenary when the order for ‘Notices of Motions’ is called out.

Period of notice:

In general, substantive motions require a notice while subsidiary motions do not. A Motion is typically not debated on the same day that its Notice is given, unless by the leave of the House.

Motions made without notice:

Several types of motions may be made without notice. These include:

- (a) Motion by way of amendment to a question already proposed from the Chair;
- (b) Motion for the adjournment of the House or of a debate;
- (c) Motion for closure of debate on a motion;
- (d) Motion that the House do resolve itself into a Committee of the Whole House;
- (e) Motion moved when the House is in Committee;
- (f) Motion for the suspension of a Member;
- (g) Motion made in accordance with the Standing Orders governing the procedure of Bills;
- (h) Motion for the agreement of the House with a Committee of the whole House in a resolution reported, or for the re-committal thereof or for the postponement of the further consideration thereof;
- (i) Motion raising a question of privilege;
- (j) Motion for the orders of the House under these Standing Orders;
- (k) Motion made to exempt business from provisions of Standing Orders;
- (l) Motion made for the limitation of a debate;
- (m) Motion made for the postponement or discharge of, or giving precedence to an order of the day; and
- (n) Motion for the extension of sitting time of the House.

(b) Admissibility

The Speaker may direct that a Motion is inadmissible if the Motion –

- (a) is one which infringes, or the debate on which is likely to infringe, any provision in the Standing Orders;
- (b) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament;
- (c) is too lengthy;
- (d) is framed in terms which are inconsistent with the dignity of the House;
- (e) contains or implies allegations which the Speaker is not satisfied that the Mover can substantiate; or
- (f) calls for the commitment of public funds for which no provision is made in the Annual Estimates as adopted by the National Assembly

The Speaker may however direct such alteration as he or she may approve to be made so the Motion may be admitted.

If the Motion calls for the commitment of public funds for which no provision is made in the Annual Estimates, the Speaker refers it to the relevant committee of the Assembly, pursuant to the provisions of Article 114(2) of the Constitution.

It is also important to note that Motions sponsored by a party have precedence over all other Motions on such days as the House Business Committee, in consultation

with the Speaker, may determine. However, where a party has sponsored two or more Motions, the Motions are considered in such order as the sponsoring party elects.

Amendment of Notice of Motion

The Speaker may permit a Member to move in amended form a Motion of which notice has been given if in the opinion of the Speaker the amendment does not materially alter any principle embodied in the Motion of which notice has been given.

At the conclusion of the debate, the Speaker puts the Question. However, upon a request by a Member, the Speaker may defer putting of the Question to another day to be determined by the House Business Committee.¹ Debates may last beyond one sitting.

Rules of Debate in the House

Debates in Parliament are regulated by the Rules of Procedure which are formulated in accordance to Article 124 of Constitution.

These are the guidelines expected to be observed by Members for the orderly conduct of business before the House.

They include –

1. **Language:** proceedings are to be transacted in official languages, being English, Kiswahili and the Kenya Sign Language. A Member must speak in the same language and conclude his/her contribution in the language which the Member began;
2. **Reference to the Speaker:** all requests to speak to a Motion must be channeled through the Chair. Further, a Member speaking to a Motion has to address the Speaker at all times;
3. **Number of Members speaking to a Motion:** at any one given time, only one Member shall speak to a Motion. In the event that two or more Members have requested to speak, the Member called by the Speaker shall speak to the Motion;
4. **Reference to written materials:** Members shall not read speeches. Nonetheless, reading short extracts from written documents and the use of printed papers in support of the argument being prosecuted may be allowed. An entire speech may only be read when the Speaker is satisfied that it is necessary for precision of facts and avoidance of doubt on the matter being prosecuted;
5. **Speaking to a Motion for which a question has been put:** no Member shall speak to a question after the question has been put by the Speaker, regardless of whether it is decided in the affirmative or negative;
6. **Speaking twice on a question:** no Member shall speak more than once to a question except under the following circumstances –
 - (a) in the Committee of the whole House;
 - (b) when required to offer explanation on some material part of the Member's speech;
 - (c) when replying to a substantive Motion which s/he had moved; or
 - (d) when speaking to an amendment to a substantive Motion before the House.

¹ See Standing Order 53

7. **Points of Order:** any Member may raise a point of order at any time during the speech of another Member through the Speaker. If the request is acceded to, the Member shall be required to indicate the Standing Order upon which the point of order is raised;

When a Member has the floor, other Members must listen in silence. However, interruptions of debate are only allowed;

- (a) by raising a point of order;
 - (b) upon a matter of privilege suddenly arising;
 - (c) upon a point of information or elucidation; and
 - (d) by raising a point of procedure.
8. **Personal Statement:** a Member wishing to explain matters of a personal nature with the indulgence of the House is allowed to issue a Personal Statement.
9. **Anticipating debate:** no Member is allowed, while contributing to a particular Motion, to raise matters relating to a Bill, Report or Motion that the House is already seized of.
10. **Reference to proceedings of Select Committees:** Members are not allowed to refer to the proceedings of a Select Committee before the Committee has laid its Report on the Table of the House.
11. **Contents of speeches:** Members are not allowed to discuss, or adversely refer to or discuss the conduct of head of state or government, a representative of a friendly country, the Speaker, a judge, or a holder of an office whose removal is dependent upon a decision of the House without a substantive Motion. Such substantive Motion requires a Notice of at least three days.
12. **Retraction of apologies:** whenever the Speaker determines that a Member has used exceptionable words that demeans or imputes improper motive on the dignity of the House or a Member of the House, the Member shall be ordered to withdraw and apologize. In the event that the Member defies the Order, s/ he is deemed to be of disorderly conduct and is sanctioned by the Speaker in accordance with the provisions of Standing Orders.
13. **Matters *sub judice* (pending in court):** a matter is considered *sub judice* if civil or criminal proceedings relating to it are ongoing in a court of law or constitutional tribunal and deliberations on the same by the House is likely to influence fair determination of the matter by the other body. The determination of whether a matter is *sub judice* or not is based on the criteria set out under Standing Order 89(3) and (4).

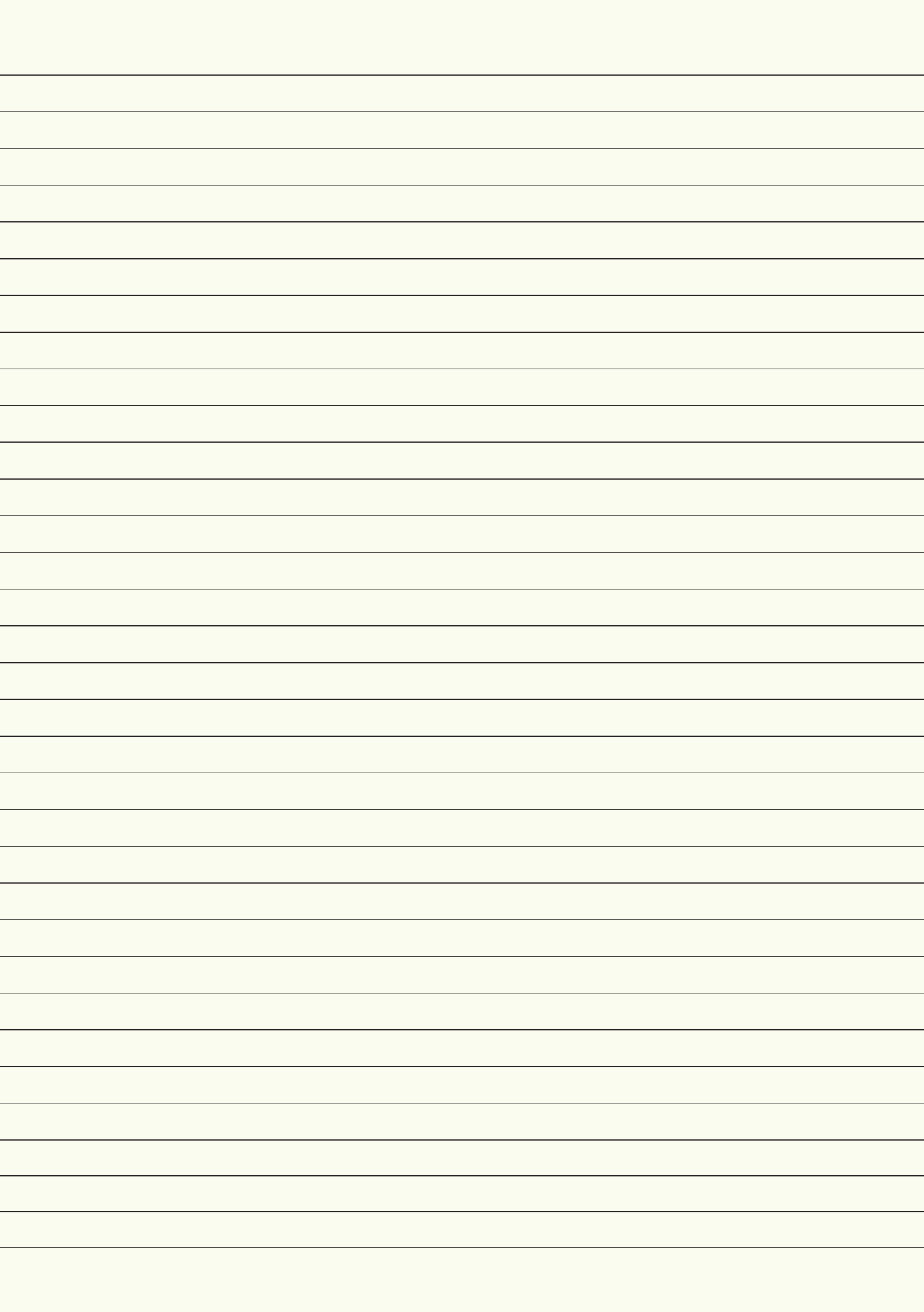
The *sub judice* rule is based on the assumption that the privilege of freedom of speech in the Assembly places a corresponding duty on Members to use their freedom responsibly. Therefore, Members are not allowed to refer to any particular matter which is *active* in a court of law or constitutional tribunal, or which, by the operation of any written law, is secret, save in exceptional circumstances where the Speaker may allow reference to such matters.

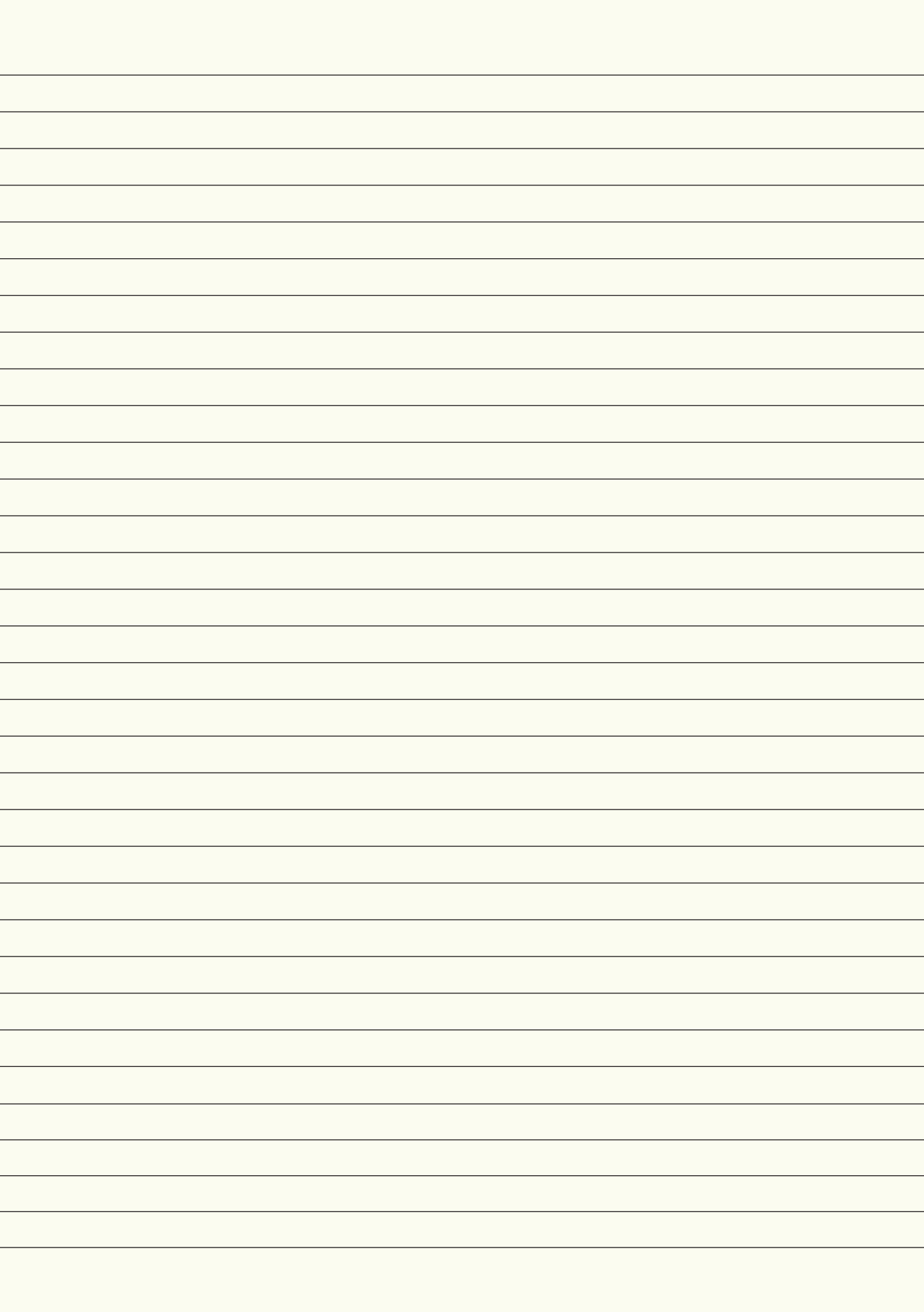
14. **Declaration of interest:** a Member who wishes to speak on any matter in which he or she has a pecuniary or proprietary interest shall first declare that interest. This is meant to eliminate the eventuality of conflict of interest.

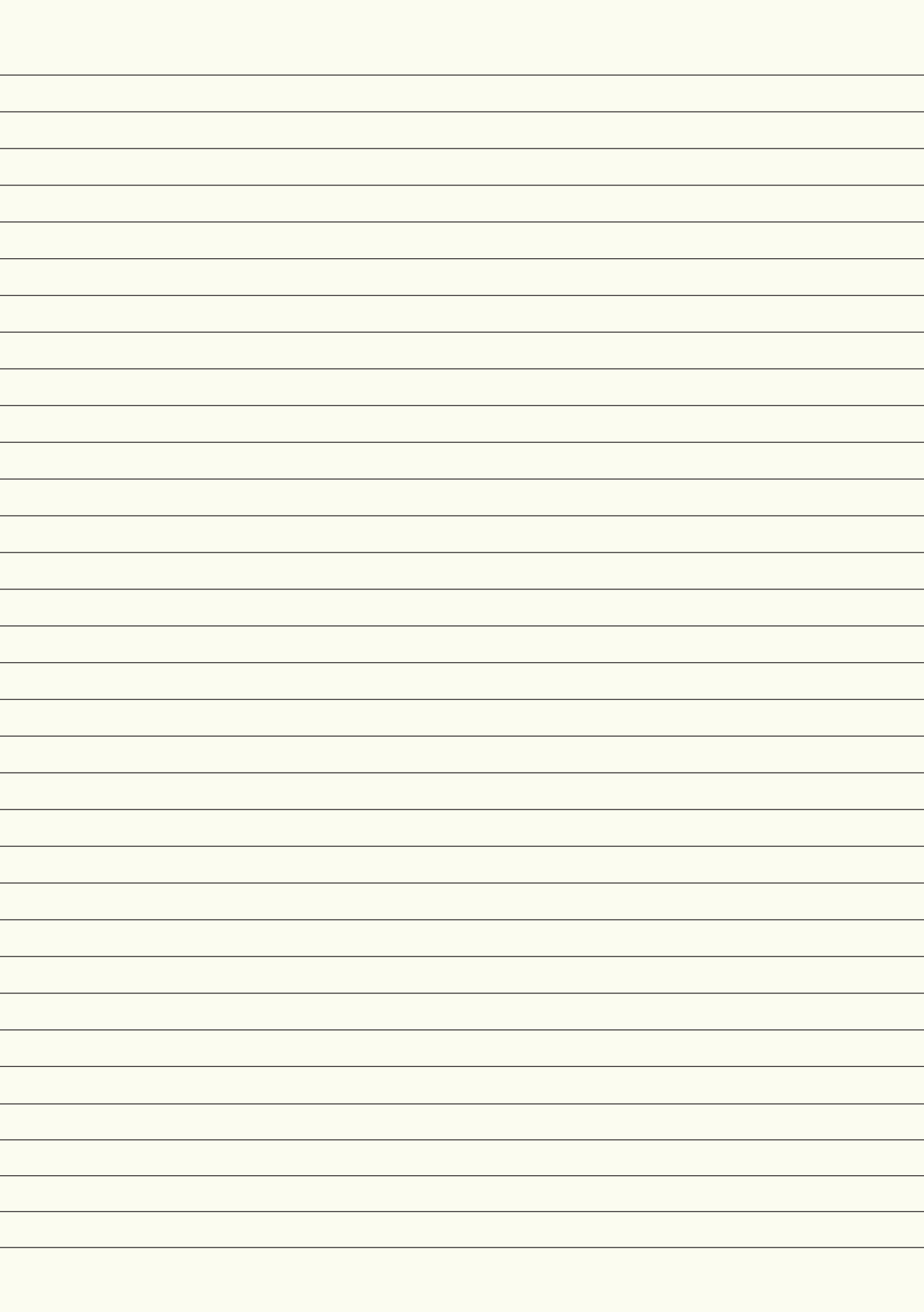
- 15. Allegations of fact(s):** Members must not allege specific matters of fact as being true unless they can substantiate them by producing evidence, which reasonably justifies such allegations. A Member is responsible for the accuracy of any fact(s) s/he alleges to be true and shall be required to substantiate immediately or not later than the next Sitting Day as may be ordered by the Speaker.
- 16. Debate on amendments:** any Member contributing to an amendment must confine himself or herself to the amendment. A Member who speaks to an amendment but had not spoken to the main question reserves the right to speak to the question once the amendment is disposed of, save for the circumstances contemplated under Standing Order 93(2).
- 17. Reserving the right to speak after seconding a Motion:** a Member who has been called upon by the Mover to second a Motion may reserve the right to contribute to that Motion at a later stage by simply bowing to signify agreement to have seconded the Motion.
- 18. Questions for which the Mover has a right to reply:** at the point of deliberation on a question of a Motion whose Mover has the right to reply has been proposed, any Member may move the House to close debate on the question. This is done by way of a Motion, "That, the Mover be now called upon to reply." However, the discretion to put the question or not rests with the Speaker. If he or she decides to put it and the House decides in the affirmative, then the Mover replies forthwith.
- 19. Adjournment of debate:** this provision is invoked when a Member wishes to postpone debate on a Motion for a question to a future sitting through the motion – "That, the debate be now adjourned." If the Speaker is satisfied that the Motion is not tantamount to an abuse to the proceedings of the Assembly s/he shall put the question forthwith. If carried, debate is adjourned but if negated, debate continues.
- 20. Limitation of debate:** this is meant to impose a limit on the duration of a debate on any particular Motion and/or the maximum time each Member wishing to speak to a debate may be entitled to. Such Motions are commonly moved at the commencement of a Session or Part of a Session but may also be moved during a Sitting of the House, provided that such a Motion is moved after a question has been proposed but before commencement of debate.
- 21. Irrelevance or repetition:** while speaking to questions before the House, Members shall ensure that their speeches are relevant to the subject matter of the Motion. Persistent irrelevance or tedious repetition of arguments already advanced by the Member in question or any other Member who has already spoken may necessitate the Speaker to discontinue the Member's debate after warning the Member. Irrelevance may also cause the Speaker to discontinue a Member's speech.

References

1. National Assembly Standing Orders, 2017
2. Erskine May, T, Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, 24th ed. London: LexisNexis, 2011









Contacts Us: National Assembly, Parliament Buildings
Parliament Road, P.O. Box 41842-00100
Nairobi, Kenya

Website: www.parliament.go.ke



clerk@parliament.go.ke



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