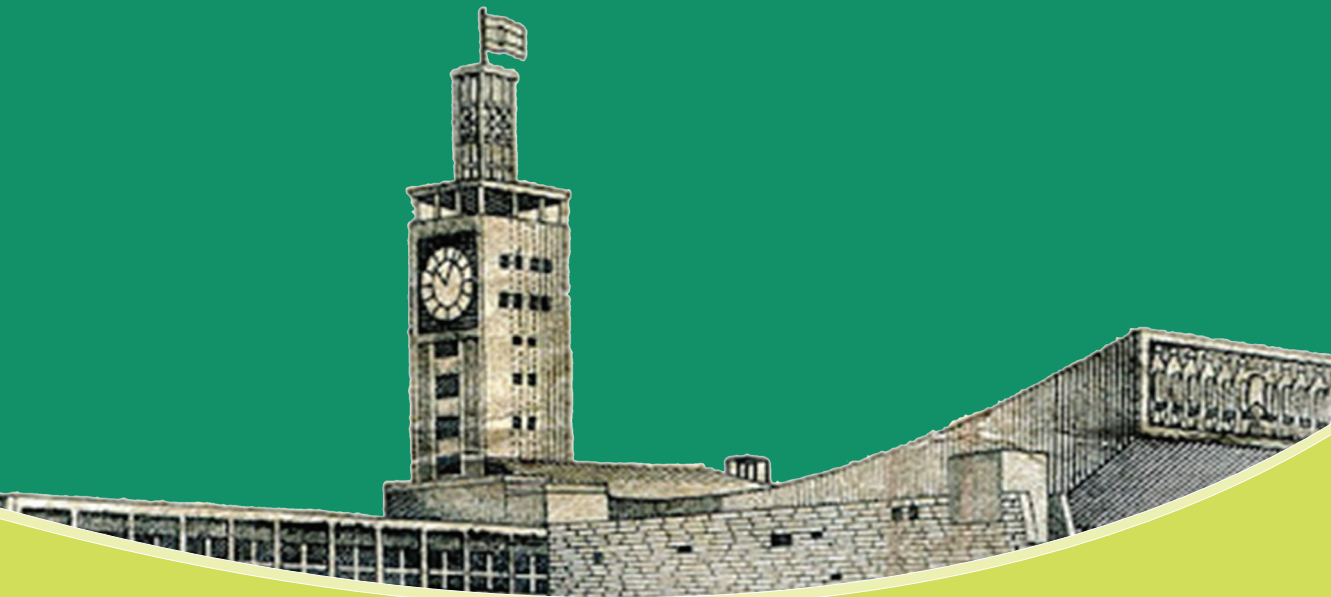




Parliament of Kenya

The National Assembly

How Parliament Works



**Fact Sheet**  
No. 28



# How Parliament Works

*FactSheet No.28*

## **How Parliament Works**

*FactSheet 28: How Parliament Works*

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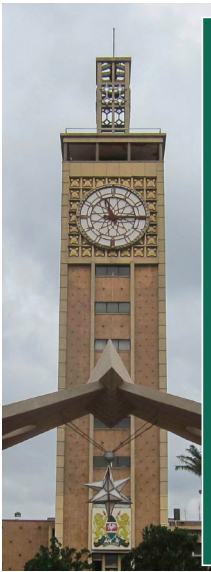
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This Factsheet on **How Parliament Works** is part of the Kenya National Assembly Factsheets Series that are supposed to enhance public understanding, awareness and knowledge of the work of the Assembly and its operations. It is intended to serve as 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

28

## How Parliament Works

### Introduction

Parliament is a legislative, elected body of government. It has a number of functions: representing the electorate, making laws, authorizing Government to spend public money, scrutinizing activities of government ministries, departments and agencies, and is a forum for debate on national issues. The Parliament of Kenya is bicameral consisting of two Houses, the National Assembly and the Senate. It is composed of the Speaker of the National Assembly, the Speaker of Senate, their Deputies and Members of Parliament, commonly referred to as , Members of the National Assembly and Senators.

### Parliament and People's Sovereignty

Sovereign power of the people of Kenya is delegated to several State organs including Parliament. The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament<sup>1</sup>. The Parliament of Kenya performs its functions in accordance with the Constitution by representing the will of the people and upholding their Sovereignty. The Sovereignty of the People of Kenya refers to the supreme power or authority of the people to govern themselves or determine how they want to be governed.

### Supremacy of the Constitution

The Constitution is the supreme law of the Republic of Kenya and binds all persons and all State organs at the national and county levels of government. No person is permitted to claim or exercise State authority except as authorized under the

1 Art. 94 of the Constitution



*A Joint sitting of Parliament with members of the public following proceedings while seated in the gallery*



*Clerks of the Houses of Parliament, welcoming H.E. The President during "The State of the Nation Address"*

Constitution.

### **Core Roles of Parliament**

Article 94 of the Constitution grants certain powers and functions to Parliament:

- Parliament is the only body that has the power to make provision having the force of law in Kenya
- Parliament may confer the authority to make law on any State organ, State officer or person through legislation on condition that it limits the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority. Such authority is referred to as delegation.
- Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty.
- Parliament may consider and pass amendments to the Constitution
- Parliament has power to alter county boundaries
- Parliament is a key protector of the Constitution
- Parliament promotes the democratic governance of the Republic

### **The Role of the National Assembly**

In addition to the traditional and internationally established roles of a legislature, Article 95 of the Constitution confers the following functions and powers on the National Assembly:

- Representation of the people of the constituencies and special interests in the National Assembly
- Deliberating on and resolving issues of concern to the people
- Enacting legislation, including having the power to originate a Bill on any matter
- Exclusive power to consider money Bills including taxes; the imposition of charges on a public fund or the variation or repeal of any of those charges; the appropriation, receipt, custody, investment or issue of public money, and the raising or guaranteeing of any loan or its repayment



- Originating Bills concerning county governments
- Power to amend or veto a special Bill that has been passed by the Senate (but this can only be done by a resolution supported by at least two-thirds of the members of the National Assembly).
- Determining the allocation of national revenue between the two levels of government
- Appropriating funds for expenditure by the national government and other national State organs
- Exercising oversight over national revenue and its expenditure
- Reviewing the conduct in office of the President, the Deputy President and other State officers and initiating the process of removing them from office;
- Exercising oversight of State organs, and,
- Approving declarations of war and extensions of states of emergency

### **The Role of the Senate**

In addition to the traditional and internationally established roles of a legislature, Article 96 of the Constitution confers the following functions and powers on the Senate:

- Representing the counties, and serving to protect the interests of the counties and their governments
- Participating in the law-making function of Parliament by considering, debating and approving Bills concerning counties
- Determining the allocation of national revenue among counties
- Exercising oversight over national revenue allocated to the county governments
- Participating in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office

### **Bicameralism**

Parliament of Kenya, which derives its power to make laws for the country from the Constitution, has two elected houses, namely the National Assembly and Senate. The framers of the Kenya Constitution employed a principle that the national legislature would consist of two Houses, where the National Assembly represents the people as whole and the Senate represents counties and their governments. While the passage of some laws is exclusive to the National Assembly alone, laws concerning county governments go through both Houses.

### **How the two Houses of Parliament Work**

- **Administration:** The Parliament of Kenya is made up of one Parliamentary Service under one Parliamentary Service Commission. The staff of Parliament serve in comity and cooperation to ensure the two Houses deliver well on their mandates.
- **Motions:** Parliament deliberates by way of motions, bills, oversight mechanisms. A motion requiring passage by both Houses must be passed in the same form and terms by the two Houses.
- **Bills:** A Bill concerning counties may originate from either of the Houses of Parliament. The Bills must go through the same legislative process of First

Reading, Second Reading, Committee Stage and Third Reading before it is referred to the other House where the Bill goes through the same lawmaking process.

- **Presentation of a Bill for assent:** A Bill not concerning county governments, once read a third time in the National Assembly, is presented to the President for Assent. Bills concerning counties may originate in either House and must be passed by both Houses of Parliament. Such Bills, upon Third Reading are presented to the President for assent by the Speaker of the originating House, save for those which are passed after a mediation process, which are presented by the Speaker of the National Assembly as provided for under Article 113 of the Constitution. The President, within fourteen days after presentation, either Assents to or refuses to assent to the Bill.
- **Reconsideration of a Bill:** If the President refuses to assent to a Bill, he refers his reservations back to the National Assembly for reconsideration as required under Article 115 of the Constitution. If it is a Bill concerning county governments originating from the Senate, the President refers the Bill back to the Senate. For a mediated version of a Bill, the President may refer the Bill back to the National Assembly, irrespective of its origination, since such a Bill is presented for assent by the Speaker of the National Assembly. Once referred back, the House reconsiders the Bill, focusing on the President's reservations and may pass the Bill a second time with amendments that fully accommodate the President's reservations. Such amendments require a simple majority to pass in the House. The House may also pass the Bill a second time, with amendments that do not fully accommodate the President's reservations. To do this, the House requires a vote of two-thirds of the members. A similar number of votes is required for the House to insist on the version of its Bill in entirety as originally passed, thereby disagreeing with President in toto. If the Bill concerns county governments, reconsideration is by the two Houses.
- **Joint Committees:** Where the two Houses deem necessary, they may establish joint committees to deliberate on matters of mutual interest within the mandates of the both Houses.
- **Mediation Committees:** In case of disagreements between the Houses on versions of a Bill, a Mediation Committee consisting of equal numbers of members of each House is established to attempt to develop a version of the Bill that both Houses will agree on and possibly pass.
- **Joint sittings of Houses:** The two Houses occasionally hold joint sittings mostly at the request of the President and with mutual consultation of the leaderships of the Houses. Joint sittings are normally held in the National Assembly chamber, which has capacity to accommodate the four hundred and sixteen (416) Members of the two Houses. During joint sittings, the Speaker of the National Assembly presides, assisted by the Speaker of the Senate pursuant to Article 107 (2) of the Constitution.

### How Parliament Makes Laws (*See Factsheet on How Law is Made*)

#### Accountability (Oversight) Role:

The National Assembly holds the Government to account in a variety of ways.

- First, the National Assembly, vets and approves nominees to various public offices such as the Chief Justice, Cabinet Secretaries, Principal Secretaries,

Ambassadors, Chairpersons and Members of Constitutional Commissions and Institutions such as the Teachers Service Commission, Central Bank of Kenya, etc.

- The National Assembly, with the concurrence of the Senate may also remove the President and Deputy President from office by way of impeachment.
- The National Assembly approves all military engagements that the Kenya Defence Forces (KDF) engages in and outside the country, and the engagement of foreign forces within the territory of Kenya.
- The National Assembly approves treaties and agreements that the Government of Kenya makes with other countries and international institutions such as security pacts, economic agreements, etc.
- Pursuant to Article 95(2), the National Assembly receives and considers complaints from citizens on any issues of concern to the people with a view to resolving them. Such issues may relate to the work and performance of the Government and public officers.

### **Budget, Spending and Audits**

The National Assembly-

- determines and approves the Annual Budget of both the National Government, Parliament, Judiciary, Constitutional Commissions and independent offices. The annual allocation of revenue raised at the National Government to the 47 counties originates in the Senate and is approved by the Senate with the concurrence of the National Assembly.
- determines how much funds each State Department or is to be allocated for its annual operations. Cabinet Secretaries appear before Parliamentary Committees each year to discuss and defend their budget proposals, which the House can approve, amend or decline .
- considers and approves taxes, levies, charges and other revenue-collecting measures that the National Government intends to impose in a financial year through the National Treasury or other revenue collection agencies including the Kenya Revenue Authority (KRA).
- considers and approves external Government Borrowing Arrangements such as loan agreements with the external sources, such as World Bank, USAID, Japan International Cooperation Agency, German Technical Assistance, and so on.
- approves additional Government funding before a financial year ends through the Supplementary Appropriation Bills.

Once the National Government, its entities and the County Governments have received and used funds approved by Parliament, Parliament undertakes follow up of how the money has been used. This is done through investigations and audit reports. The main Committees of the National Assembly that offer financial or audit oversight how funds have been spent are the Public Accounts Committee (PAC) and the Public Investments Committee (PIC). The Special Funds Accounts Committee was also recently established to offer audit oversight on behalf of the National Assembly.

### **Representation of the People**

- Parliament, in line with the Constitution, is expected to manifest the diversity of the nation, represent the will of the people, and exercise the people's

sovereignty.

- In particular, the National Assembly represents the people of the constituencies and special interests in the National Assembly.
- Further, the National Assembly deliberates on and resolves issues of concern to the people. Such issues include matters of food provision, water provision, security, agriculture, trade, prices of commodities, employment opportunities, access to health, freedom of expression, and so on.
- The participation of people in parliamentary affairs is a right that is provided and protected by the Constitution. The National Assembly engages the public in its legislative affairs by seeking their views. For instance, invitations for views or submission of memoranda are regularly made on newspapers of national circulation on Bills, specific motions or proposed public appointments by respective committees. This is done through advertisements/ notices placed in such newspapers. Further, the committees undertake meetings, which are ordinarily open to the public engage and regularly conduct public hearings on Bills, budget proposals and other legislative agenda. Public Petitions is also another avenue through which the National Assembly deliberates on and resolves issues of concerns of the people. Citizens forward their particular concerns to the National Assembly, either in writing to the Clerk or the Speaker, or through a Member of Parliament. The House, through its committees, in turn investigates the concerns and comes up with recommendations for action, which are communicated to the main petitioner and followed up for implementation

### **The National Assembly working through Committees**

Committees usually undertake most of the work done by the House. Working through committees adds value to legislative business, for instance-

- More suitable forum than a House - Committees can address in detail matters that are the business of the House but are not suitable to be dealt with in the environment of a plenary. Committee proceedings are largely more collegiate and bipartisan than is the case with proceedings in the House. Typically, party politics are often less prominent in a committee than in the plenary of the House. It can be useful for a committee to review a complex or contentious matter, and to assist parliamentary debate by clarifying issues and establishing common ground between members of different parties.
- More practicable forum than a House - Committees can perform functions which a House may not be well placed to perform. Committees may carry out investigations, hear evidence from witnesses, travel for inquiries, seek advice from experts, and deliberate on matters under inquiry before reporting their findings to the House.
- Avenue of public communication - Committees are a good avenue of communication between the House and the community. The committees offer a platform for the community to participate in law making and policy review by airing their views on a matter and having those views reported to the National Assembly.

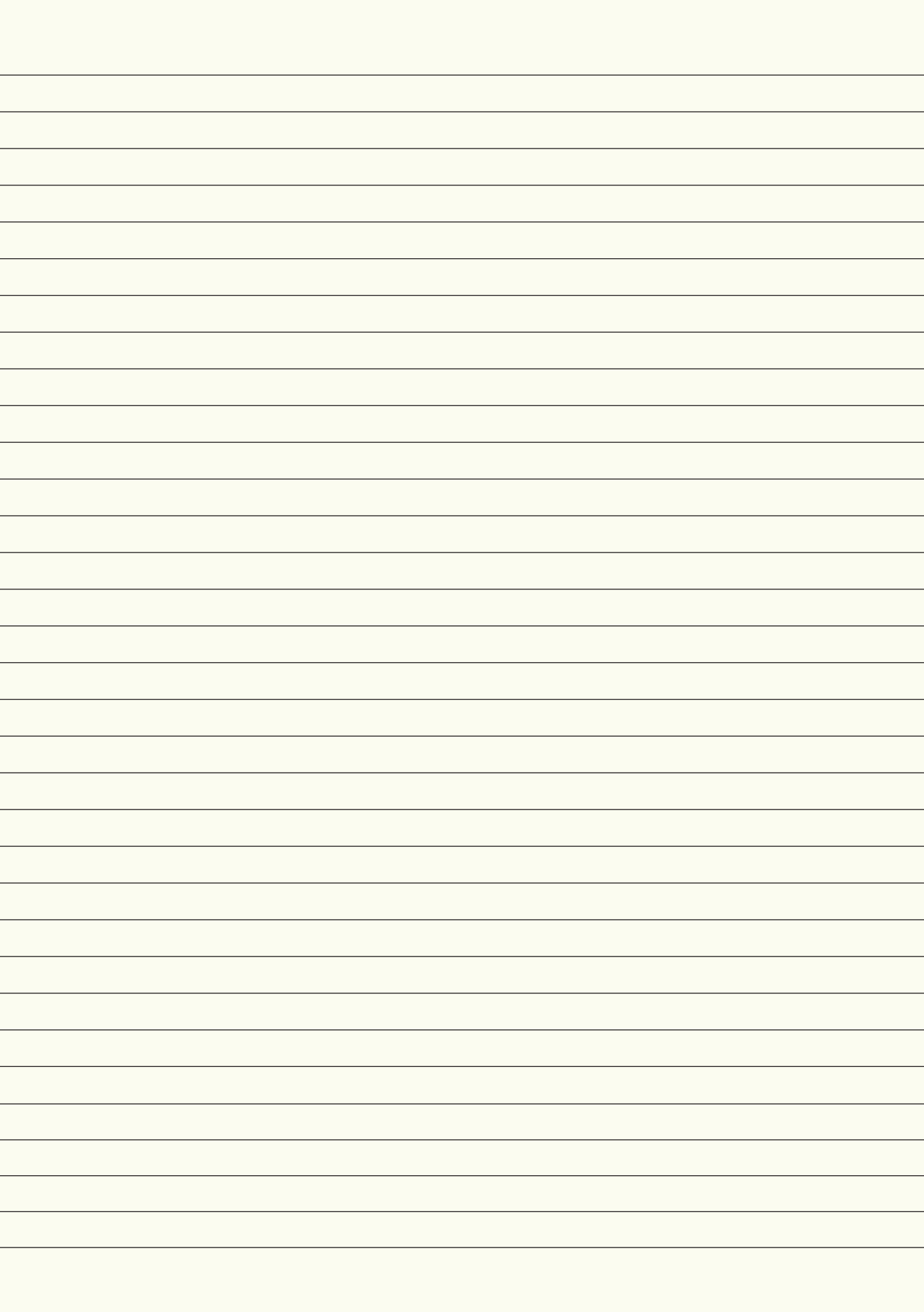
### **The Role of the National Assembly and National Security**

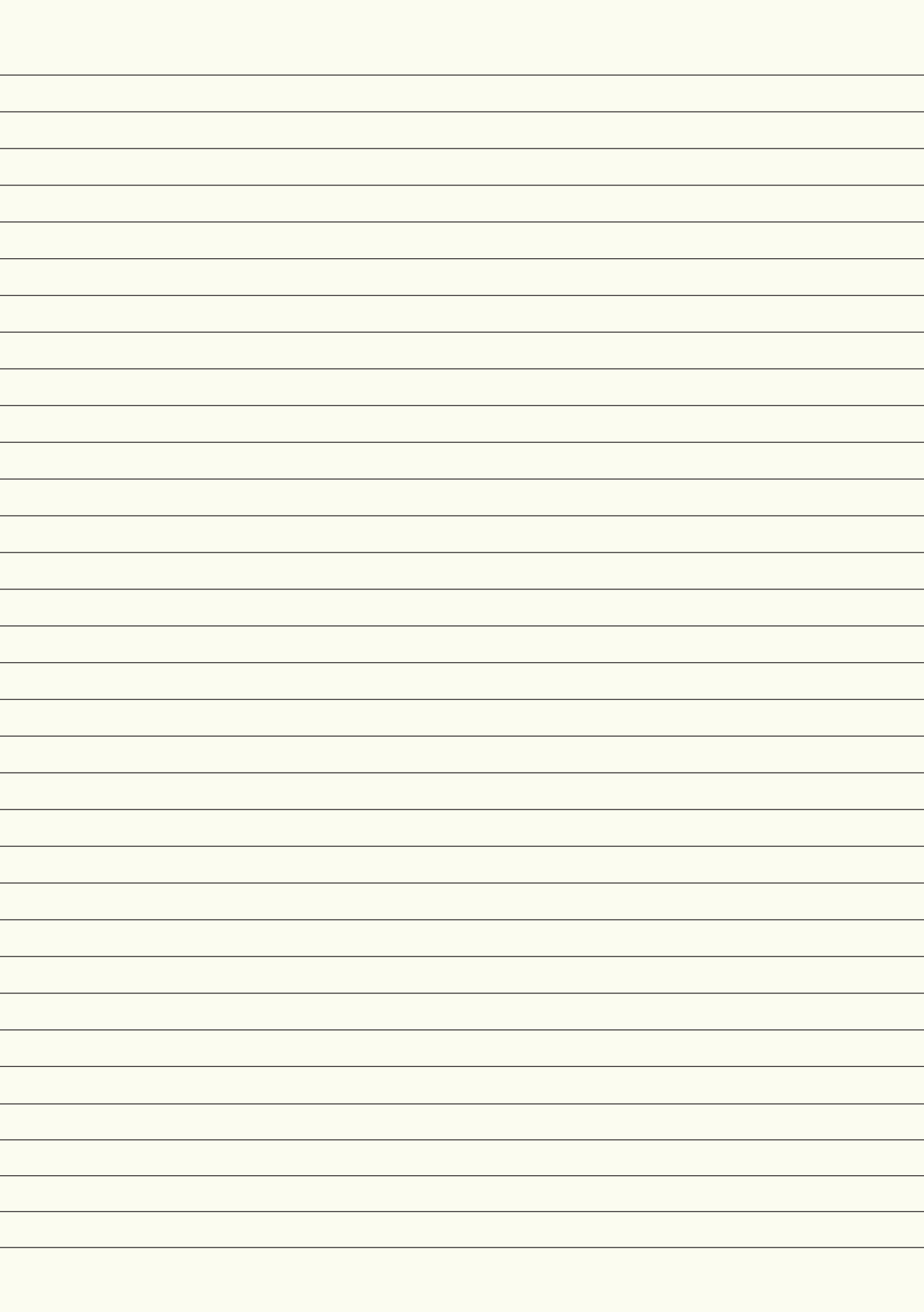
- The National Assembly approves declaration of war on other countries
- The National Assembly approves any extension to a State of Emergency

- facing the county
- The National Assembly approves the deployment of the Kenya Defence Forces (KDF) for regional and international peace support operations and the deployment of foreign forces in Kenya, with the concurrence of the Senate in accordance with Article 240(8) of the Constitution.
- The National Assembly approves emergency funding and funds reallocation by the National Government to address and mitigate the effects of drought, famine, floods, and other natural and manmade disasters.

### **Communication between Houses of Parliament**

The Houses of Parliament communicate on a day-to-day basis either formally or informally. The Constitution and Standing Orders provide for the manner of the formal communication between the Houses as distinct from the many informal communications and consultations between members and Office holders of the Houses. Official communication between the National Assembly and the Senate mostly conveys decisions or resolutions of one House to the other on such matters as Bills, joint committees, mediation committees, Motions or proposed appointments that require bicameral consideration. This is achieved by way of **Messages**. Typically, a Message from one House to the other is precise, accurate and couched in an official and polite manner. It is addressed to the other House and signed by the conveying Speaker for communication to the other House.







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Parliament of Kenya



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