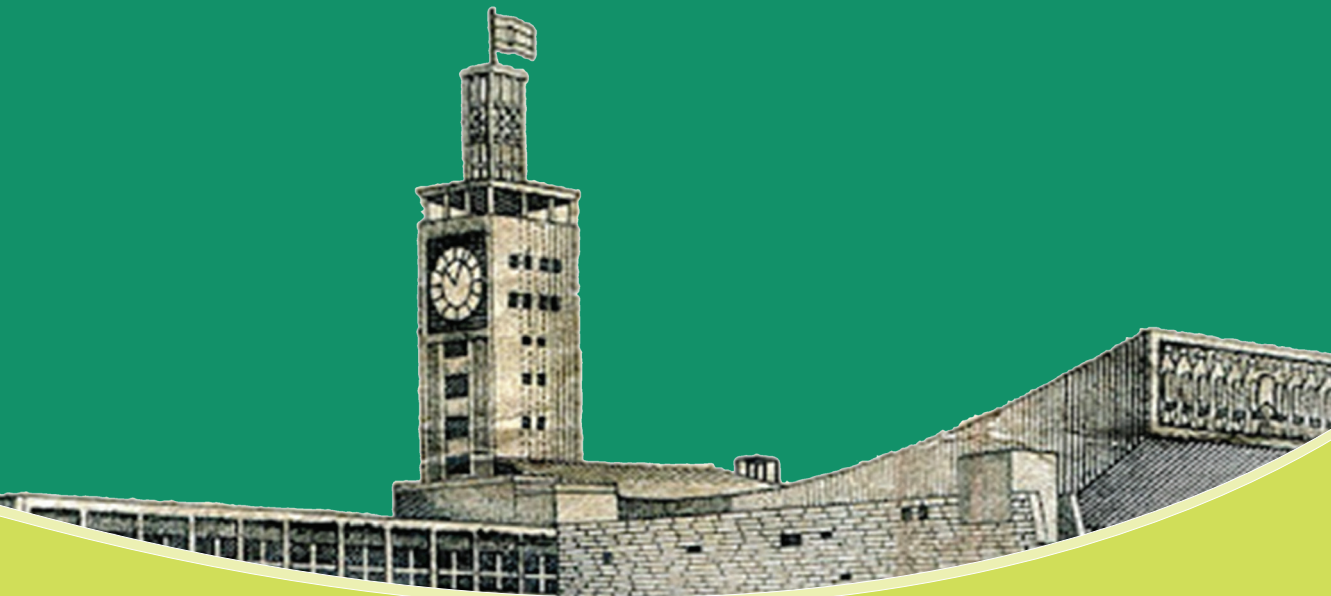




Parliament of Kenya

The National Assembly

Petitions to Parliament



Fact Sheet

No. 4

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FactSheet 4: Petitions to Parliament

Published by:

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Compiled by:

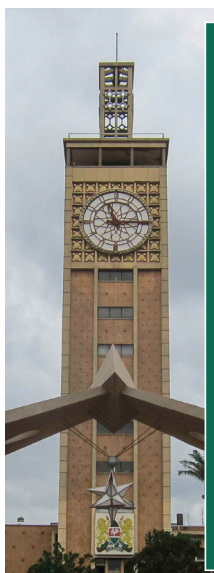
The National Assembly Taskforce on Factsheets, Online Resources and Webcasting
of Proceedings

Design & Layout: National Council for Law Reporting

Acknowledgements

This Factsheet on **Petitions to Parliament** 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.

This work is a product of concerted efforts of all the Directorates and Departments of the National Assembly, and the Parliamentary Joint Services. Special thanks go to the Members of the National Assembly Taskforce on Factsheets, Online Resources and Webcasting of Proceedings, namely, Mr. Kipkemoi arap Kirui (Team Leader), Mr. Emejen Lonyuko, Mr. Robert Nyaga, Mr. Denis Abisai, Mr. Stephen Mutungi, Mr. Bonnie Mathooko, Maj. (Rtd.) Bernard Masinde, Mr. Enock Bosire, and Ms. Josephine Karani. Special thanks also go to the very dedicated members of the Secretariat of the Taskforce Mr. Salem Lorot (Head of the Secretariat), Mr. Samuel Kalama, Ms. Anne Shibuko, Mr. Benson Inzofu, Mr. Finlay Muriuki, Ms. Doreen Karani, Mr. Charles Atamba and Ms. Rabeca Munyao.



FactSheet

04

Petitions to Parliament

This factsheet is designed to provide information on how to prepare and submit a Petition to the National Assembly. It sets out the manner of preparing a Petition within the parameters set out in Articles 37, 119 and 251 of the Constitution, Part XXIII of the National Assembly Standing Orders and the Petition to Parliament (Procedure) Act, 2012 (hereinafter the Act) to ensure a Petition is acceptable for presentation in the National Assembly.

The factsheet also explains the procedure to be followed from presentation until the Petitioner receives a report from the National Assembly on the decision taken on the Petition.

I. Introduction to Petitions

(a) What is a Petition?

The Act defines a Petition as a written prayer to Parliament under Article 37 or 119 of the Constitution made in accordance with the Act.

There are two types of Petitions that may be admissible in the National Assembly:

- (i) Petition under Article 37 or Article 119 of the Constitution:
This is a written prayer to Parliament under Article 37 or Article 119 of the Constitution by any person requesting the House to consider any matter within its authority, as contemplated in Article 94 and Article 95 of the Constitution, including to enact, amend or repeal any legislation. Most Petitions received in the National Assembly normally fall in this category
- (ii) Petition for the removal of a member of a Constitutional Commission or

holder of an Independent Office pursuant to the provisions of Article 251 of the Constitution:

This Petition is made pursuant to the provisions of Article 251 of the Constitution. Such a Petition must indicate the alleged grounds under Article 251(1) of the Constitution which the member of the commission or holder of an independent office is in breach of and may contain affidavits or other documents annexed to it.

(b) Who can Petition the National Assembly?

Article 37 of the Constitution provides that “Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to *present Petitions to public authorities*”. Similarly, Article 119 (1) gives **“every person”** *“a right to Petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation”*. This therefore means that any person, including a company, association or other body of persons whether incorporated or unincorporated, may present a Petition to Parliament.

II. How to Petition the National Assembly

(a) Submission of Petitions

- (i) A Petition to the National Assembly may be submitted to the Clerk by the Petitioner. A Petition may also be presented by a Member on behalf of a Petitioner, with the consent of the Speaker.
- (ii) Within seven days after receiving the Petition, the Clerk reviews the Petition to ascertain whether it meets the requirements of the Standing Orders and the Act .
- (iii) Where the Clerk considers that a Petition does not comply with the Standing Orders or the Act, the Clerk gives such directions as are necessary to ensure that the Petition is reviewed to comply with the requirements.
- (iv) Where a Petition is addressed to the National Assembly in respect of a matter which is exclusive to the mandate of the Senate, the Clerk refers the Petition to the Clerk of the Senate.
- (v) Where the Clerk is satisfied that the Petition meets the requirements set out in the Standing Orders and the Act, the Clerk forwards the Petition to the Speaker to authorise its conveyance to the House. Once conveyance is authorised, the Petition is published in as part of the “NOTICES” in the Order Paper. The notice is a summary of the subject of the Petition and the name(s) of the Petitioner(s).
- (vi) When the Order for **“Petitions”** is read, and for a Petition presented by a Member, the Speaker directs that the Member presents the Petition to the House or in case of a Petition presented through the Clerk, the Speaker reads out the summary of the Petition to the House.

(b) Form of a Petition

A person presenting a Petition to Parliament is required to use the Form in the

Third Schedule to the National Assembly Standing Orders or the Schedule to the Act in Petitioning the National Assembly, with necessary modifications.

A Petition must-

- (i) be hand written, printed or typed;
- (ii) be in English or Kiswahili and be written in respectful, decorous and temperate language;
- (iii) be free of alterations and interlineations in its text;
- (iv) be addressed to the House;
- (v) have its subject-matter indicated on every sheet if it consists of more than one sheet;
- (vi) indicate whether any efforts have been made to have the matter addressed by a relevant body and whether there has been any response from that body or whether the response has been unsatisfactory;
- (vii) indicate whether the issues in respect of which the Petition is made are pending before any court of law or other constitutional or legal body;
- (viii) conclude with a clear, proper and respectful prayer, reciting the definite object of the Petitioner or Petitioners in regard to the matter to which it relates;
- (ix) contain the names, addresses, identification numbers, signature or a thumb impression of the Petitioner or of every Petitioner, where there is more than one Petitioner;
- (x) contain only signatures or thumb impressions, as the case may be, and addresses and identification numbers written directly onto the Petition and not pasted thereon or otherwise transferred to it;
- (xi) not have any letters, affidavits or other documents annexed to it, unless it is a Petition for the removal of a member of a Constitutional Commission or the holder of an Independent Office;
- (xii) in the case of a Petition presented by a Member on behalf of a Petitioner, be countersigned by the Member presenting it; and
- (xiii) be signed by the Petitioner or if the Petitioner is unable to sign, by a witness in whose presence the Petitioner shall make his or her mark on the Petition.

(c) Inadmissible Petitions

A Petition to the National Assembly may be rejected where it does not comply with any or all of the requirements on the form of a Petition as set out in the Standing Orders or the Act. For instance, a Petition may be rejected if-

- (i) it purports to be presented by a Member on his or her own behalf;
 - (ii) it contains prayers that are not within the mandate and functions of the National Assembly under Article 94 or Article 95 of the Constitution;
 - (iii) it contains offensive or impolite expressions;
 - (iv) it is clear that a relevant body, court or other constitutional or other statutory body is dealing with or has irrefutably dealt with the prayers;
- or,

- (v) it lacks signature or thumb impression of the Petitioner.

III. Presenting a Petition

(a) Role of a Member of Parliament presenting a Petition

The Member presenting a Petition-

- (i) checks that the subject matter of the Petition is within the authority of the National Assembly;
- (ii) ensures conformity with the requirements of the Act and the National Assembly Standing Orders;
- (iii) indicates whether the issues in respect of which the Petition is made are pending before any court of law or other constitutional or legal body, or is not being handled by a relevant authority;
- (iv) gives the Clerk at least two sitting days' notice of the intention to present the Petition to allow publication in the "NOTICES" section of the Order Paper for the day in which the Petition is to be presented to the House ; and
- (v) reads out the summary of the Petition focusing on the subject, the name(s) of Petitioner(s) and the number of other signatures attached, the concerns of the Petitioner(s) or primary allegations and the prayers sought, and thereupon lays the Petition on the Table of the House.

(b) Role of the Clerk of the National Assembly in the processing of Petitions

The Clerk-

- (i) examines the Petition and ensures that it is presented in the manner, form and content required by the Standing Orders;
- (ii) gives such directions as are necessary to ensure that Petitions which do not comply with the requirements are reviewed to so comply;
- (iii) forwards the Petitions to the Speaker for conveyance to the House;
- (iv) notifies the Petitioner of the decision on the Petition by the House or relevant Committee ; and
- (v) maintains a Register of Petitions.

(c) Role of the Speaker of the National Assembly in the processing of Petitions

The Speaker-

- (i) approves the Petition for presentation to the House;
- (ii) conveys the Petition to the House by reading out its summary if it's not one presented through a Member;
- (iii) refers the Petition to the relevant committee.

IV. What happens to your Petition after presentation in the House?

(a) Referral to a relevant committee

Upon presentation of a Petition to the House, the Speaker refers it to the relevant committee for consideration and reporting. The Committee invites the Petitioner to the hearing and allows the relevant authority to respond

to the subject of the Petition in writing or verbally in a meeting of the Committee. The Committee can also undertake a site visit to the concerned physical area or region depending on the nature of the Petition.

(b) Report of the Committee to the Petitioner

Within sixty days, the Committee responds to the Petitioner through a report, which is tabled in the House. The Clerk thereafter formally notifies the Petitioner of the findings of the Committee by forwarding the Committee's report.

(c) Referral of the report to the implementing authority

The Clerk also forwards the report of the Committee to the responsible authority for implementation. Such a report becomes the subject of follow up by the Committee on Implementation.



CS. Prof. Judy Wakhungu appearing before the Committee on Environment and Natural Resources regarding a petition on ban of manufacture and use of plastic bags

(d) Fate of a Petition at the end of a term of Parliament

Petitions to the National Assembly, except Petitions for removal of a member of a Constitutional Commission or holder of an Independent Office, lapse at the end of a term of Parliament if not acted upon or concluded by the relevant committee of the House. A Petition that has lapsed may however be re-introduced in a new Parliament.

PETITIONS FOR REMOVAL OF A MEMBER OF A CONSTITUTIONAL COMMISSION OR A HOLDER OF AN INDEPENDENT OFFICE

Article 255 (1) (g) and Article 249 (2) (b) of the Constitution provide for the independence and security of tenure of office holders of Constitutional Commissions and Independent Offices to ensure they guarantee the protection of the sovereignty of the people, secure the observance by all State organs of democratic values and principles, and to promote constitutionalism.

The members of Constitutional Commissions and holders of Independent Offices are subject only to the Constitution and the law and are independent and not subject to direction or control by any person or authority. The Constitution further requires

Parliament to allocate adequate funds to enable each commission and independent office perform its functions effectively and the budget of each commission and independent office is a separate vote.

The Commissions are:

- (a) the Kenya National Human Rights Commission
- (b) the National Gender and Equality Commission;
- (c) the National Land Commission;



Consideration of a Petition seeking removal of The Chair of the National Lands Commission by the Departmental Committee on Lands

- (d) the Independent Electoral and Boundaries Commission;
- (e) the Parliamentary Service Commission;
- (f) the Judicial Service Commission;
- (g) the Commission on Revenue Allocation;
- (h) the Public Service Commission;
- (i) the Salaries and Remuneration Commission;
- (j) the Teachers Service Commission;
- (k) the National Police Service Commission; and
- (l) the Ethics and Anti-Corruption Commission (under Article 79 of the Constitution).

The independent offices are:

- (a) the Auditor-General; and
- (b) the Controller of Budget.

Form of a Petition for Removal of a member of a Constitutional Commission or holder of an Independent Office

- 1) A Petition for the removal of a member of a Constitutional Commission or holder of an Independent Office must:
 - a) be hand written, printed or typed;
 - b) be in English or Kiswahili and be written in respectful, decorous and temperate language;
 - c) be free of alterations and interlineations in its text;
 - d) be addressed to the House;
 - e) have its subject-matter indicated on every sheet if it consists of more than one sheet;

- f) conclude with a clear, proper and respectful prayer, reciting the definite object of the Petitioner or Petitioners in regard to the matter to which it relates;
 - g) contain the names, addresses, identification numbers, signature or a thumb impression of the Petitioner or of every Petitioner, where there is more than one Petitioner;
 - h) contain signatures or thumb impressions, as the case may be, and addresses and identification numbers written directly onto the Petition and not pasted thereon or otherwise transferred to it;
 - i) in the case of a Petition presented by a Member on behalf of a Petitioner, be countersigned by the Member presenting it; and
 - j) be signed by the Petitioner or if the Petitioner is unable to sign, by a witness in whose presence the Petitioner shall make his or her mark on the Petition.
- 2) Apart from the above requirements, a Petition for the removal of a member of a Constitutional Commission or holder of an Independent Office-
 - a) must indicate the alleged grounds under Article 251(1) of the Constitution which the member of the Constitutional Commission or holder of an Independent Office is in breach;
 - b) where the grounds for removal above relate to violation of the Constitution or any other law, state with a degree of precision the provisions of the Constitution or any other written law that have been alleged to be violated;
 - c) indicate the nexus between the person concerned and the alleged grounds on which removal is sought; and
 - d) may contain affidavits or other documents annexed to it.
- 3) The grounds under Article 251 (1) of the Constitution which must be indicated in a Petition for the removal of a member of a Constitutional Commission or holder of an Independent Office are:
 - (a) serious violation of the Constitution or any other law, including a contravention of Chapter Six;
 - (b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
 - (c) physical or mental incapacity to perform the functions of office;
 - (d) incompetence; or
 - (e) bankruptcy.
- 4) The Petition is submitted to the Clerk by the Petitioner and reported to the House by the Speaker; or presented by a Member on behalf of a Petitioner, with the consent of the Speaker.
- 5) The Clerk has **seven days** from the date of receipt of the Petition to review the Petition to ascertain whether the Petition meets the requirements of the Standing Orders and the Act.
- 6) Where the Clerk considers that a Petition does not comply, the Clerk may

give directions as are necessary to ensure that the Petition is reviewed to comply.

- 7) If satisfied that the Petition meets the requirements, the Clerk forwards the Petition to the Speaker for communication to the House in plenary.
- 8) A Member is expected to give to the Clerk two sitting days' notice of intention to present a Petition and for the Clerk to have adequate time to examine the Petition to ensure it is presented in the manner, form and content required by the National Assembly Standing Orders and the Act.
- 9) When the Order for **"Petitions"** is read, and for a Petition presented by a Member, the Speaker directs that the Member presents the Petition to the House or in case of a Petition presented through the Clerk, the Speaker reads out the summary of the Petition to the House.
- 10) The Speaker may allow comments, observations or clarifications in relation to the Petition presented.
- 11) The Petition, once conveyed to the House, stands committed to the relevant Departmental Committee.
- 12) Upon receipt of a Petition, the relevant Departmental Committee investigates the matter and, within fourteen days, reports to the House whether the Petition discloses a ground for removal under Article 251(1) of the Constitution. The Committee is required to accord the member of the Constitutional Commission or holder of an Independent Office a fair hearing before making its decision on the matter.
- 13) Within ten days following the Tabling of the report of the Committee, the House, by way of a Motion, debates and resolves whether or not the Petition discloses a ground for removal of the particular person(s) under Article 251(1) of the Constitution.
- 14) Where the House resolves that a Petition discloses a ground for removal, the Speaker transmits the resolution and the Petition to the President within seven days of the resolution;
- 15) The President may suspend the member or office holder pending the outcome of the Petition, and during the period of such suspension, the member or office holder receives one half of the remuneration and benefits of his or her office.
- 16) The President then appoints a Tribunal to confirm the complaints against the member or the office holder. The Tribunal appointed by the President consists of-
 - a) a Judge, either current or retired, who shall be the Chairperson of the Tribunal;
 - b) at least two persons who are qualified to be appointed as High Court judges; and
 - c) one person who is qualified to assess the facts in respect of the particular ground for removal.
- 17) The Tribunal is expected to expeditiously investigate the matter and report to the President, and the report of the Tribunal makes a binding recommendation.

- 18) The President then acts in accordance with the recommendation of the Tribunal within thirty days.
- 19) Consideration of a Petition for removal of a member of a Constitutional Commission or holder of an Independent Office does not lapse at the expiry of the term of Parliament.

APPENDIX

FORM OF PETITION

I/We, the undersigned,
(Here, identify in general terms, who the petitioner or petitioners are, for example, citizens of Kenya, residents of..... province or region, workers of industry, etc)

DRAW the attention of the House to the following:

(Here, briefly state the reasons underlying the request for the intervention of the House by outlining the grievances or problems by summarizing the facts which the petitioners wish the House to consider.)

THAT

[Here confirm that efforts have been made to have the matter addressed by the relevant body, and it failed to give satisfactory response.]

THAT

[Here confirm that the issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body.]

HEREFORE your humble petitioner(s) Pray that Parliament–

(Here, set out the prayer by stating in summary what action the petitioners wish Parliament to take refrain from.)

And your PETITIONER(S) will ever Pray.

Name of petitioner Full Address

*National ID, or Signature/Thumb
Passport No.*

Impression

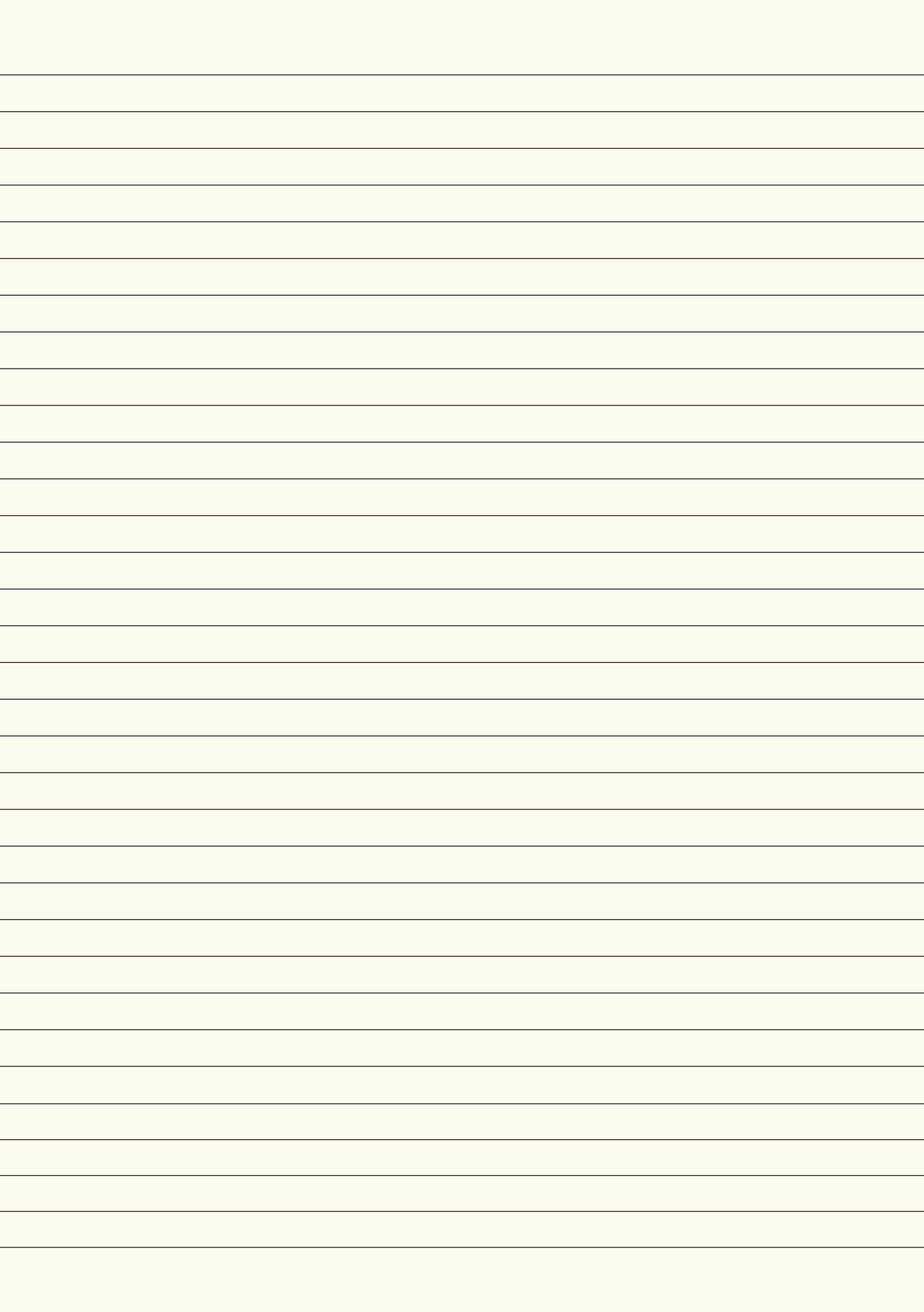
SCHEDULE –continued

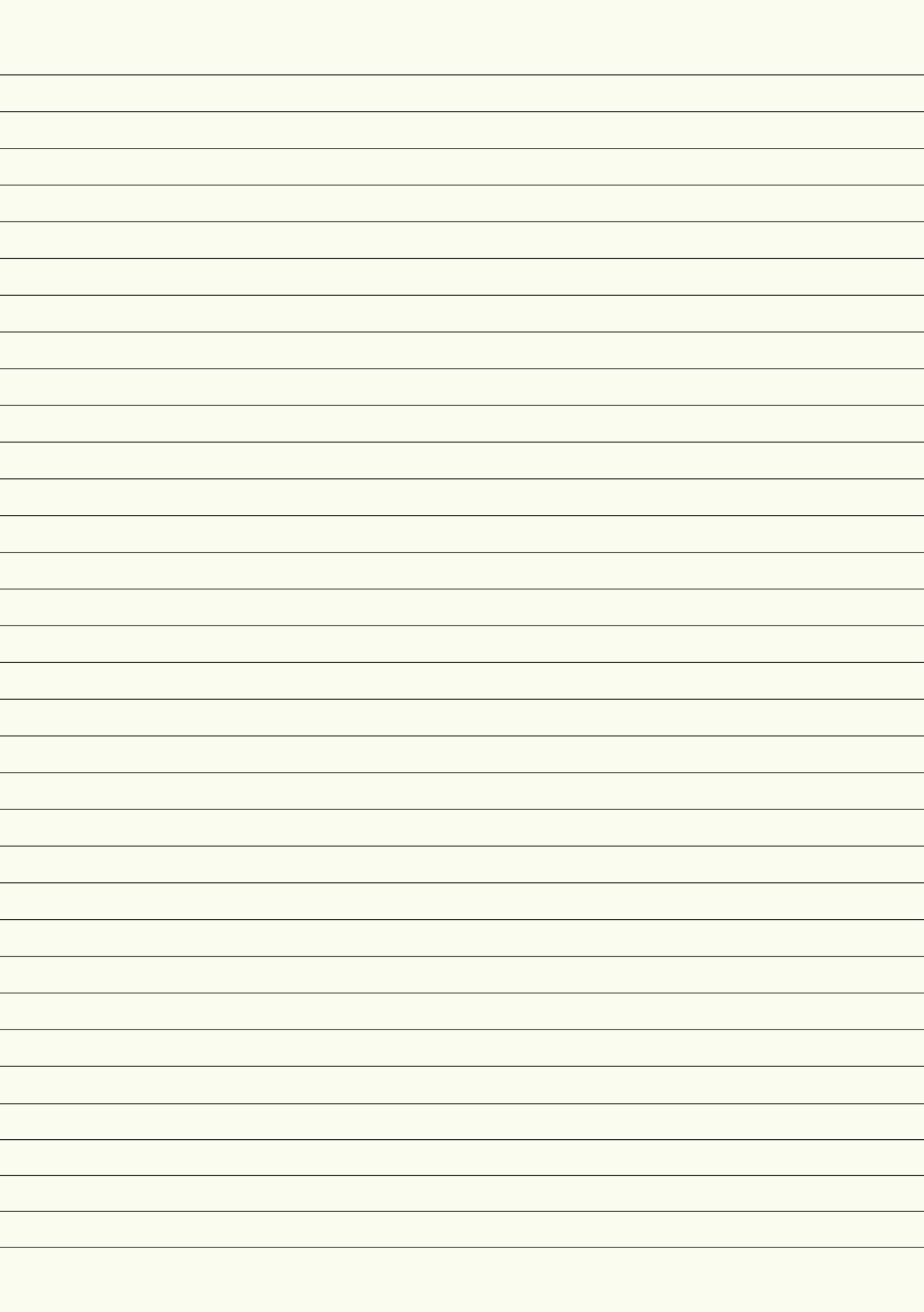
PETITION concerning -----(Here, repeat the summary in first page)

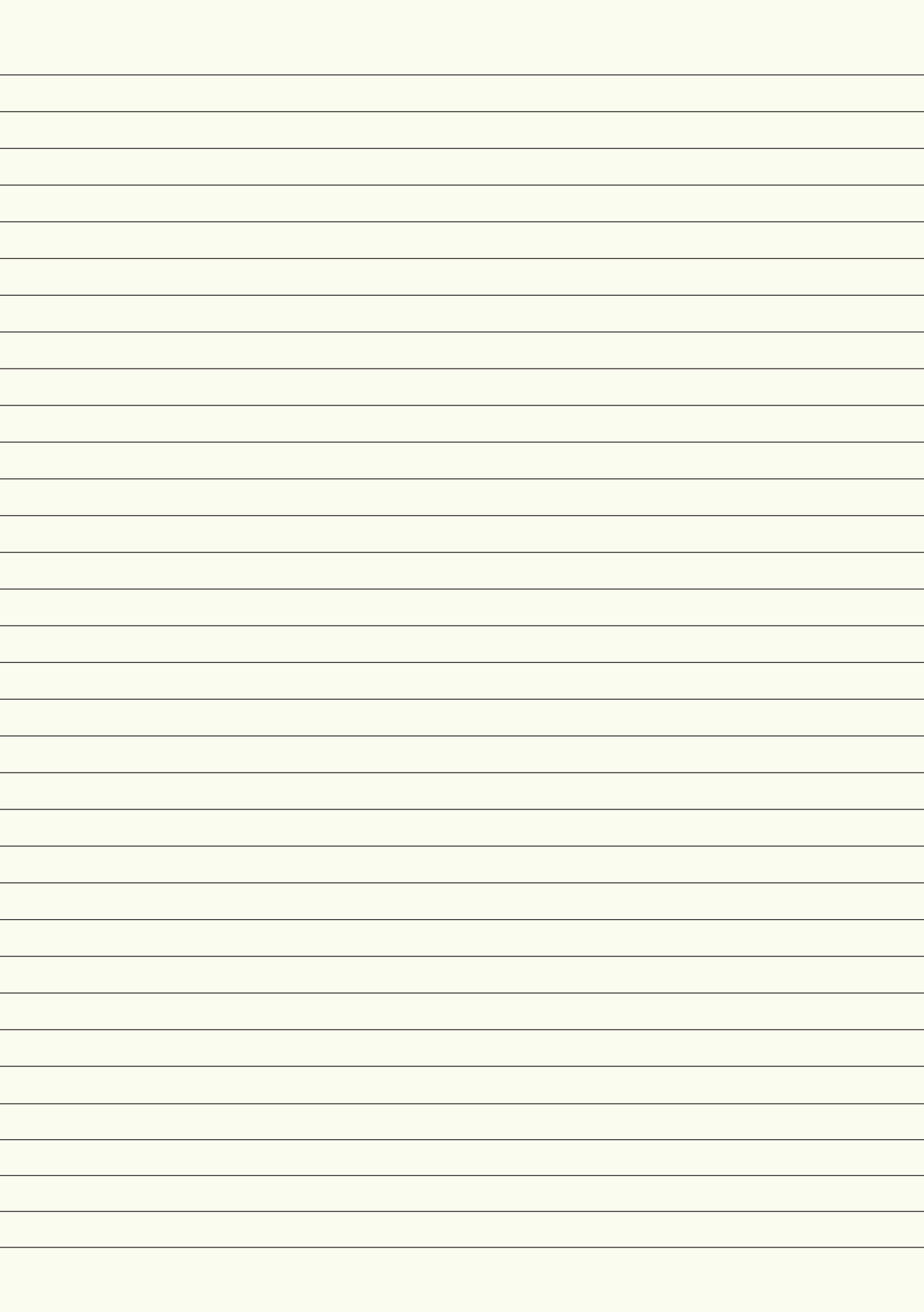
Name of petitioner
Signature/Thumb impression

(Subsequent pages)

* This form may contain such variations as the circumstances of each case may require









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