

FACTSHEET

15



PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

Petitioning Parliament

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Factsheet No. 15

PETITIONING PARLIAMENT

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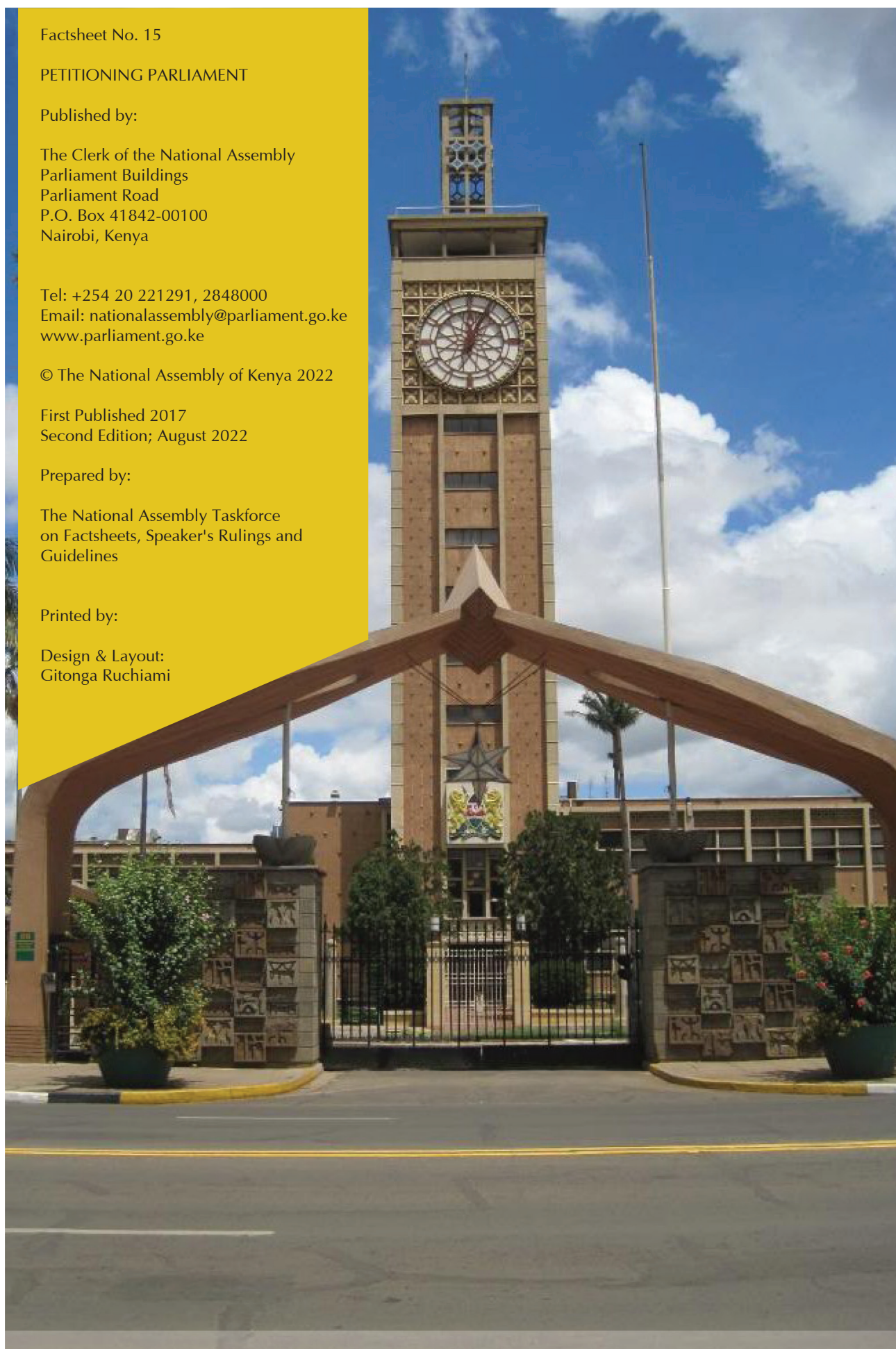
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Purpose and Acknowledgement

This Factsheet is part of the Kenya National Assembly Factsheets Series that has been developed to enhance public understanding and awareness, and to build knowledge on the work of the Assembly, and its operations. It is intended to serve as a guide for ready reference by Members of Parliament, staff and the 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 the concerted effort 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, Speaker's Rulings and Guidelines*, namely, Mr. Kipkemoi arap Kirui (Team Leader), Mr. Rana Tiampati, Mr. Kennedy Malinda, Ms. Anna Musandu, Mr. Samuel Kalama, Mr. Salem Lorot, Ms. Fiona Musili, Mr. Benson Inzofu, Ms. Laureen Wesonga, Ms. Anne Shibuko, Mr. James Maina Macharia, Mr. Morrice Shilungu, Mr. Finlay Muriuki, Ms. Rabeca Munyao and Mr. Stephen Omunzi.

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Petitioning Parliament



Petitioning 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 A of the National Assembly Standing Orders and statutes, including the Petitions to Parliament (Procedure) Act, 2012 to ensure the petition is accepted for presentation in the National Assembly.

The factsheet also explains the procedure to be followed, from presentation right until the Petitioner receives a report from the House on the decision taken pertaining to the petition.

I. Introduction to petitions

(a) What is a petition?

There are two types of public petitions allowable in the National Assembly:

- i. Petition under Article 37 or Article 119 of the Constitution:

This is a written prayer to the House under Article 37 and/or Article 119 of the Constitution by a member of the public requesting the House *to consider any matter within its authority*, as contemplated in Article 94 and Article 95 of the Constitution, including praying for the enactment, amendment or repeal of any legislation.

- 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:

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.

Every public petition for removal of a member of a Constitutional Commission or Independent Office established under Chapter 15 of the Constitution stands committed to the relevant Departmental Committee. Once it has received the petition, the Departmental Committee investigates the matter and reports within **fourteen days** (See *National Assembly Standing Order 230*) to the House whether the petition **discloses grounds** for removal under Article 251(a) of the Constitution.

The House has **ten days** after tabling of the report of the committee to resolve whether or not the petition discloses any grounds for removal under Article 251(a) of the Constitution. This is done through a motion to adopt the report of the Departmental Committee. 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.

(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”. Therefore individuals, organised groups, men, women, children, people with disability, religious groups and practically anyone, both citizens and non-citizens alike, may petition Parliament.



Kenyans hold a peaceful demonstration to lobby for the law to be changed to address climate change issues



The Immediate former Clerk of the National Assembly Mr. Michael Sialai (left) receives a petition from constituents of Muhoroni, through their MP Hon. James Onyango K'Oyoo (Centre). Petitions are one of the avenues for public participation in the legislative business.

II. How to petition the National Assembly

(a) How do you submit a petition?

- (i) A petition to the National Assembly may be submitted to the Clerk by the petitioner and reported to the House by the Speaker or 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 law;
- (iii) Where the Clerk considers that a petition does not comply with the Standing orders or the law, the Clerk gives such directions as are necessary to ensure that the petition is *amended to comply with the requirements*;
- (iv) When the Clerk is satisfied that the petition meets the requirements, the Clerk forwards the petition to the Speaker to authorize its tabling in the House;
- (v) Where a petition is addressed to the National Assembly in respect of a matter which is within the mandate of the Senate, the Clerk refers the petition to the Clerk of the Senate;
- (vi) A Member wishing to present a Petition on behalf of a Petitioner must give to the Clerk **two sitting days' notice of intention to present** the Petition and the Clerk will then examine such Petition and ensure that the Petition is presented in the manner, form and content required by the Standing Orders.
- (vii) When, in the plenary, the Order for "Petitions" is read, in the case of a Petition presented by a Member, the Speaker allows the Member to present the Petition to the House, and in the case of a petition submitted through the Clerk, the Speaker reports

the Petition to the House.

- (viii) In reading the Petition, the Member presenting confines himself or herself to the subject of the prayer, the material allegations and the number of signatures attached, and then proceeds to lay the Petition on the Table of the House.
- (ix) The Member presenting has **five minutes within which to present the petition**. The Speaker may however allow comments, observations or clarifications in relation to the Petition. The time allocated for all petitions while prosecuting the entire order on petitions is **thirty minutes**.

(b) Form of a petition

In petitioning the National Assembly, petitioners are required to use the Form in the Third Schedule of the National Assembly Standing Orders or the Schedule in the Petition to Parliament (Procedure) Act.

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. However, letters, affidavits or other documents must be attached if the petition is for removal of a member of a Constitutional Commission or holder of an Independent Office; as well as in cases where the petitioner has stated that efforts have been made to have the matters raised in the petition addressed by a relevant body or that the matters raised in the petition are pending before court;

- (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

Petitions may be rejected on any one or more of the following grounds:



- (i) if presented by a Member on his or her own behalf;
- (ii) a petition with prayers that are not within the mandate and powers of the National Assembly under Article 94 or Article 95 of the Constitution;
- (iii) a petition with any letters, affidavits or other documents annexed to it (unless annexed as evidence of efforts to have the matters raised in the petition addressed by a relevant body; annexed as evidence that the matters raised in the petition are pending before court, or annexed to a petition seeking the removal of a member of a Constitutional Commission or holder of an Independent Office);
- (iv) a petition that is rude, not respectful, not decorous and not using temperate language;
- (v) where it is clear that it is under determination by a relevant body, court or other constitutional or legal body;
- (vi) absence of signature by the petitioner or the Member presenting it; or
- (vii) fails to comply with any other requirement stipulated under the Constitution, statutes or the Standing Orders.

III. Presenting a petition

(a) What is the role of a Member of Parliament presenting a petition?

The Member presenting a petition should:

- (i) check that the subject matter of the petition is *within the authority* of the National Assembly;
- (ii) ensure conformity with the requirements of the Constitutions, statutes including the Petitions to Parliament (Procedure) Act and National Assembly Standing Orders;
- (iii) 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, or is not being handled by a relevant authority;
- (iv) give the Clerk *two sitting days' notice of intention to present* a petition.

(b) What is the role of the Clerk of the National Assembly in the processing of Petitions?

The Clerk:

- (i) examines the petitions and ensures that they are presented in the manner, form and content required by the Constitution, the law and the Standing Orders;

- (ii) gives such directions as are necessary to ensure that petitions which do not comply with the requirements are amended to so comply;
- (iii) forwards the petition to the Speaker for approval for tabling in the House if satisfied that the petition meets the requirements;
- (iv) notifies the petitioner of the decision on the petition by the House in writing within fifteen days of the *decision* of the Assembly.
- (v) maintains a Register of Petitions that is accessible to the public.

(c) What is the role of the Speaker of the National Assembly in processing of Petitions?

The Speaker:

- (i) approves the petition for presentation to the House;
- (ii) presents the petition to the House if the petition is one that is directly submitted through the Clerk;
- (iii) refers the petition to the Public Petitions Committee.

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

(a) Referral to the Public Petitions Committee

Upon presentation of the Petition to the House, the Speaker refers it to the Public Petitions Committee for consideration and reporting. The Committee usually invites the petitioner to the hearing and allows the relevant authority to respond to the subject of the petition in writing. The Committee can also undertake a site visit to the concerned physical area/region depending on the nature of the petition.



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

(b) Report of the Committee to the Petitioner

The Committee has a maximum of ninety days to respond to the Petitioner through a report, which is tabled in the House and forwarded through the Clerk to the Petitioner. For petitions on removal of a member of constitutional commission or a holder of an

independent office, the Committee tables its report within fourteen days. The Public Petitions Committee can recommend that the report on the petition be considered for debate in the House.

(c) Notification of the decision of the House

The Clerk formally notifies the petitioner of the decision of the House. This is done **fifteen days** after 'the decision of the House' through the report of the Public Petitions Committee.

(d) 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.

(e) What happens to a Petition at the end of a term of Parliament?

Like Motions and Bills, public 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 by the expiry of the term. A Petition that has lapsed may however be re-introduced/ revived in a new Parliament.

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

Article 255 (1)(g) and Article 249 of the Constitution provide for the independence of the offices 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 commissioners 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 to perform its functions effectively and the budget of each commission and independent office is a separate vote.

The commissions and independent offices include:

- (a) the Kenya National Human Rights and Equality Commission;
- (b) the National Land Commission;
- (c) the Independent Electoral and Boundaries Commission;
- (d) the Parliamentary Service Commission;
- (e) the Judicial Service Commission;
- (f) the Commission on Revenue Allocation;
- (g) the Public Service Commission;
- (h) the Salaries and Remuneration Commission;
- (i) the Teachers Service Commission;
- (j) the National Police Service Commission
- (k) the Ethics and Anti-Corruption Commission (under Article 79);
- (l) the Auditor-General; and
- (m) the Controller of Budget



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

Form of a Petition for Removal of a member of a Constitutional Commission

- 1) A petition for the removal of a member of a Commission:
 - a) shall 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;
 - 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 member concerned and the alleged grounds on which removal is sought;
 - d) may contain affidavits or other documents annexed to it.
- 2) As earlier indicated, the Petition must clearly set out the alleged facts constituting the ground or grounds for removal as set out under Article 251 of the Constitution. These grounds are-
 - (a) serious violation of the Constitution or any other law, including a contravention of Chapter Six of the Constitution;
 - (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
- 3) 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;
- 4) 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 of the law;
- 5) Where the Clerk considers that a petition does not comply, the Clerk may give directions as are necessary to ensure that the petition is amended to comply;
- 6) If satisfied that the petition meets the requirements, the Clerk forwards the petition to the Speaker for tabling in the House;
- 7) 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 Constitution, statutes and the National Assembly Standing Orders;
- 8) 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 himself or herself reports the Petition to the House;

- 9) In reading the Petition, the Member presenting should confine himself or herself to the subject of the prayer, the material allegations and the number of signatures attached, and then proceed to lay the Petition on the Table of the House;
- 10) The Member presenting the Petition has **five minutes**;
- 11) The Speaker may allow comments, observations or clarifications in relation to a Petition presented or reported;
- 12) Every Petition presented or reported pursuant to the Standing Orders stands committed to the relevant Departmental Committee;
- 13) Upon receipt of a petition, the relevant Departmental Committee investigates the matter and, within **fourteen days**, reports to the House whether the petition discloses ground for removal under Article 251 of the Constitution. The Committee is required to accord the member of the commission or holder of an independent office a fair hearing before making its decision on the matter;
- 14) The House then, within **ten days** after the tabling of the report of the committee, resolves whether or not the petition discloses a ground for removal under Article 251 of the Constitution;
- 15) Where the **House resolves** that a petition **discloses a ground for removal**, the Speaker must transmit the resolution and the petition to the President within **seven days** of the resolution;
- 16) The President may suspend the member of the constitutional commission or holder of an independent office;
- 17) During the period of suspension, the member of the constitutional commission or holder of an independent office will receive a half of the remuneration and benefits of his or her office;
- 18) The President then appoints a Tribunal to confirm the complaints against the member of the constitutional commission or holder of an independent office;
- 19: The Tribunal consists of—
 - (a) a Judge (current or retired) –who is the Chairperson of the Tribunal;
 - (b) two (or more) persons who are qualified to be appointed as High Court judges; and
 - (c) a person who is qualified to assess the facts in respect of the particular ground for removal;
20. The Tribunal is expected to expeditiously investigate the matter and report to the President;
21. The Report of the Tribunal must make a **binding recommendation**;
22. The President then acts in accordance with the recommendation of the Tribunal within **thirty days**;
23. Consideration of a Petition for removal of a member of a Constitutional Commission or holder of an Independent Office shall not lapse at the expiry of a term of Parliament.



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