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ACT, 2021**

No. 4 of 2021

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Date of Commencement: See Section 1

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**THE TANA RIVER COUNTY WARDS DEVELOPMENT FUND
ACT, 2022**

AN ACT of the County Assembly of Tana River to provide for the establishment of a Fund for promoting development in the Wards and to set up institutional framework for co-ordinating development initiatives and projects in the Wards, and for connected purposes

ENACTED by the County Assembly of Tana River, as follows—

Short title and commencement

1. This Act may be cited as the Tana River County Wards Development Fund Act, 2022, and shall come into operation upon the expiry of thirty days from the date of publication.

Interpretation

2. In this Act, unless the context otherwise requires—

“Clerk” means the Clerk of the County Assembly of Tana River;

“Community” means resident of a particular area or region as a Ward, location or sub – location and having common interests;

“County Management Committee” means the County Wards Development Fund Management Committee established by section 5;

“Fund” means the Wards Development Fund established by section 4;

“County Executive Committee Member” means the County Executive Committee Member responsible for Finance and Economic Planning;

“Officer Adminstrating the Fund” means the person appointed as such under section 8;

“Deputy Administrator of the Fund” means the person appointed as such under section 9;

“Officer of the Fund” means the officer seconded by the County Executive Committee Member to the Ward under section 10;

“Ward Development Fund Committee” means the committee established under section 30;

“County Wards Development Fund Account” means the account maintained for the Wards Development Fund in accordance with section 14.

Objects and purposes of this Act

3. The object and purpose of this Act is to ensure that a specific portion of the county annual budget is devoted to the Wards for purposes of development.

PART II— ESTABLISHMENT AND ADMINISTRATION OF THE FUND**Establishment of the Fund**

4. (1) There is established a Fund to be known as the Tana River County Wards Development Fund which shall be administered by the Officer administering the Fund and under the direction of the County Executive Committee Member.

(2) The Fund shall consist of—

- (a) an amount of not less than twenty percent of the approved total development budget of the Tana River County government in every financial year;
- (b) any monies accruing to, donated, lent or received by the Fund from any other lawful source.

(3) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained for the purpose for which the Fund is established.

(4) There shall be paid out of the Fund payments in respect to any expense incurred in pursuance of the provision of this Act.

Establishment of the County Management Committee

5. (1) There is established a committee to be known as the County Management Committee.

(2) The County Management Committee shall consist of—

- (a) the Chief Officer of the County Department for the time being responsible for matters relating to finance and economic planning;
- (b) the Chief Officer of the County Department for the time being responsible for matters relating to transport and infrastructure;
- (c) three persons, qualified in matters relating to finance, accounting, engineering, economics, community development, or law, competitively and transparently recruited and appointed by the County Executive Committee Member and approved by the County Assembly, taking into account gender balance and the diversity of the County;

- (d) the Officer Administering the Fund who shall be an ex-officio member.

(3) The Governor shall appoint the Chairperson of the County Management Committee from amongst the three persons appointed in accordance with paragraph (c) of subsection (2).

Conduct of Business and affairs of County Management Committee

6. (1) The conduct and regulation of the business and affairs of the County Management Committee shall be as provided in the First Schedule.

(2) Except as provided in the First Schedule, the County Management Committee may regulate its own procedure.

Functions of the County Management Committee

7. The functions of the County Management Committee shall be to—

- (a) ensure allocation and disbursement of funds in every Ward;
- (b) ensure prudent management of the Fund;
- (c) receive and discuss the annual reports and returns from the Wards;
- (d) ensure the compilation of proper records, returns and reports from the Wards;
- (e) ensure quarterly submissions to County Assembly of various returns, reports and information as required under this Act;
- (f) consider project proposals submitted for various wards in accordance with the Act and make appropriate recommendations to the County Assembly;
- (g) continually review, oversee the implementation, policy framework and legislative matters that may arise in relation to the Fund;
- (h) perform such other functions as may be provided for in this Act.

Officer administering Fund

8. (1) There shall be an Officer Administering the Fund who shall be appointed by the County Executive Committee Member and has—

- (a) at least a university degree in finance, accounting, economics, , law or a related field from a recognized university;
- (b) at least three years working experience in a relevant development field.

(2) The Officer Administering the Fund shall be the Administrator of the Fund and Secretary to the County Management Committee and shall subject to the directions of the County Executive Committee Member—

- (a) supervise and control the day to day administration of the Fund;
- (b) be responsible for the day to day management of the affairs and staff in the service of the County Management Committee and the Ward Development Fund Committees;
- (c) prepare and keep or cause to be kept accounts for the Fund and annual financial statements relating to those accounts that comply with accounting standards prescribed and published by the Accounting Standards Board from time to time.
- (d) not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General and present the financial statements to the County Assembly;
- (e) perform any other duties that maybe reasonably assigned to him or her by the County Management Committee from time to time.

(3) The Officer Administering the Fund shall serve a term of five years but shall be eligible for reappointment.

Deputy Administrator of the Fund

9. (1) There shall be a Deputy Administrator of the Fund who shall be appointed by the County Executive Committee Member and has—

- (a) at least a university degree in finance, accounting, economics, or a related field from a recognized university;
- (b) at least three years working experience in a relevant development field.

(2) The Deputy Administrator of the Fund shall be the Deputy to the Officer Administering the Fund and shall subject to the directions of the County Executive Committee Member —

- (a) in the absence of the Officer Administering the Fund, perform the functions of the Officer Administering the Fund;
- (b) assist the Officer administering the Fund in supervising and controlling the day to day administration of the Fund;
- (c) assist the Officer Administering the Fund in the day to day management of the affairs and staff in the service of the County Management Committee and the Ward Development Fund Committees;

- (d) assist the Officer Administering the Fund prepare and keep or cause to be kept accounts for the Fund and annual financial statements relating to those accounts that comply with accounting standards prescribed and published by the Accounting Standards Board from time to time;
- (e) perform any other duties that maybe reasonably assigned to him by the Officer Administering the Fund and the County Management Committee from time to time.

(3) The Deputy Administrator of the Fund shall serve a term of five years but shall be eligible for reappointment.

Secondment of Staff

10. (1) The County Executive Committee Member shall, facilitate secondment to the Fund of such officers from the county public service as may be appropriate and necessary for the proper management of the Fund.

(2) The County Executive Committee Member may designate any of the officers seconded under subsection (1) to be Officer of the Fund in respect of one or more wards as may be appropriate.

Delegation by the County Management Committee

11. The County Management Committee may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the County Management Committee, the exercise of any of the powers or the performance of any of the functions or duties of the County Management Committee under this Act or under any other written law.

PART III—FINANCIAL PROVISIONS

Disbursement from the Fund

12. (1) Each and every disbursement from the Fund shall be approved and minuted by the County Management Committee.

(2) All disbursements shall be made through IFMIS (Gpay) in accordance with procedures outlined in this Act.

(3) All disbursements from the Fund shall be for specific projects as submitted by the wards in accordance with the procedures outlined in this Act.

(4) Notwithstanding the provisions of subsection (2), payments for a joint project as outlined in section 27 (4) or a joint procurement, may be made directly to a supplier with due approval of the County Management Committee.

(5) The record of the amounts received in respect of each project and the record of expenditure of amounts so received shall be submitted to the County Management Committee quarterly by the Ward Development Committee for each ward.

Allocation of funds

13. (1) The County Executive Committee Member, with the concurrence of the County Management Committee shall for each financial year allocate funds to each Ward in accordance with section 26.

(2) Once funds are allocated for a particular project, they shall remain allocated for that project and may only be re-allocated for any other purpose during the financial year with the approval of the Ward Development Fund Committee and the County Management Committee.

(3) If for any reason a particular project is cancelled or discontinued during the financial year, funds allocated for such a project shall be returned to the Fund for subsequent reallocation to that particular ward.

(4) Unspent funds shall be allocated to any eligible project in the same ward and such project may be new or ongoing at the end of the financial year.

(5) For the avoidance of doubt, a return as set out in the Second Schedule shall be made for the current financial year and every previous financial year on which some funds remain unspent.

Funds to be retained in the Fund

14. (1) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be returned to the Fund and applied in accordance with section 13 (5) of this Act.

(2) All funds allocated to a Ward shall be cumulative and shall be carried forward from one financial year to the next, including funds returned into the accounts in accordance with section 13(3) or funds which are not utilized for whatever reasons.

County Ward Development Fund Account

15. (1) A bank account of the Fund shall be opened and maintained by the Tana River County Treasury.

(2) The signatories to the account of the Fund maintained in accordance with subsection (1), shall be the Officer Administering the Fund and two other persons appointed by the County Management Committee from amongst its members.

(3) The signing instructions shall be such that the signature of the Officer Administering the Fund shall be mandatory on all payment

cheques or instruments intended for actual release of money from the Fund, plus any one of the other two signatories.

(4) The bank account opened pursuant to subsection (1), shall be separate from that of the County Treasury.

(5) The Officer administering the Fund shall hold the authority to incur expenditure of the funds at the County Ward Development Fund Account.

(6) Every payment or instruction for payment out of the County Ward fund account for purposes of office operations, administration, monitoring and evaluation for each ward shall be strictly on the basis of a minuted resolution of the Ward Development Fund Committee.

(7) All receipts, savings and accruals to the County Ward Development Fund Account and the balances thereof at the end of each financial year shall be returned to the County Revenue Fund Account.

(8) All unutilized funds of the Ward Development Fund Committees shall be returned to the County Revenue Fund account.

(9) Any accruing revenues, interest and liabilities from the County Ward Development Fund Account shall be declared to the County Management Committee together with the annual returns.

Record of disbursements to be kept

16. (1) Accurate records of all disbursements made for projects to every Ward shall be kept and updated every month by the County Management Committee.

(2) The disbursement of administration, monitoring and evaluation funds to the Ward Development Fund Committees shall be effected at the beginning of the first quarter of each financial year with an initial amount equivalent to twenty-five per centum of the annual allocation for the Ward and thereafter three equal instalments at the beginning of the second, third and fourth quarters of the financial year.

(3) The Chairperson of the County Management Committee shall submit an annual report on the activities, operations and expenditure of the Fund to the County Executive Committee Member under the Act.

(4) At the end of every financial year the County Management Committee shall submit accounts of the Fund to the Auditor-General.

Remuneration and allowances

17. (1) The personal emoluments of officers of the County Government working or involved in the management of the Fund shall be determined by the County Executive Committee Member after

consultation with the County Management Committee upon the advice of the County Public Service Board and the Salaries and Remuneration Commission and shall be provided under the recurrent expenditure of the County Government.

(2) Out of pocket expenses incurred by any person officially involved in the management of the Fund or the implementation of projects under the Fund, including public officers may be reimbursed but that not more than three percent of the total allocation in the financial year may be used for this purpose.

(3) Sitting and other allowances for the members of the County Management Committee and the Ward Development Fund Committees shall be fixed by the County Executive Committee Member upon the advice of the County Public Service Board and the Salaries and Remuneration Commission.

PART IV—SUBMISSION OF WARD PROJECT PROPOSALS

Submission of projects

18. (1) The list of proposed Ward based projects to be covered under this Act shall be submitted by the chairperson of the Ward Development Fund Committee to the County Management Committee after approval by the Ward Development Fund Committee for that Ward.

(2) The County Management Committee shall receive and compile the list of proposed Ward projects submitted to it under this Act and grant the necessary approval where the requirements of this Act has been fulfilled.

Submission deadline

19. (1) The list of the proposed Ward projects shall be submitted to the County Management Committee before the end of the month of December in each year or such other month as may be determined by the County Executive Committee Member in order to ensure timely inclusion of the projects in the annual Government budget of a particular financial year.

(2) Where the chairperson of the Ward Development Fund Committee fails to submit the list of Ward based projects to the County Management Committee within the stipulated time in subsection (1), the matter should be referred to the County Executive Committee Member who will consult with the County Assembly Select Committee on the next cause of action.

Submission Form

20. (1) The list of projects shall be submitted on a Ward Projects Submission Form set out in the Third Schedule to this Act accompanied by minutes of the Ward Development Fund Committee approving the projects.

(2) All projects proposed for every Ward shall be listed in the Form together with the cost estimates, amounts allocated and amounts disbursed to such projects.

Approval of projects

21. (1) The list of projects received by the County Management Committee pursuant to section 17 shall be tabled for review at a meeting of the County Management Committee.

(2) The County Management Committee shall scrutinize and approve for funding those project proposals that are consistent with the Act.

(3) Where the County Management Committee does not approve a proposal submitted to it under this section, it shall refer the matter to the Wards Development Fund Committee giving reasons as to, why it has declined the proposal.

Discretion of Ward Development Fund Committee.

22. The allocation of funds to various projects in each Ward is the responsibility of the Ward Development Fund Committee to be exercised at its own discretion within the provisions of this Act.

List to be serialized

23. The projects listed for each Ward shall be numbered by the County Management Committee and the serial numbers of all projects in a Ward shall bear the number of the Ward as delineated by the Independent Electoral and Boundaries Commission in order to ensure that a project retains the same serial number every year until its completion.

Basis for budget ceiling

24. (1) The budget ceiling, for each Ward shall be seventy-five percent of the amount specified in section 4.

(2) (a) divided equally among all Wards;

(b) twenty five per cent of the amount specified in section 4.

(3) (a) divided by the population in the county multiplied by the number of inhabitants in that Ward as at the last national population census.

(2) The Chairperson of the relevant Committee of the County Assembly shall table in the Assembly a schedule showing the ceiling for each Ward, which shall be determined in accordance with sub section (1).

Criteria for Projects

25. (1) The types of projects submitted for funding under this Act shall comply with the provisions of this Act.

(2) It shall be the responsibility of the Ward Development Fund Committee to ensure that the list of projects submitted for funding comply with the provisions of the Act and their total cost does not exceed the allowable ceiling for the particular Ward or is not below that ceiling.

(3) If the list of projects submitted for funding is in contravention of subsection (2) the same shall be referred back to the Ward Development Fund Committee for amendment and re-submission.

(4) Whenever the amount for projects in a Ward is less than the allowable ceiling for reasons of projects being deleted in accordance with sub-section (3), or for whatever reason, the shortfall shall be indicated as unallocated amount against that particular Ward on the list to be forwarded to the County Executive Committee Member.

PART V—TYPES OF PROJECTS

Projects to be community based

26. (1) Projects under this Act shall—

- (a) be in respect of those falling within the functions of the county government as contemplated under Part 2 of the Fourth Schedule to the Constitution; and
- (b) be community based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.

(2) Any funding under this Act shall be for a complete project or a defined phase, of a project and may include the acquisition of land and buildings.

(3) All projects shall be projects as defined under this Act and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility.

(4) Funds provided under this Act shall not be used for the purpose of supporting political bodies or political activities or for supporting religious bodies or religious activities.

(5) Notwithstanding the provisions of subsection (4), the Ward Development Fund Committee may identify a religious body or organization as an appropriate specialized agency for purposes of section 12 with regard to emergency support.

(6) A Ward Development Fund Committee office project shall be considered as a development project for purposes of the Act and may include appropriate furniture and equipment for the office.

(7) Each of the projects shall be listed on the Third Schedule including, where applicable, the activities under subsection (8) of this section.

(8) The allocation may be used as follows—

- (a) an amount not exceeding five per cent of each ward annual allocation may be used as expenses for administration of the Fund which may include rent and utilities, staff salaries and committees allowances;
- (b) five per cent of each ward annual allocation may be used for monitoring and evaluation.

Number of projects

27. (1) The number of projects to be included in the Ward Projects Submission Form specified in the Third Schedule shall be a minimum of five and a maximum of ten for every Ward in each financial year.

(2) Wards with unspent funds at the end of the financial year shall submit new proposals to the County Management Committee for approval in accordance with section 12(5) of this Act.

(3) Project activities of a similar nature in a particular Ward may be combined and considered as one project for purposes of subsection (1) provided that the sub projects are listed in the Second Schedule.

(4) Wards may pool resources for joint projects provided that the decision for such joint projects shall first be approved by the Ward Development Fund Committee of each of the participating wards and shall be reflected on the projects listed for each of the participating wards.

(5) Where wards have joint projects, the County Management Committee shall co-ordinate such projects.

Cost estimates to be realistic

28. (1) The Ward Development Fund Committee may make appropriate consultations with the relevant Government departments to ensure that cost estimates for the projects are as realistic as possible.

(2) The Ward Development Fund Committee shall rank the projects in order of priority and whenever, in the opinion of the County Management Committee, the total cost of the projects listed exceed the ceiling for a particular Ward, then the order in which they are listed shall be taken as the order of priority for purposes of allocation of funds, provided that on-going projects shall take precedence over all other projects.

Personal awards to be excluded

29. A project or any part thereof which involve personal awards to any person in cash or in kind, shall be excluded from the list of projects submitted.

Counter-part funding to be permitted

30. For the purposes of this Act, the County Management Committee may consider part funding of a project financed from sources other than the Fund so long as the other financiers or donors of that project have no objection and provided that the part funding for the project availed pursuant to this Act shall go to a defined unit or any part thereof or phase of the project in order to ensure that the particular portion defined in the allocation is completed with the funds allocated under this Act.

PART VI—THE WARD DEVELOPMENT FUND COMMITTEE AND THE COUNTY ASSEMBLY SELECT COMMITTEE

Establishment of Ward Development Fund Committee

31. (1) There shall be a Ward Development Fund Committee for every Ward which shall be constituted by the elected Member of the County Assembly within the first forty five days of a new Assembly.

Composition of the Ward Development Fund Committee

32. (1) The membership of the Ward Development Fund Committee shall comprise of the following persons to be appointed by the member of the County Assembly—

- (a) two persons of either gender, of whom one shall be a youth;
- (b) one representative of local non-governmental organizations or religious organizations;
- (c) one person with disability
- (d) one representative of religious organizations;
- (e) the Ward Administrator;
- (f) the Ward Manager.

(2) The Chairperson and secretary shall be elected by Members of the County Ward Development Committee during their first meeting;

(3) The persons referred to in subsection (1) (a), (b), (c), and (d) shall be nominated through the following procedure—

(a) within forty-five days of being sworn in, each Member of the County Assembly for a particular Ward shall convene open public meetings of registered voters in each sub location of the Ward;

(b) the Member of the County Assembly in consultation with County Executive Committee Member, shall appoint persons to the Ward Development Fund Committee, taking into account the geographical diversity within the Ward, communal, religious, social and cultural interests in Ward and the requirements of gender, youth and representation of persons with disabilities;

(c) upon conclusion of the election of the chairperson in the manner stipulated in sub section (3), the Member of the County Assembly shall forward the names of the members of the Ward Development Fund Committee to the Officer Administering the Fund for onward transmission to the County Executive Committee Member for gazettelement;

(d) the Member of the County Assembly for the Ward shall be an ex-officio member and patron of the Committee.

(4) The County Executive Committee Member shall cause the names of persons appointed as members of the Wards Development Fund Committee, pursuant to subsection (3) to be published in the *Gazette*.

(5) The first meeting of the Ward Development Fund Committee shall be convened within the first sixty days of a new County Assembly or a by-election, by the Member of the County Assembly.

(6) The Chairperson of the Ward Development Fund Committee in consultation with the Member of the County Assembly for the Ward and the ward administrator for every ward shall, within the first year of a new County Assembly and at least once every two years thereafter, convene open forum public meetings in every sub-location in the Ward to deliberate on development matters of the ward.

(7) Each sub location shall come up with a list of priority projects to be submitted to the Ward Development Fund Committee.

(8) The term of office of the members of the Ward Development Fund Committee shall be three years irrespective of a county assembly term but shall be renewable and shall come to an end upon the

appointment of a new Ward Development Fund Committee in a manner provided in this Act.

(9) The Officer of the Fund seconded by the County Executive Committee Member to the ward shall be the custodian of all records and equipment of the Ward during the term of the county assembly and during transitions occasioned by general elections or a by-election.

(10) Whenever a vacancy occurs in the Ward Development Fund Committee by reason of resignation, incapacitation or demise of a member then the vacancy shall be filled from the same category of persons where the vacancy has occurred.

(11) The Ward Development Fund Committee shall meet at least four times in a year and not more than eighteen times in every financial year including sub-committee meetings.

(12) The committee may employ staff, not exceeding two in number, and such staff shall have knowledge in information and communications technology, and basic accounting.

(13) Staff employed under subsection (12) shall help in project monitoring and evaluation, co-ordination and proper keeping of records and such staff shall be remunerated from the funds allocated for administration and recurrent expenses.

Functions of the Ward Development Fund Committee

33. (1) Each unit of a ward shall come up with proposals, discuss them, select and prioritize a list of projects to be submitted to the Ward Development Fund Committee

(2) The Ward Development Fund Committee shall deliberate on project proposals from the Ward and any other project which the committee considers beneficial to the Ward, then draw up a priority project list both immediate and long term, out of which the list of projects to be submitted to County Management Committee.

(3) The quorum of the Ward Development Fund Committee shall be one half of the total membership.

Establishment of the County Assembly Select Committee

34. (1) The County Assembly shall, in accordance with its Standing Orders, establish a Select Committee consisting of a chairperson and not more than eight other members of the County Assembly.

(2) In determining the membership of the County Assembly Select Committee, the County Assembly shall ensure proportionate representation of the County Assembly political parties.

(3) The term of office of the members of the County Assembly Select Committee shall be three years renewable or upon the appointment of a new committee in a manner provided for in this Act, whichever comes earlier.

(4) The procedures and rules for the operations of the County Assembly Committee shall be governed by the Standing Orders of the County Assembly.

(5) The functions of the County Assembly Select Committee shall be to—

- (a) consider and recommend to the County Assembly any matter requiring action by the County Assembly pursuant to the provisions of this Act;
- (b) oversee the implementation of this Act and in this respect, shall after every two years submit a report to the County Assembly and where necessary, propose any amendments to this Act, in particular, with respect to the quantum of funds repayable into the Fund in accordance with section 4 of the Act;
- (c) oversee the policy framework and legislative matters that may arise in relation to the Fund;
- (d) continually review the framework set out for the efficient delivery of development programmes financed through the Fund.

(6) The Committee may make reports other than the statutory report stated in sub section 5(b) to appraise the County Assembly on various matters relating to the Fund and to seek various approvals as required by the Act.

Quarterly reports on projects and disbursements

35. (1) The County Management Committee shall, on a quarterly basis, submit a report to the County Assembly Select Committee detailing—

- (a) a summary of the project proposals received from the wards in the preceding quarter and indicating the approval status of such projects;
- (b) a summary of the status of disbursements of funds to the wards for that preceding quarter; and
- (c) a summary of the status of disbursements from the County Treasury.

(2) The County Management Committee shall ensure that the list of projects forwarded to it by each ward is, upon approval, funded in accordance with the Act.

PART VII—IMPLEMENTATION OF PROJECTS

Project Management Committee to implement

36. (1) Projects under this Act, shall be implemented with the assistance of the relevant department of County Government and all payments through cheques or otherwise shall be processed and effected in accordance with government regulations for the time being in force.

(2) Where a project in a Ward involves the purchase of equipment, such equipment shall remain for the exclusive use of that Ward.

(3) The Ward Development Fund Committee and the County Management Committee shall be responsible for monitoring the implementation of projects and may designate a sub-committee, a ward committee or a project committee, the functions of monitoring an on-going project and shall submit a report on the ongoing projects to the ward administrator and sub-county administrator, and the County Assembly committee.

(4) All fixed and movable assets, including equipment bought under this Act for use by the Ward Development Fund Committee shall be the property of the County Government to be insured in the name of the County Government but serialized to reflect the name of the Ward.

(5) No asset or equipment acquired under this section shall be disposed of by the County Government without the prior approval of the County Management Committee.

(6) Any proceeds that may accrue from the disposal of any asset acquired pursuant to subsection (5) shall be credited to the County Revenue Fund and such funds shall be reflected and declared as part of the following years Ward fund for that year.

Procurement of services and Works

37. (1) All works and services relating to projects under this Act shall be procured in accordance with the provisions of the Public Procurement and Disposals Act, 2005.

(2) Regulations made under the Public Procurement and Disposals Act, 2005 shall provide for the composition of the ward tender committees for purposes of procurement under this Act.