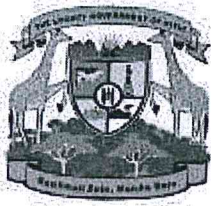


**REPUBLIC OF KENYA**

**COUNTY ASSEMBLIES**



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**REPORT OF THE JOINT COUNTY ASSEMBLIES**  
**COMMITTEE ON CONSIDERATION OF THE**  
**CONSTITUTIVE AGREEMENT ON THE SOUTH EASTERN**  
**KENYA ECONOMIC BLOC (SEKEB)**

**AUGUST, 2021**

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## **PREAMBLE**

The Constitution of Kenya, 2010 brought into place 47 Counties in order to decentralize resources. The formation of the Counties was based on various factors such as geographical features, urban centres, and community of interest, historical, economic and cultural ties. With time, Counties bordering each other realized common interest in economic development and therefore resolved to pool their resources together.

Article 189(2) of the Constitution of Kenya, 2010 as read together with Section 6(3) of the County Governments Act, 2012 allows Counties to set up joint committees; joint authorities and enter into partnerships with any public or private organization in accordance with the provisions of any law relating to public or private partnerships for any work, service or function.

In reference to the above, the three Counties; Kitui, Machakos and Makueni constituted a draft agreement for formation of a regional economic bloc known as the South Eastern Kenya Economic Bloc (SEKEB).

The Governors of Kitui, Machakos and Makueni executed the Constitutive Agreement for the formation of the South Eastern Kenya Economic Bloc (SEKEB) on the 18<sup>th</sup> day of May, 2019 and forwarded it to their respective County Assemblies for consideration (**Annex 1**).

### **Establishment and Mandate of the Joint County Assemblies Committee.**

Section 14(5 and 6) of the County Governments states that;

- 5) *A County Assembly may jointly with another county Assembly, establish committees consisting of members of both county assemblies.*
- 6) *If a county assembly establishes a joint committee with another county assembly, the election of members and regulation of the conduct of the business of the joint committee shall be as agreed between the two county assemblies.*

The Joint County Assemblies Committee was established vide a resolution of the three County Assembly Speakers on 11<sup>th</sup> November, 2019.

The Joint County Assemblies Committee consists of the following:-

- i. Committee on Justice & Legal Affairs and Committee on Public Service & Administration, Kitui County Assembly;
- ii. Committee on Justice and Legal Affairs and Committee on Devolution & inter-governmental relations -Machakos County Assembly; and
- iii. Committee on Delegated County Legislation and Committee on Devolution & Public Service –Makueni County Assembly.

The Joint County Assemblies Committee was tasked to consider the constitutive agreement on the South Eastern Kenya Economic Bloc (SEKEB), and come up with a legislation to operationalize it.

### **Joint Assemblies Committee Membership**

The Joint Assemblies Committee membership comprises of the following members;

1. **Hon. Nelson K. Musyoka, MCA** -Chairperson
2. **Hon. Jeremiah Munguti, MCA** -Whip
3. Hon. Alfred Nyamai Mutuku, MCA -Member
4. Hon. Jonathan M. Kimongo, MCA -Member
5. Hon. Martina N. Kimilu, MCA -Member
6. Hon. Moffat Maitha, MCA -Member
7. Hon. Jane Nyawira, MCA -Member
8. Hon. Johana Munyao, MCA -Member
9. Hon. Jane Mutua, MCA -Member
10. Hon. Eliud M. Ndinguri, MCA -Member
11. Hon. Grace Sammy, MCA -Member
12. Hon. Alfred Kituku Kalunde, MCA -Member
13. Hon. Bernardette K. Mutisya, MCA -Member
14. Hon. Dennis Wambua Masavu, MCA-Member
15. Hon. Magdalene Mulwa, MCA -Member
16. Hon. Francis King'oo Mutungi, MCA -Member
17. Hon. Francis Mwanja Mulwa, MCA -Member
18. Hon. Jackson Muema Mbalu, MCA -Member
19. Hon. Janet Mwikali Kitung'a, MCA -Member
20. Hon. Janet Ngina Wambua, MCA -Member

21. Hon. Josphat N. Nzuki, MCA	-Member
22. Hon. Mercy Mutuku, MCA	-Member
23. Hon. Julius Tangai, MCA	-Member
24. Hon. Patrick Mbevi, MCA	-Member
25. Hon. Mariam N. Musyoka, MCA	-Member
26. Hon. Rosie Ndibo, MCA	-Member
27. Hon. Sharon M. Mutinda, MCA	-Member
28. Hon. Charity Mwangangi, MCA	-Member
29. Hon. Josephine K. Mutie, MCA	-Member
30. Hon. Philip Nguli, MCA	-Member
31. Hon. Musee Mati, MCA	-Member
32. Hon. Deiys Mukala, MCA	-Member
33. Hon. Geoffrey Mwalimu, MCA	-Member
34. Hon. Dr. Grace Mutua, MCA	-Member
35. Hon. Stephen Musili, MCA	-Member
36. Hon. Peter M. Kilonzo, MCA	-Member
37. Hon. James Wangunze, MCA	-Member
38. Hon. Mary P. Ndumbu, MCA	-Member
39. Hon. Annastancia Mutunga, MCA	-Member
40. Hon. Johnson Kanandu, MCA	-Member
41. Hon. David Masaku, MCA	-Member
42. Hon. Stephen Katana, MCA	-Member
43. Hon. John Kisangau, MCA	-Member
44. Hon. Fredrick Nthuri, MCA	-Member
45. Hon. Justus Katumo, MCA	-Member
46. Hon. Abdirah ahman Ali, MCA	-Member
47. Hon. Daniel M. Kiilu, MCA	-Member
48. Hon. Francis Ngunga, MCA	-Member
49. Hon. Eric Musembi, MCA	-Member
50. Hon. Phoebe Koki, MCA	-Member
51. Hon. Benedette Mueni, MCA	-Member
52. Hon Alice Nzioka, MCA	-Member

53. Hon Robert Kisini, MCA	-Member
54. Hon. Francis Kalumu, MCA	-Member
55. Hon. Patrick Kituku, MCA	-Member
56. Hon. Cosmas Masesi, MCA	-Member
57. Hon. Stephen Mwanthi, MCA	-Member
58. Hon. Tariq Mulatya, MCA	-Member
59. Hon. Winfred Mutua, MCA	-Member
60. Hon. Dominic Ndambuki, MCA	-Member

**Executive summary.**

The Constitution of Kenya, 2010 brought into place 47 Counties in order to decentralize resources. The formation of the Counties was based on various factors such as geographical features, urban centres, and community of interest, historical, economic and cultural ties. Article 189(2) of the Constitution of Kenya, 2010 as read together with Section 6(3) of the County Governments Act, 2012 allows Counties to set up joint committees; joint authorities and enter into partnerships with any public or private organization in accordance with the provisions of any law relating to public or private partnerships for any work, service or function. Counties bordering each other realized common interest in economic development and therefore resolved to pool their resources together. In reference to the aforementioned, the Governors of Kitui, Machakos and Makueni executed the Constitutive Agreement for the formation of the South Eastern Kenya Economic Bloc (SEKEB) on the 18<sup>th</sup> day of May, 2019 and forwarded it to their respective County Assemblies for consideration. The agreement seeks to strengthen ties between the three Member Counties, and to facilitate development, management and utilization of cross cutting County resources and infrastructure.

Comital to the Joint County Assemblies Committee.

Article 185 of the Constitution provides for the legislative authority of the County Assembly limiting it to within the geographic boundaries of the County. Section 14(5 and 6) of the County Governments provides that a County Assembly may jointly with another county Assembly, establish committees

consisting of members of both county assemblies and agree on the election of members and regulation of the conduct of the business of the joint committee.

The Joint County Assemblies Committee consisting of Committees drawn from Kitui, Machakos and Makueni County Assemblies was established on 15<sup>th</sup> November, 2019 to consider the constitutive agreement and formulation of a legislation for operationalization of the agreement.

#### Learning Visits/research

The Joint Committee conducted learning visits with the Lake Region Economic BLOC (LREB), Jumuiya ya Kaunti za Pwani (JKP) and the State Department of Devolution on 8<sup>th</sup> to 10<sup>th</sup> January, 2020. The objective of the visit was to learn on the structure of administration, the legal framework and the procedure for funding the Economic BLOCs.

**Structure of the Economic Blocs** -Generally, the Joint Committee learnt that the established Economic BLOCs had; **the Summit/Apex** as the top most organ comprising of the Member County Governors headed by a Chairperson elected amongst themselves. The tenure of the Chair of the summit was not defined. **The Council**- provided technical support to the summit in the implementation of programs; policies and projects. It Comprised of CECM's of Finance in the respective Member Counties and any other CECM's as and when necessary appointed by the Summit. **The Pillar Committees**- comprised of CECM's are in charge of every Department. Each pillar committee elected a chairperson from among themselves. It swerved as the technical committee where issues were discussed and relayed to the Council and the summit for approval. The **Secretariat**- was headed by the Chief Executive Officer (C.E.O) and who was responsible for coordinating all activities of the Economic Bloc.

**Budgeting/Financing of the Economic Blocs** -notwithstanding the provisions of Section 146 of the Public Finance Management Act 2012, the joint Committee learnt that financing of Economic Blocs at the existing County Economic Blocs such as Lake Region Economic Bloc (LREB) and Jumuiya Ya Kaunti Za Pwani (JKP) included funds allocated by member Counties, donations, grants, gifts and loans. However, there existed no regulation to guide on the process of budgeting and financing of County Economic Blocs by

individual Counties.

**Legal framework** -Section 146 of the Public Finance Management Act, 2012 provides for the Parliament to approve regulations prescribing financial relations with respect to joint infrastructure investments undertaken by counties. During the learning visit, the Committee established that parliament has not enacted the regulations for the County government joint infrastructure investment. The State Department of Devolution had developed a draft policy on the establishment of County Economic Blocs. The draft policy was awaiting cabinet approval. Therefore, currently there is no regulatory framework to guide on the nature of instruments required for the establishment of CEB's. Further, there were no guidelines to provide norms and standards for the management of CEBs leading to application of various and sometimes inappropriate institutional structures. The organizational structure of existing operational economic blocs indicates a complex mix of committees and working groups which may become unsustainable.

**Investments of the Economic BLOCs** -The Committee established that the existing County Economic BLOCs such as Lake Region Economic Bloc (LREB) and Jumuiya Ya Kaunti Za Pwani (JKP) cannot engage in joint investments directly since there is no established legal framework to guide on the same. The latter has been occasioned by the failure by the Intergovernmental Budget and Economic Council (IBEC) to provide regulations as stipulated under Section 146 (2) of the Public Finance Management Act, 2012 to guide County Governments Budget for joint investments.

Based on the scrutiny of the constitutive agreement and research visits, committee made the following **recommendations**:-


1. While planning to implement joint programmes, SEKEB should conduct a feasibility study taking into consideration; shared resources, interests and benefits for the region.
2. A robust public participation should always be undertaken to sensitize residents of the member counties on the importance of having an economic BLOC and the modalities for financing and managing the projects.



3. The Secretariat should be competitively sourced from each Member County. The Chief Executive Officer should be recruited on a six year contract to ensure continuity even after general elections.
4. Political interests by the Member County Governors in running of SEKEB should not feature in the objectives of the BLOC especially in identification and implementation of projects.
5. The Summit should develop a Joint Venture Agreement that shall give the BLOC the authority to do projects jointly. Proceeds from the projects shall be shared equally among the Member Counties. Once developed, the Joint Venture Agreement has to be registered with the Registrar of Companies.
6. SEKEB should invest in financial institutions as shareholders since Counties are not allowed to carry out the day to day administration of a BLOC. Dividends payed through the Counties from the said Institutions should be voted in as revenue by the member Counties.
7. The state Department on Devolution and ASALs should fast track the formulation of a regulatory framework that guide on the nature of instruments required for the establishment of County Economic Blocs and the role of County Assemblies in its establishment.
8. Guidelines should be developed to provide norms and standards for the management of County Economic Blocs leading to application of various institutional structures. Therefore, the Senate should be petitioned to approve regulations on the County government joint infrastructure investment as stipulated under Section 146 of the PFM Act, 2012.
9. There is need for increased collaboration between South Eastern Kenya Economic Bloc (SEKEB) and the State Department of Devolution, through various platforms among them sharing of the Joint Assemblies Committee Report, legislations relating to SEKEB activities and policy on formation of Regional BLOCs.
10. That, the Joint County Assemblies should approve a joint legislation for operationalization of the constitutive agreement **within one month** after the adoption of this report.

11. Pursuant to the provisions of Article 196(1b) of the Constitution of Kenya, 2010 as read together with Section 87 of the County Governments Act, 2012, **Public participation** must be taken into considering and approving the joint legislation.

for

Signed: .....  ..... Date: ..... 27/07/2021 .....

**Hon. Nelson K. Musyoka, MCA,**  
**Chairperson of the Joint County Assemblies Committee**

## **1.0 BACKGROUND INFORMATION**

Article 189(2) of the Constitution of Kenya, 2010 provides that;

*Government at each level, and different governments at the county level, shall cooperate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.*

Article 6 of the Constitution establishes the 47 County Governments whilst affirming their distinct and interdependent nature.

Article 185 of the Constitution provides for the legislative authority of the County Assembly limiting it to within the geographic boundaries of the County.

Further, Section 6(3) of the County Governments Act, 2012 gives County Governments powers to enter into partnerships with any public or private organization in accordance with the provisions of any law relating to public or private partnerships for any work, service or function for which it is responsible within its area of jurisdiction.

Section 23 of the Intergovernmental Relations Act, 2012 (IGRA) provides for the formation of Joint Committees by the County Governments. Section 146 of the PFM Act anticipates Counties to have joint infrastructure investments.

Therefore the Constitutive Agreement for the South Eastern Kenya Economic Bloc (SEKEB) is founded on the above provisions of the law and seeks to strengthen ties between the three Member Counties, and to facilitate development, management and utilization of cross cutting County resources and infrastructure.

### **1.1 Legal Framework**

Legal Framework on the formation of Regional Economic Blocs

#### **1.1.1 Constitution of Kenya**

- a. The Preamble to the Kenyan Constitution recognizes that the Kenyan people are proud of their ethnic, cultural and religious diversity, and are determined to live in peace and unity as one indivisible sovereign nation.
- b. Article 1(1),(2), (3)(a) and (4) recognizes that the sovereign power belongs to the people and can be exercised directly or indirectly at the County

Level through democratically elected representatives in Legislative Assemblies in the County Governments.

- c. Article 6(1) and (2) as read together with the First Schedule of the Constitution provides that Kenya is divided into Counties among them Kitui, Machakos and Makueni which are distinct and inter-dependent but must conduct their mutual relations based on consultation and cooperation.
- d. Article 10(1)(a),(b) and (c) and (2)(a),(b), and (c) of the Constitution provides all persons, state organs, state officers and public officers are bound by the national values and principles of governance among them democracy and participation of the people, inclusiveness and good governance when applying or interpreting the Constitution; applying or interpreting any law or in making or implementing public policy decisions.
- e. Article 176 establishes a County Government for each County which is comprised of the County Assembly and the County Executive.
- f. Article 174 (c) and (i) of the Constitution provides that the objects of devolution includes giving self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them; and enhancing checks and balances and the separation of powers.
- g. Article 175 of the Constitution as relates to the principles of devolved governments provides that County Governments shall be based on democratic principles and separation of powers and must have reliable sources of revenue to enable it govern and deliver services effectively.
- h. Article 185(1) and (2) of the Constitution provides that the legislative authority of the County Government is vested on the County Assembly.
- i. Article 189(1)(a),(b) and (c),(2),(3) and (4) of the Constitution provides that National and County Government must cooperate while performing their respective functions, assist, support and consult as and when appropriate in implementing legislation and coordinate with each other in exchange of information, administration and enhancement

of capacity. Further, in case of any dispute occurring among the two levels of Governments, reasonable efforts shall be made to settle the dispute.

**1.1.2 County Governments Act, 2012**

- a. Section 6(1),(2)(a), (b) and (c ),(3),(4),(5) (a) and (b) and (6) of the County Governments Act, 2012 grants County Governments with corporate powers with perpetual succession and power to enter into a contract, acquire, purchase or lease any land or delegate any of its functions to its officers, decentralized units or other entities within the County. Further, the Act provides that County Government can enter into a partnership with any public or private entity for any work, service or functions for which it is responsible within its area of jurisdiction whose contracts shall be valid and binding on the County Governments, its successors and assigns. Further, in a bid to ensure efficiency in service delivery, County Government may establish a company, firm or other body for the delivery of a particular service or carrying on of a particular function; or contract any person, company, firm or other body for the delivery of a particular service or carrying on a particular function. In undertaking the aforementioned functions, the County Governments must ensure that there is efficiency, effectiveness, inclusivity and participation of the people.
- b. Section 14(5) and (6) of the County Governments Act,2012 makes provisions for different County Assemblies to work through establishment of joint County Assemblies Committee. The Act empowers the Joint Assembly committee to establish its own code of conduct and regulate its own procedure
- c. Section 118 of the County Governments Act, 2012 authorizes County Governments to enter into an agreement with the National Government, another County or an agency of the National Governments so as to receive any services that each County participating in the agreement is empowered to provide or receive within its own jurisdiction, including services incidental to the primary purpose of any of participating Counties. In undertaking the above stated activities each County shall have

a County shared services platform aligned to the National policies, standards and norms.

- d. Section 121 of the County Governments Act, 2012 provides that Ministry and Government State Department on matters relating to intergovernmental relations must offer support to County Governments to enable them perform their functions . Further the Cabinet Secretary must upon receipt of report on matters that it seeks to undertake , seek the approval of Parliament before making any intervention which seeks to assume the responsibility of the functions it seeks to undertake.

**1.1.3 Intergovernmental Relations Act, No. 2 of 2012**

- a. The Intergovernmental Relations Act, 2012 makes provisions for the establishment of a framework for consultation and cooperation between the National and County Governments and amongst County Governments; to establish mechanisms for the resolution of intergovernmental disputes pursuant to Articles 6 and 189 of the Constitution.
- b. Section 23(a) and (b) of Intergovernmental Relations Act, 2012 makes provision for establishment of joint committees of national and County Governments appropriate to in the realization of objects and principles of devolution as outlined by Article 174 and 175 of the Constitution
- c. Section 30(1) and (2)(a) and (b), 31(a) and (b), 31(1)(a) and (b) and (2) ,33(1) and (2),34(a)(i) and (ii) ,(b)(i) and (ii),(2), and (3) of Intergovernmental Relations Act,2012 makes provisions for how a dispute arising between the National Government and a County Government or amongst County Governments shall be resolved. Further it makes provisions for the mechanism that shall be used in resolving dispute and the procedure that shall be followed in making a determination of a dispute declared by the National and County Governments Co-coordinating Summit.

**1.1.4 Public Private Partnership No.15 of 2013**

- a. Public Private Partnership Act, 2013 seeks to make provisions for the participation of the private sector in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the Government through concession or other contractual

arrangements; the establishment of the institutions to regulate, monitor and supervise the implementation of project agreements on infrastructure or development projects.

- b. Section 4(1)(e) of the Public Private Partnership Act, 2013 establishes the Public Private Partnership Committee whose composition includes the Principal Secretary in the state department for the time being responsible for matter relating to County Governments.
- c. Section 18(1) and (2) of the Public Private Partnership Act, 2013 provides that a contracting authority intending to finance, operate, equip or maintain an infrastructure facility or provide a service may enter into a project agreement with any qualified private party for financing, construction, operation, equipping or maintenance of infrastructure or development facility or provisions of service of the Government in accordance with the Act. In undertaking the above stated activities, a contracting authority if it deems it appropriate, designate its assets for the use by a private party, in relation to, and for the duration of a project on such terms and conditions as the contracting authority shall consider appropriate.
- d. Section 19 of the Public Private Partnership Act, 2013 provides that a contracting Authority may enter into a public private partnership with a private party in accordance with the Public Private Partnership arrangements outlined in the Second schedule to the Act or based on arrangements approved by the Cabinet Secretary.
- e. Section 20 (a),(b) ,(c ),(d) and (e) of the Public Private Partnership Act,2013 provides that Contracting Authority must before entering into a public private partnership arrangements undertake sector diagnostic study and assessments which covers technical issues; legal, regulatory and technical frameworks; institutional and capacity status; commercial, financial and economic issues; and such other issues as the Cabinet Secretary may stipulate.
- f. Section 21((c) and (d) of the Public Private Partnership Act, 2013 provides that contracting authority must in determining the duration of a public

private partnership take into account the investment standards that are required to be maintained by each party to the project agreement throughout the duration of the partnership; and the economic and financial viability of the project and the economic life of the facilities to be provided.

**1.1.5 Public Finance Management Act, 2012**

Section 146 of the Public Finance Management Act, 2012 authorizes counties to undertake joint infrastructure investments which shall be done on terms which prescribe financial relations as outlined in the Regulations approved by Parliament.

**1.1.6 Public Procurement and Asset Disposal Act no. 33 of 2015**

- a. Section 49 of the Public Procurement and Asset Disposal, Act 2015 allows procuring entities with common interest to establish a procuring agency at National or County level for purpose of procurement and distribution of sector-specific goods, works and services on behalf of procuring entities within the respective sector and in accordance with the Act and Regulations thereof.
- b. Section 56 of the Public Procurement and Asset Disposal Act, 2015 allows a state organ to seek in writing another state organ or regulated professional body's registration list of all registered persons in the category provided the list is valid and developed through competitive process in accordance with the Act and in the case of regulated professional bodies, developed through a process in accordance with the relevant legislation regulating the particular profession.



## **2.0 OVERVIEW OF THE CONSTITUTIVE AGREEMENT**

**Preamble:** Highlights the Articles and Sections of the Constitution that provide for establishment of SEKEB. It looks at the legal frameworks in place that seeks to promote social and economic development between Kitui, Machakos and Makueni Counties.

**Article 1:** Seeks to interpret words as used in the Constitutive Agreement.

**Article 2:** Provides in-depth information on the establishment of SEKEB.

**Article 3:** Provides for Membership of SEKEB which shall comprise of Kitui County, Machakos County, Makueni County and any other County that is granted Membership.

**Article 4:** Provides that SEKEB is a legal entity with corporate powers to contract, buy goods, offer services, own property, sue and be sued.

**Article 5:** Provides for the objectives of SEKEB.

**Article 6:** Provides for the governing principles of SEKEB to include transparency, accountability and integrity.

**Article 7:** Establishes organs of SEKEB which shall comprise of the Summit, the Council, the General Assembly, Joint Assemblies Committee, Panel of Experts, Panel of Eminent Persons and the Secretariat.

**Article 8:** Provides for composition of Summit members, which shall comprise of Governors from member counties; and from amongst whom the Chairperson shall be elected.

**Article 9:** Provides for the functions of the Summit and makes it as the supreme decision making body.

**Article 10:** Provides that the membership of the Council shall comprise of Governors, Deputy Governors, Senators, Members of National Assembly, County Assemblies Leadership, Clerks of County Assemblies, County Executive Committee Members and County Secretaries.

**Article 11:** Provides that the Council shall be the consultative body of SEKEB and shall be responsible for harmonizing policies and legislative initiatives of SEKEB; and in creating linkages between the organs of SEKEB and the general public.

**Article 12:** Establishes the composition of the General Assembly and provides for when members can convene for ordinary or extraordinary sessions.

**Article 13:** Provides that the General Assembly shall be the voice of the people in the affairs of SEKEB. Its functions shall include mobilizing community support for SEKEB programs; giving general directions on SEKEB affairs; and adoption of budgets.

**Article 14:** Establishes the Joint Assemblies Committees and outlines its Membership which include the Speakers, Majority and Minority Leaders, Minority and Majority Whips, and Chairpersons of County Assemblies.

**Article 15:** Provides for powers and functions of the Joint Assembly Committee that includes acting as the link between SEKEB and respective County Assemblies; and to facilitate oversight; representation and proposed legislation.

**Article 16:** Establishes a panel of nine (9) experts, who shall be appointed by the Summit; and must be persons who are recognized by academic and professional bodies in their field of study, work and practice, taking into consideration gender balance.

**Article 17:** Provides that the functions of the panel of experts shall include offering technical, intellectual and professional advice to SEKEB among others.

**Article 18:** Establishes panel of eminent persons, whose membership is drawn from highly respected members of the society, with good social standing and high integrity.

**Article 19:** Provides that the panel of eminent persons shall spearhead conflict resolution within SEKEB, support in resource mobilization and serve as advisors to the Summit.

**Article 20:** Provides for the establishment of the Secretariat as the principal administrative organ of SEKEB, which shall be headed by a Chief Executive Officer appointed competitively by the Summit.

**Article 21:** Provides for the functions of the Secretariat which shall include the daily management of SEKEB affairs and any other function as may be assigned by the Summit.

**Article 22:** Provides that a person shall qualify for appointment as the Chief Executive Officer if they hold a degree from a recognized university, have at least five years proven experience in administration or have a distinguished career in senior management either in private or public sector. Further, the Article provides that the Chief Executive officer shall hold office for a period of three years and shall be eligible for appointment once.

**Article 23:** Provides for the responsibilities of the Chief Executive Officer which includes day to day operations of the Secretariat. Further the Article provides that the Chief Executive Officer shall be the secretary to the Summit, Council and General Assembly and shall assign secretaries for other organs of SEKEB from the secretariat.

**Article 24:** Provides for the establishment of SEKEB headquarters, which is to be determined by the different organs and empowers the Summit to establish other offices of SEKEB as it may consider necessary.

**Article 25:** Allows any County not listed in the preamble to become a member without reservations, upon admittance by the Summit and shall be effected by proof of public participation.

**Article 26:** Provides for procedures in which a member county may withdraw from SEKEB and subsequent effects of withdrawal.

**Article 27:** Provides for grounds which a Member County may be suspended from SEKEB.

**Article 28:** Provides for grounds which the Summit may expel a Member County from SEKEB.

**Article 29:** Provides for procedures which SEKEB may be dissolved.

**Article 30:** Provides for sanctions which can be imposed on Member Counties that fail to comply with financial and other obligations as outlined in SEKEB Agreement.

**Article 31:** Provides for mechanism in which disputes arising from the interpretation of this Agreement shall be resolved.

**Article 32:** Provides that the Agreement shall be interpreted and applied in accordance with the Laws of Kenya.

**Article 33:** Outlines the process of budget preparation and general administration.

**Article 34:** Provides for how funds will be mobilized and administered.

**Article 35:** Provides that the process of procuring goods and services for realization of SEKEB objectives be done in accordance with the Laws of Kenya.

**Article 36:** Provides for custody of ownership and assets acquired by member counties under auspices of SEKEB.

**Article 37:** Provides for the development of SEKEBS instrument of power including Logo, Emblem and Seal.

**Article 38:** Gives the organs of SEKEB authority to determine their own rules and procedures.

**Article 39:** Provides for how SEKEB will execute its mandate before the key organs are fully constituted.

**Article 40:** Gives the Summit mandate to develop guidelines for implementation of this Agreement.

**Article 41:** Provides the procedure for amendment or revision of this Agreement.

**Article 42 and Article 43:** Provides for the execution of the Agreement and the effective date when the Agreement shall come into force.

After analyzing the constitutive Agreement, the Joint Assemblies Committee resolved to undertake research activities among them which included learning visits to the Lake Region Economic Bloc (LREB), Jumuiya ya Kaunti za Pwani (JKP) and the State Department of Devolution in Nairobi. Further, the Committee undertook desk research on the East African Community and South Africa Development Community (SADC) on the institutional and management framework.

Thereafter the Committee developed a report from the findings of the research conducted.

## 3.0 LEARNING/RESEARCH VISITS

### 3.1 Learning Visits

The Joint Committee conducted learning visits with the Lake Region Economic BLOC (LREB), Jumuiya ya Kaunti za Pwani (JKP) and the State Department of Devolution on 8<sup>th</sup> to 10<sup>th</sup> January, 2020.

The objective of the visit was to learn on the structure of administration, the legal framework and the procedure for funding the Economic BLOCs.

#### **3.1.1 Structure of the Economic Blocs**

The committee observed that the Lake Region Economic Bloc (LREB), Jumuiya ya Kaunti za Pwani (JKP) and the State Department of Devolution have generally adopted a three-tier governance and management structure that is characterized by—

- a. The **Apex body/Summit** mostly comprising of county governors who are to provide policy guidance and strategic direction;
- b. The **technical level** (*some Blocs have complex mix of technical committees and working groups which may become unsustainable*). The level mainly comprises of CEC members who are to provide the technical support for the implementation of the policy decisions of the bloc. They report to the apex body.
- c. The **secretariat** that is tasked with the implementation of the decisions of the bloc.

At the technical level, the Lake Region Economic Bloc (LREB) has such Committees as the Council and the Pillar Committee while at Jumuiya ya Kaunti za Pwani (JKP) the technical level includes Sector Council and the Sector Working Groups. The draft policy for the State Department of Devolution proposes to have advisory Committees only.

Generally, the Joint Committee learnt that the established Economic BLOCs had the following structure;

- i. **Summit/Apex** – Is the top most organ comprising of the Member County Governors headed by a Chairperson elected amongst themselves. The tenure of the Chair of the summit was not defined.

- ii. **The Council**– provides technical support to the summit in the implementation of programs; policies and projects. It Comprises of CECM’s of Finance in the respective Member Counties and any other CECM’s as and when necessary appointed by the Summit.
- iii. **Pillar Committees**- They are led by the pillar heads whereby CECM’s are in charge of every Department. For instance in the Agriculture pillar, the committee comprises of all the CECM's in the region in charge of Agriculture. Each pillar committee elects its chairperson from among themselves. These are the technical persons who discuss issues and push them to the Council, then from there they are taken to the summit for approval.
- iv. **Secretariat**– Is headed by the Chief Executive Officer (C.E.O) and is responsible for coordinating all activities of the Economic Bloc.

Further, the composition for the Council, the Pillar Committees and the secretariat were minimized so as to cut on the administrative costs.

### **3.1.2 Budgeting/Financing of the Economic Blocs**

Section 146 of the Public Finance Management Act 2012, provides:

(1) *“Regulations approved by Parliament shall prescribe financial relations with respect to joint infrastructure investment by counties and any joint infrastructure investments under taken by counties shall be done in terms of those regulations.”*

(2) *Intergovernmental Budget and Economic Council (IBEC) may agree on regulations with guidelines for county government joint infrastructure investments*

This provision is regulated under regulation 128 of the Public Finance Management (County Government) Regulations 2015. Therefore, Counties can directly enter into joint infrastructure investments. However, the County Economic Blocs are not joint infrastructure investments, but rather are a vehicle through which member counties may conduct joint planning, budgeting and financing for joint investments.

The joint Committee learnt that financing of Economic Blocs at the existing County Economic Blocs such as Lake Region Economic Bloc (LREB) and

Jumuiya Ya Kaunti Za Pwani (JKP) includes funds allocated by member Counties, donations, grants, gifts and loans.

However, there exists no regulation to guide on the process of budgeting and financing of County Economic Blocs by individual Counties.

### **3.1.3 Legal framework**

Section 146 of the Public Finance Management Act, 2012 provides for the Parliament to approve regulations prescribing financial relations with respect to joint infrastructure investments undertaken by counties. It further tasks the Intergovernmental Budget and Economic Council (IBEC) to agree on regulations with guidelines for county government joint infrastructure investments. During the learning visit, the Committee established that;

- i. The parliament has not enacted the regulations for the County government joint infrastructure investment. The State Department of Devolution had developed a draft policy on the establishment of County Economic Blocs. The draft policy was awaiting cabinet approval. Therefore, currently there is no regulatory framework to guide on the nature of instruments required for the establishment of CEB's.
- ii. There is no regulatory framework to provide for the role of County Assemblies in the establishment of the CEBs.
- iii. There is need to provide regulation on the functions and activities of the County Economic Blocs.
- iv. There are no guidelines to provide norms and standards for the management of CEBs leading to application of various and sometimes inappropriate institutional structures. The organizational structure of existing operational economic blocs indicates a complex mix of committees and working groups which may become unsustainable.

### **3.1.4 Investments of the Economic BLOCs**

The Committee established that the existing County Economic BLOCs such as Lake Region Economic Bloc (LREB) and Jumuiya Ya Kaunti Za Pwani (JKP) cannot engage in joint investments directly since there is no established legal framework to guide on the same. The latter has been occasioned by the failure by the Intergovernmental Budget and Economic Council (IBEC) to provide



regulations as stipulated under Section 146 (2) of the Public Finance Management Act, 2012 to guide County Governments Budget for joint investments.

However, this challenge has been addressed through Public Private Partnership whereby the Economic BLOCs engage private entities for investment. The County Economic BLOC formulates a Joint Venture Agreement and initiate joint investments in line with the agreement. For instance, the Lake Region Economic Bloc has established Joint Venture Agreement (JVA) as the umbrella that gives them the authority to undertake joint projects. The JVA is registered with the Registrar of Companies.

### **3.2 Challenges Faced by the Regional Economic BLOCs**

The Regional Economic BLOCs visited face the following challenges;

- i. **Lack of policy**- There is no existing policy framework guiding formation and operationalization of Economic Blocs in Kenya- Policy formulation takes a lot of time thus making operationalization of the already formed Economic Blocs unachievable. This has really hindered budgeting process, joint investments and inter County interactions.
- ii. **Financing for Administration and operations of Economic Bloc** - County Governments cannot fully budget for all the identified projects in their Blocs hence the need for financial assistance from the National Government and donors.
- iii. **Cross-border conflicts** -Cross-border conflicts between neighboring counties poses challenges to peaceful cohesion of communities thus resulting in divisions while trying to operationalize the Regional Economic Blocs.

#### **4.0 COMMITTEE OBSERVATIONS AND PROPOSALS ON THE CONSTITUTIVE AGREEMENT**

The Joint Committee interrogated the Constitutive Agreement, made observations and proposed the following amendments:-

##### **Article 1 -Definitions**

The part highlights the definition of the general terms referred to in the context of the agreement.

A proposal was made to amend the definition, *“Committee” which means the Joint Assembly Committee established under Article 7 of this Agreement;*

By deleting the word *“Assembly”* appearing after the word *“joint”* and replacing therefore with the word *“Assemblies”*. *To read;*

***“Committee” which means the Joint Assemblies Committee established under Article 7 of this Agreement;”***

##### **Article 2-Establishment of SEKEB**

This Article provides in-depth information on the establishment of SEKEB. After interrogation by the Committee, no amendment was proposed.

##### **Article 3-Membership of SEKEB**

This Article provides for Membership of SEKEB which shall comprise of Kitui County, Machakos County, Makueni County and any other County that is granted Membership.

After interrogation by the Committee, no amendment was proposed.

##### **Article 4- Legal Capacity of SEKEB**

This Article provides that SEKEB is a legal entity with corporate powers to contract, buy goods, offer services, own property, sue and be sued.

After interrogation by the Committee, no amendment was proposed.

##### **Article 5- Objectives of SEKEB**

This Article provides for the objectives of SEKEB.

After interrogation by the Committee, no amendment was proposed.

### **Article 6 –Principles**

The part highlighted the basic principles that would govern the constitutive agreement.

Members proposed an addition of “*promote democracy*”.

### **Article 7 –Organs of SEKEB**

The Article highlighted the seven organs that would ensure smooth running of the constitutive agreement.

The following amendments were proposed and adopted.

- i. That, Article 7(1) (2) be amended by deleting the word “*Council*” and replacing therefor with “*the Governing Council*”.
- ii. That, Article 7(1) (4) be amended by deleting the word “*Assembly*” as appearing after the word “*Joint*” and replacing therefor with the word “*Assemblies*” to read “*Joint Assemblies Committee*”.
- iii. That, Article 7(1) (5) and (6) be deleted and replaced therefor with “*the Panel of Experts and Eminent Persons*”.

### **Article 8- The Summit**

This Article provides for composition of Summit members, which shall comprise of Governors from member counties; from amongst whom the Chairperson shall be elected.

The Article was deleted and amended as below;

1. *The Summit shall comprise of the Governors of the Member Counties.*
2. *The Governors shall elect the Chairperson from amongst themselves.*
3. *The Chairperson shall hold office for a period of one year on rotational basis.*
4. *The Summit shall meet at least once quarterly and as often as may be necessary for the carrying out of its functions.*
5. *The Chief Executive Officer of the Secretariat shall be an ex-officio member and the Secretary of the Summit.*

### **Article 9 – Functions of the Summit**

The Article provides for the Functions of the Summit.

The Committee proposed the following amendments:

That sub article 5 be amended by inserting the words "subject to the provisions of article 29 of this agreement".

That Sub-Article 13 and 14 be deleted and replaced with the following;

- a) *approve Chief Executive Officer within the laid down procedure;*
- b) *determine share contribution of each member county;*
- c) *any other functions as may be necessary for the performance of its functions.*

2 . *The functions referred to under Article 9 (1) (c), (d), (e), (f), (g) and (m) shall be subject to approval by the Member County Assemblies.*

Sub-Article 14 was deleted since its composition violates the principles of separation of powers.

### **Article 10 –The Council**

This Article provides for the composition of the Council and the frequency of its meetings.

A proposal was made to amend:

- i. Article 10(1) (5) by deleting it and replacing therefor with "*members of the County Assemblies*".
- ii. Article 10(1) (8) by inserting the word "*relevant*" before the word "*County*".
- iii. Insert a new article 10 "*(9) Joint Assemblies Committee*".

Upon further consultations, the joint committee resolved to delete the entire article and replace it with the following:

*Article 10 the Governing Council;*

1. *The Governing Council shall comprise of the following officials drawn from the Member Counties:*

- (a) The Governors;*
- (b) Chairperson of the General Assembly;*
- (c) County executive members responsible for finance and social-economic planning who shall be ex- officio members;*
- (d) The County Attorneys of the respective Member Counties.*

*(e) The Chief Executive Officer of the secretariat who shall be the secretary to the Governing Council.*

- 2. The Governors shall elect the chairperson from amongst themselves who shall hold office for a period one year on rotational basis provided a Governor who is the current chairperson of the Summit shall not be eligible to be elected as the chairperson under this Article.*
- 3. The Council may from time to time invite officials of the county government, the national government, development partners and any other non-state actors for specific purposes necessary for the furtherance of the objectives of SEKEB.*
- 4. The Council shall meet twice in a year.*
- 5. The quorum of the meetings shall be half of the members provided that no meeting shall be held in the absence of all the Governors or their appointed representatives.*

**Article 11 – Functions of the Council**

The article highlights the functions of the council.

After deliberations and consideration of the Speakers draft, the committee resolved to delete the entire Article and replace it with the following:-

**“Functions of the Governing Council”**

*The governing Council shall:*

- 1. be the consultative body of SEKEB;*
- 2. be a forum for harmonizing development programs of County Government, National Government and other partners within SEKEB to avoid duplication;*
- 3. provide linkage between the Organs of SEKEB and the general public;*
- 4. build public support for programs of SEKEB;*
- 5. facilitate community feedback;*
- 6. support fundraising initiatives of SEKEB;*
- 7. deliberate on the long-term development agenda for SEKEB;*
- 8. harmonize policies and legislative initiatives of SEKEB;*
- 9. appoint the selection panel;*
- 10. give strategic direction to SEKEB;*

11. *establish thematic Ad-hoc committees comprising of such technical experts as may be necessary for purposes of assisting the governing council perform its functions.*
12. *Co-opt into the Governing council persons whose knowledge and skills are considered necessary for functioning of the Governing Council, such co-opted members shall not have voting rights.*
13. *Determine common policies and programmes for SEKEB.*
14. *Oversee the functions of SEKEB and follow up on and monitor the implementation of its objectives.*
15. *Make guidelines for the better carrying out of the functions of SEKEB.*
16. *Receive, consider and take decisions on reports and recommendations from other organs of SEKEB.*
17. *Receive and implement reports from the Joint Assemblies' Committee.*
18. *Ensure that services offered by SEKEB are available and accessible by the citizens of all member counties;*
19. *Submit its resolutions to the respective member county assemblies for consideration. The resolutions shall be committed to the Joint Assemblies Committee.*
20. *Submit biannual reports to the respective member counties assemblies for consideration. This reports shall be committed to the Joint Assemblies Committee.*
21. *The resolutions of the respective member county assemblies shall be binding on all Member counties.*

**Article 12- The General Assembly**

The part highlights the composition of the General Assembly.

The Article was deleted and replaced with the following:

1. *The General Assembly shall comprise of: -*
  - 1) *the Governors of the Member Counties*
  - 2) *the Senators from the Member Counties*
  - 3) *two Members of the National Assembly from the Member Counties.*
  - 4) *the Speakers of the Member County Assemblies*

- 5) *the County Executive Committee Members of the Member Counties.*
  - 6) *the Majority and Minority leader of the respective Member County Assemblies.*
  - 7) *two eminent persons from each Member County nominated by the Panel of Eminent Persons and experts;*
  - 8) *chairpersons of the Chamber of Commerce from each Member County;*
  - 9) *two religious' leaders from each Member County nominated by the National Council of Churches of Kenya and the Supreme Council of Kenya Muslims and Kenya Conference of Catholic Bishops.*
  - 10) *Two representatives of institutions of higher learning nominated by the respective forums of private and public Institutions of higher learning from Member Counties.*
  - 11) *two representatives of Persons Living with Disability from each Member County nominated by the Council for Persons Living with Disability;*
  - 12) *two representatives of the youth from each Member County nominated by the National Youth Council Chapter from each member county;*
  - 13) *two representatives of women from each Member County;*
  - 14) *two representatives of non-state actors operating within SEKEB;*
  - 15) *one representative of the diaspora from each Member County;*
  - 16) *two representatives of professional bodies from each Member County; and;*
  - 17) *The Chief Executive Officer who shall be an ex officio member.*
2. *The General Assembly shall meet once in a year in an ordinary session which shall be convened by the Chairperson of the General Assembly.*
  3. *An extraordinary session may be convened by the Chairperson of the Summit for special purposes.*

4. *The Summit chairperson shall nominate the chairperson of the General Assembly and shall appoint the said nominee upon approval by the member counties' Assemblies.*
5. *The Chairperson shall hold office for one term of two years renewal once.*
6. *The quorum of the General Assembly is one third of all the members of the General Assembly, provided that there is at least one (1) Governor in attendance*
7. *Decisions shall be adopted by consensus failure to which decisions shall be adopted by two thirds majority of the members present and voting.*
8. *The Chairperson shall not have voting rights.*

**Article 13- Functions of the General Assembly**

The article highlights the functions of the General Assembly.

No amendment was proposed on this Article.

**Article 14- Joint Assemblies Committee**

Joint Assemblies Committee

Delete sub article 1(6) and replace with “*Two members of County Assembly representing special interest appointed by each member County Assembly*”.

The entire Article was therefore amended to read as below;

1. *The Committee shall comprise of:*
  - (1) *The Speakers;*
  - (2) *Majority Leaders;*
  - (3) *Minority Leaders;*
  - (4) *One man and woman from each member county assemblies nominated from members of the county assemblies who are not part of the Assemblies” leadership.*
2. *The Speakers shall elect the Chairperson from amongst themselves.*
3. *The Chairperson shall hold office for a period of one year on rotational basis.*
4. *The Committee may co-opt into the Committee, persons whose knowledge and skills are considered necessary for the functioning of the Committee. Co-opted members shall not have voting rights.*



5. *The Committee shall go about its duties in cognizance of the principle of separation of powers as well as the need for mutual co-operation in promoting the public interest.*
6. *The Quorum shall be seven members provided there is attendance by at least one member from each member county assemblies.*

**Article 15-Powers and Functions of the Committee**

The Article provides for powers and functions of the Joint Assembly Committee. No amendment was proposed on this Article.

**Articles 16, 17, 18 and 19- Panel of Experts and Eminent Persons and their Functions**

The Articles provides for establishment and functions of the Panel of Experts and Eminent Persons. Upon interrogation, the Committee noted that the Panel of Experts and Eminent Persons were more or less the same, performing the same functions. A proposal was made to merge the two. As a result, Articles 16, 17, 18 and 19 were deleted and replaced with the following Article;

**Article 16- Panel of Experts and Eminent Persons**

- (1) *The Panel shall be made up of highly respected members of the society of high integrity and good social standing who are recognized by academic and professional authorities in their field of study, work and practice.*
- (2) *The Panel shall comprise of nine (9) persons selected by the Selection Panel and nominated by the Summit for approval for appointment by the Summit by the County Assembly.*
- (3) *In selecting members of the Panel, the Selection Panel shall take into consideration persons from:*
  - (a) *Arbitration and Mediation Society;*
  - (b) *Council of elders;*
  - (c) *Religions leaders;*
- (4) *When selecting the Panel, the Selection Panel shall take into consideration regional and gender balance;*
- (5) *The Panel shall serve on part time basis for a non-renewable term of three years.*

*(6) Gender balance shall be observed in the composition of the panel of experts.*

### **Article 17-Functions of the Panel of Experts and Eminent Persons**

*The Panel of Experts and Eminent persons shall:*

- (1) Provide technical, intellectual and professional advice to SEKEB.*
- (2) Conduct research on behalf of SEKEB.*
- (3) Support SEKEB in resource mobilization.*
- (4) Advise the Summit on best practices.*
- (5) Choose priorities and improve the programs of SEKEB to ensure accelerated impact on socio-economic needs of the citizens of SEKEB.*
- (6) Spearhead internal conflict resolution within SEKEB.*
- (7) Serve as advisors of the Summit.*

### **Article 20- The Secretariat**

The Article provides for the establishment of the Secretariat as the principal administrative organ of SEKEB, which shall be headed by a Chief Executive Officer. A proposal was made that the Article be deleted and replaced with the following;

#### **“The Secretariat**

- 1. The Secretariat shall be the Principal Administrative organ of SEKEB.*
- 2. The Secretariat shall be headed by a Chief Executive Officer and a Deputy Chief Executive Officer and shall have such other staff as may be determined by the Summit from time to time.*
- 3. The staff of the Secretariat may be seconded from the Member Counties except for staff necessary for the implementation of specific projects undertaken with partners in which case Sub-Article 5 shall apply.*
- 4. The Summit shall appoint a Chief Executive Officer and the Deputy Chief Executive officer from persons competitively sourced by the Selection Panel.*
- 5. Recruitment of the staff of the secretariat shall be done by the Selection Panel and shall consider regional balance amongst the Member Counties..*
- 6. In the performance of its functions the Secretariat shall take instructions from the Chief Executive Officer.*

**Article 21- Functions of the Secretariat.**

A proposal was made to amend the Article by adding the following new Sub-Articles to read as follows;

*12. Provide technical, intellectual and professional advice to the organs of the BLOC*

*13. Conduct research on behalf of the organs of the BLOC.*

*14. Support the organs of the BLOC in resource mobilization*

*15. Advise the summit on the best practices.*

**Article 22- Qualifications for Appointment of the Chief Executive Officer**

The article highlights the requirements for appointment of the Chief Executive Officer.

The committee recommended that the appointment of the CEO be on rotational basis from the Member Counties.

**Article 23- Responsibilities of the Chief Executive Officer**

The article highlights the responsibilities to be undertaken by the Chief Executive Officer.

No amendment was proposed on this Article.

**Article 24- SEKEB Headquarters**

The committee proposed an addition of article 24(1) "*on identification of a Central office at Machakos town*".

It was recommended that the summit should establish satellite offices in each of the Member Counties.

**Article 25- Accession**

The Article allows any County not listed in the preamble to become a member upon admittance by the Summit and approval by Member County Assemblies.

No amendment was proposed on this Article.

**Article 26- Withdrawal**

The Article highlights the procedures in which a member county may withdraw from SEKEB and subsequent effects of withdrawal

No amendment was proposed on this Article.

**Article 27- Suspension**

The committee proposed an addition of Article 27(4) “a quorum of 2/3 should be present when suspending any member County”.

The committee recommended that prior to the suspension, the affected member county should have a right to be heard.

**Article 28- Expulsion**

Amend Article 28(4) by deleting the word “summit” and replace with “Governing Council”.

The Committee recommended that the approval for expulsion should be ratified by the Member County Assemblies.

**Article 29- Dissolution**

A proposal was made to amend Article 29 by adding sub article (3) to read “*it is mandatory to conduct public participation before dissolution of the BLOC*”.

**Article 30- Sanctions**

Members proposed that Article 30 should come before Article 27 and 28.

**Article 31- Dispute resolution**

Provides for mechanism in which disputes arising from the interpretation of this Agreement. The Committee recommended that disputes shall be resolved by the BLOC in the following hierarchy:-

- i. Negotiation
- ii. Mediation
- iii. Arbitration
- iv. High Court

**Article 32- Governing Law**

Provides that the Agreement shall be interpreted and applied in accordance with such other relevant Laws.

**Article 33- Budget**

Outlines the process of budget preparation and general administration.

The Committee recommended that there shall be a budget for SEKEB prepared by the Secretariat and approved by the Member County Assemblies with recommendations from Summit.

That sub article 3 be deleted in the agreement since it was a repetition of sub article 1

**Article 34- Financial Provisions**

Provides for how funds will be mobilized and administered.

A proposal was made that, Article 1 (6) be amended by inserting the words “with approval by the Member County Assemblies” immediately after the word “summit”

**Article 35- Procurement of Goods and Services**

Provides that the process of procuring goods and services for realization of SEKEB objectives be done in accordance with the Laws of Kenya and such other relevant Laws.

**Article 36- Assets**

Provides for custody of ownership and assets acquired by member counties under auspices of SEKEB.

No amendment was proposed on this Article.

**Article 37- SEKEB’s Instruments of Power**

Provides for the development of SEKEB instrument of power including Logo, Emblem and Seal. The Committee recommended that instruments of power developed by the Summit should be approval by Member County Assemblies.

**Article 38- Conduct of Business**

Gives the organs of SEKEB authority to determine their own rules and procedures.

No amendment was proposed on this Article.

**Article 39- Transitional Provisions**

Provides for how SEKEB will execute its mandate before the key organs are fully constituted.

No amendment was proposed on this Article.

#### **Article 40- Guidelines**

Gives the Summit mandate to develop guidelines for implementation of this Agreement.

A proposal was made that, the Article be amended by inserting the words “with approval by the Member County Assemblies” immediately after the word “Agreement”

#### **Article 41- Amendment**

Provides the procedure for amendment or revision of this Agreement.

No amendment was proposed on this Article.

#### **Article 42 and Article 43- execution date and entry into force**

Provides for the execution of the Agreement and the effective date when the Agreement shall come into force.

The Committee recommends that the agreement should be approved by the Member County Assemblies and thereafter, come into force for execution by the Governors.

#### **General observations**

In addition to the aforementioned proposals by the Committee on the Constitutive Agreement, the following General observations were noted;

- i. That the constitutive agreement has never been subjected to public participation.
- ii. That some organs of the BLOC did not take into consideration the principal of separation of powers e.g. the Council as was established under Article 10.
- iii. That there was no policy to guide on the formation of regional Economic BLOCs.
- iv. That, the constitutive agreement did not capture the procedure for removal from office for the Chief Executive Officer.
- v. There, was no policy with clear financial guidelines on the operationalization of the Economic Blocs.

## **5.0 COMMITTEE RECOMMENDATIONS**

The committee recommends on the following:-

12. The Member Counties of SEKEB should conduct a feasibility study to ascertain programmes that the BLOC can jointly carry out, taking into consideration; shared resources, interests and benefits for the region.
13. The Member Counties should carry out a thorough public participation to sensitize residents on the importance of having an economic BLOC and how projects will be financed and managed.
14. The Secretariat should be competitively sourced from each Member County. The Chief Executive Officer should be employed on a six year contract to ensure continuity even after general elections.
15. Political interests by the Member County Governors in running of SEKEB should not feature in the objectives of the BLOC especially in identification and implementation of projects.
16. There is need to develop a Joint Venture Agreement that shall give the BLOC the authority to do projects together or jointly. Proceeds from the projects shall be shared equally among the Member Counties. Once developed, the Joint Venture Agreement has to be registered with the Registrar of Companies.
17. SEKEB should invest in financial institutions as shareholders since Counties are not allowed to carry out the day to day administration of a BLOC. Dividends payed through the Counties from the said Institutions should be voted in as revenue by the Counties.
18. The state Department on Devolution and ASALs should fast track the formulation of a regulatory framework that guide on the nature of instruments required for the establishment of County Economic Blocs and the role of County Assemblies in its establishment.
19. Guidelines should be developed to provide norms and standards for the management of County Economic Blocs leading to application of various institutional structures. Therefore, the Senate should be petitioned to approve regulations on the County government joint

infrastructure investment as stipulated under Section 146 of the PFM Act, 2012.

20. There is need for increased collaboration between South Eastern Kenya Economic Bloc (SEKEB) and the State Department of Devolution, through various platforms among them sharing of the Joint Assemblies Committee Report, legislations relating to SEKEB activities and policy on formation of Regional BLOCs.
21. That, the Joint County Assemblies should approve a legislation for operationalization of the constitutive agreement **within one month** after the adoption of this report.
22. Pursuant to the provisions of Article 196(1b) of the Constitution of Kenya, 2010 as read together with Section 87 of the County Governments Act, 2012, **Public participation** must be taken into considering and approving the joint legislation.

for

Signed: ..... *[Signature]* ..... Date: *27/07/2021* .....

**Hon. Nelson K. Musyoka, MCA,**  
**Chairperson of the Joint County Assemblies Committee**