

INTRODUCING ELECTRONIC WAREHOUSE RECEIPTS IN NIGERIA TO FACILITATE  
ACCESS TO FINANCE FOR COMMERCIAL FARMERS AND ENHANCE ECONOMIC  
GROWTH

AMAKA ELIZABETH ORJI

Doctor of Philosophy

ASTON UNIVERSITY

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**Abstract**

The dwindling Nigerian economy is associated with its excessive dependence on crude oil. However, it is argued that diversifying its economy to agriculture, a more sustainable sector, by introducing electronic warehouse receipts can facilitate farmers' access to finance and boost the economy. This research examines the validity of this argument and inquires whether it is possible for Nigeria to successfully adopt electronic warehouse receipts and operate the electronic warehouse receipt system to achieve this purpose. This analysis is done through a wholesale law reform and comparative law perspective.

The study adopts a doctrinal methodology that evaluates primary sources like statutes and judicial precedents. It equally examines secondary sources in the public domain, such as journal articles and command papers.

This research underscores the significant benefits Nigeria would gain from amending its warehouse receipt Bill to endorse the sole use of electronic warehouse receipts. It also confirms the viability of using electronic warehouse receipts as collateral under the Nigerian personal property and secured transactions laws. While introducing electronic warehouse receipts could pose initial challenges, this study suggests that Nigeria has the proficiency to overcome them.

Nevertheless, there should be the creation of sufficient awareness and capacity-building exercise conducted by some prospective stakeholders of the electronic warehouse receipt system, such as the Nigerian Information Technology Development Agency, to enlighten and train other potential beneficiaries of the system like farmers and warehouse operators, among others, on how electronic warehouse receipts work, as it will be an innovative concept in Nigeria.

Since this research is based on the International Institute for the Unification of Private Law/the United Nations Commission on International Trade Law draft Model Law on Warehouse Receipts and Nigeria's warehouse receipt Bill, future research could include examining the completed model laws to determine whether the outcome of this research needs modification.

Electronic Warehouse Receipts, Security Interest, Access to Credit, Creditor, Grantor,  
Collateral, Personal Property, Documents of Title, UNCITRAL, UNIDROIT

### **Dedication**

I dedicate this thesis to my sister, Dr Chiemezie Margaret Orji, for her financial, emotional, and intellectual support throughout this research. She believed in me even when I doubted myself.

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This PhD journey has been a profoundly transformative experience. It has remarkably challenged me in many ways and taught me vital lessons. I would not have excelled in this doctoral pursuit without the support and guidance of many people. Indeed, it took a village to drive me through this academic voyage! I want to seize this opportunity to express my deepest gratitude to them.

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## List of Abbreviations

Abbreviations	Meaning
1G	First Generation of Wireless Cellular Technology
2G	Second Generation of Wireless Cellular Technology
3G	Third Generation of Wireless Cellular Technology
4G	Fourth Generation of Wireless Cellular Technology
5G	Fifth Generation of Wireless Cellular Technology
ACGSF	The Agricultural Guarantee Scheme Fund
ACJA	The Administration of Criminal Justice Act 2015
ADR	Alternative Dispute Resolution
AFEX	Africa Exchange or AFEX Commodities Exchange Limited
AGF	Attorney General of Federation
BC	Before Christ
BDC	Bureaux-de-Change
BMZ	The German Federal Ministry for Economic Cooperation and Development
BOA	Bank of Agriculture
BOFIA	Banks and Other Financial Institutions Act
BVN	Bank Verification Number
CAC	Corporate Affairs Commission
CACS	Commercial Agricultural Credit Scheme
CAMA	Companies and Allied Matters Act 2020
CBN	Central Bank of Nigeria
CBNR	Central Bank of Nigeria Regulations of Security Interests in Movable Property by Banks and Other Financial Institutions (Regulations No 1) 2015
CJ	Chief Justice
CMA	Collateral Management Agreement
CMC	Collateral Management Company
COVID-19	Corona Virus
CPG	Captive Power Generation
CPP	Captive Power Plants
CSP	Captive Solar Power
DFI	Development Finance Institution
EBRD	The European Bank of Reconstruction and Development
ECX	The Ethiopian Commodity Exchange
EFCC	The Economic and Financial Crimes Commission
EGTE	The Ethiopian Grain Trading Enterprise
ESC	Electronic Silo Certificate (Pty) Ltd
e-WR	Electronic Warehouse Receipt
e-WRs	Electronic Warehouse Receipts
FAO	The Food and Agriculture Organisation
FC	Finance Companies
FSA	The Farm Service Agency
GDP	Gross Domestic Product

GDPR	General Data Protection Regulation of the European Union
GGC	The Ghana Grain Council
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
HC	Holding Companies
IBTC	Investment Bank and Trust Company Limited
ICAN	Institute of Chartered Accountants of Nigeria
IFC	International Finance Corporation
IMF	International Monetary Fund
IP	Internet Protocol
IT	Information Technology
JSE	The Johannesburg Securities Exchange
LTV	Loan-to-Value
MFB	Micro-finance Bank
MLETR	Model Law on Electronic Transferable Records
MLST	Model Law on Secured Transactions
MLWR	Model Law on Warehouse Receipts
MSMEs	Micro, Small and Medium Enterprises
MW	Megawatt
NACRDB	Nigerian Agricultural Cooperative and Rural Development Bank
NCX	Nigerian Commodity Exchange
NDPA	Nigerian Data Protection Act 2023
NERC	Nigerian Electricity Regulatory Commission
NGO	Non-Governmental Organisation
NIN	National Identification Number
NIRSAL	The Nigerian Incentive-Based Risk Management System for Lending
NITDA	The National Information Technology Development Agency
NITDAA	The National Information Technology Development Agency Act 2007
NLRC	Nigerian Law Reform Commission
NLRCA	Nigerian Law Reform Commission Act 2022
OAS	Organisation of American States
PDF	Portable Document Format
PMB	Primary Mortgage Banks
PPP	Public-Private Partnership
PSB	Payment Service Banks
SAFEX	The South African Futures Exchange
SDG	Sustainable Development Goals
SMA	Stock Management Agreement
STMAA	Secured Transactions in Movable Assets Act 2017
TWLB	Tanzania Warehouse Receipt Licensing Board
UCC	Uniform Commercial Code
UK	The United Kingdom
UN	The United Nations
UNCITRAL	The United Nations Commission on International Trade Law

UNIDROIT	The International Institute for the Unification of Private Law
USA	The United States of America
USAID	The United States Agency for International Development
USD	The United States Dollars
USDA	The United States Department of Agriculture
USWA	The United States Warehouse Act 1916
WR	Warehouse Receipt
WRs	Warehouse Receipts
ZIMACE	The Zimbabwe Accountability and Citizen Engagement

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### **Postscript**

The views in this research are based on the International Institute for the Unification of Private Law (UNIDROIT) and the United Nations Commission on International Trade Law (UNCITRAL) Draft Model Law on Warehouse Receipts and its Draft Guide to Enactment.

Shortly before the final submission of this thesis, UNIDROIT/UNCITRAL adopted the Model Law on Warehouse Receipts and its Guide to Enactment on June 26, 2024. Due to time constraints, it was impractical to wait for the organisations to publish the original documents, which will reflect the current Model Law and its Guide to Enactment. Nonetheless, to the best of my knowledge, the organisations adopted the final draft as contained on their official website, on which this research is based. This research would, however, add the phrase 'draft' for clarity.

## CHAPTER ONE: BACKGROUND OF STUDY

### 1.1. Introduction

Access to finance is difficult for farmers, notably the Micro, Small and Medium Enterprises (MSMEs) in Nigeria, irrespective of the fact that they are an integral part of Nigeria's food supply.<sup>1</sup> This is usually because many of them are informal, which makes creditors reluctant to extend credit to them.<sup>2</sup> This has contributed to the country's economic decline.<sup>3</sup> Wastage of resources caused by the lack of proper storage of goods is another problem that leads to poverty and hunger, among other economic situations in emerging economies like Nigeria.<sup>4</sup> Where this problem is mitigated, there will be a boost in Nigeria's economy through an increase in domestic production, export and trade.<sup>5</sup> Also, more storage facilities to conserve agriproducts and food will be acquired to reduce poverty and hunger.<sup>6</sup>

Some researchers argue that the appropriate use of warehouse receipts (WRs) is a viable means of promoting access to finance for farmers and enhancing the storage of goods.<sup>7</sup> This contributes to the improvement of the economy, including the mitigation of poverty and

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<sup>1</sup> Gideon Kasie Ezu, 'The Impact of Agricultural Financing on the Growth of Nigerian Economy' (2023) 1(1) Afr Bank F Rev J 1; see also Jeffrey Chiwuiem Chiaka and others, 'Smallholder Farmers Contribution to Food Production in Nigeria' (2022) 9 Front Nutr 1.

<sup>2</sup> Simon White and Dan Aylward, *Business Environment Reform Facility: Formalisation of Smallholder Agriculture and Agri-business* (Department for International Development 2016).

<sup>3</sup> Gideon Kasie Ezu, 'The Impact of Agricultural Financing on the Growth of Nigerian Economy' (2023) 1(1) Afr Bank F Rev J 1.

<sup>4</sup> Rovshen Ishangulyyev, Sanghyo Kim and Sang Hyeon Lee, 'Understanding Food Loss and Waste: Why Are We Losing and Wasting Food?' (2019) 8 Foods 297.

<sup>5</sup> International Institute for the Unification of Private Law (UNIDROIT), 'Study LXXXIII: Model Law on Warehouse Receipts' (The United Nations Commission on International Trade Law (UNCITRAL)/UNIDROIT, 30 March 2021) <<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>> accessed 18 May 2023; see also Jonathan Coulter and Gideon Onumah, 'The Role of Warehouse Receipt Systems in Enhanced Commodity Marketing and Rural Livelihood in Africa' (2002) 27 Food Policy 319, 323.

<sup>6</sup> *ibid.*

<sup>7</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 37 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021; see also Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 722.



hunger.<sup>8</sup> After all, WRs can be utilised as movable collateral by farmers to obtain credit from creditors to improve their business.<sup>9</sup>

Although WRs are used in Nigeria, the above problems persist.<sup>10</sup> This implies that Nigeria needs to utilise WRs appropriately, or underlying factors affect the efficient use of WRs to boost the economy. Therefore, this research evaluates how WRs can be employed in Nigeria to improve its economy by facilitating access to finance for farmers and mitigating such problems as poverty and hunger.

A WR is a document issued by a warehouse operator as evidence of the ownership of goods deposited in the warehouse.<sup>11</sup> The WR could be transferred to another party through various means like a sale, a gift or be utilised as collateral to obtain credit.<sup>12</sup> There are two forms of WRs: paper WRs and electronic warehouse receipts (e-WRs).<sup>13</sup> This will be discussed in more detail in chapter two of this thesis.

### 1.1.1. Background of Research

The motivation for this research stems from the recognition that a country's economy influences factors that directly impact human sustenance, such as poverty.<sup>14</sup> The Nigerian economy has continued to decline since 2015, even before the coronavirus pandemic (COVID-19).<sup>15</sup> 2015 is significant for measuring the recent economic situation because, between 2000 and 2014, the Nigerian economy, measured by the Gross Domestic Product

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<sup>8</sup> *ibid.*

<sup>9</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 37 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021; see also Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 722.

<sup>10</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 19.

<sup>11</sup> UNIDROIT, 'International Developments Activités Internationales' (2021) 26(4) *Unif L Rev* 684.

<sup>12</sup> *ibid.*

<sup>13</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801.

<sup>14</sup> Richard H Adams Jr, 'Economic Growth, Inequality and Poverty: Findings from a New Data Set' (2003) The World Bank Policy Research Working Paper, 2972 <<https://documents1.worldbank.org/curated/en/168041468761746890/pdf/multi0page.pdf>> accessed 23 September 2023.

<sup>15</sup> International Bank for Reconstruction and Development, *Nigeria Poverty Assessment 2022: A Better Future for All Nigerians* (WBG 2022).

(GDP) in this case, grew by at least 7 per cent each year.<sup>16</sup> In 2015, it declined to 2.7 per cent.<sup>17</sup> It went lower in 2016 when it dropped to about -1.6 per cent and has continued to decline.<sup>18</sup> This regression has affected the rate of poverty in Nigeria. Nigeria has the second-highest number of extremely poor in the world.<sup>19</sup> Therefore, there is a need to mitigate poverty in Nigeria to help achieve the first United Nations (UN) Sustainable Development Goal (SDG), which is to end poverty in all its forms everywhere.<sup>20</sup>

Although the UN predicted that the Nigerian economy was expected to increase in 2022 by 2.8 per cent if there is a rise in the price and production of crude oil; unfortunately, the price and production of crude oil are unreliable as they continue to fluctuate.<sup>21</sup> Thus, Nigeria's economy has steadily declined. In 2023, the World Bank estimated that Nigeria's economy will increase by about 3.3 per cent, although the outlook remains uncertain.<sup>22</sup> However, its economy has deteriorated to the extent that in February 2024, its inflation reached a 24-year high of about 31.7 per cent, which has driven millions of Nigerians into deeper poverty.<sup>23</sup>

It has been argued that one major cause of the constant decline in the economy is Nigeria's overdependence on crude oil as its primary source of income.<sup>24</sup> In 2021, Nigeria experienced its lowest oil production in the last two decades, adversely affecting its economy.<sup>25</sup> In 2023, Nigeria's oil production remained significantly below the quota allotted by the Organisation of the Petroleum Exporting Countries.<sup>26</sup> This explains why researchers suggest that Nigeria diversify from excessive dependence on crude oil to a more sustainable sector like agriculture.<sup>27</sup>

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<sup>16</sup> *ibid* 2.

<sup>17</sup> *ibid*.

<sup>18</sup> *ibid*.

<sup>19</sup> International Bank for Reconstruction and Development, *Poverty and Shared Prosperity 2020: Reversals of Fortune* (WBG 2020) 76.

<sup>20</sup> The United Nations Sustainable Development Goals Report (2022) UN Doc 22-04175.

<sup>21</sup> Elias Igwebuike Agbo, 'Effect of Oil Price Fluctuations on Nigeria's Monthly Inflation Rate' (2020) 7(12) *Schol J Econ Bus Manag* 406.

<sup>22</sup> Alex Sienaert, Gloria Joseph-Raji and Miguel Angel Saldarriaga, *Nigerian Development Update: Seizing the Opportunity* (IBRD/The World Bank Report, No 183292, 2023) 5.

<sup>23</sup> The World Bank, 'The World Bank in Nigeria: Overview' (*The World Bank*, 21 March 2024) <<https://www.worldbank.org/en/country/nigeria/overview>> accessed 24 May 2024.

<sup>24</sup> Enaibre Felix Ighosewe, David Chucks Akan and Oghenekparobo Ernest Agbogun, 'Crude Oil Price Dwindling and the Nigerian Economy: A Resource-Dependence Approach' (2021) 12 *Mod Econ* 1160; see also John Okey Onoh and Obianuju Edith Ndu-Okereke, 'Dependence on Oil Income Earnings and Diversification of the Economy: The Nigerian Response' (2018) 8(2) *Dev Count Stud* 95.

<sup>25</sup> Gloria Joseph-Raji and others, *The World Bank Nigeria Development Update: Time for Business Unusual* (The World Bank Report, No 166305, 2021) 12.

<sup>26</sup> Alex Sienaert, Gloria Joseph-Raji and Miguel Angel Saldarriaga, *Nigerian Development Update: Seizing the Opportunity* (IBRD/The World Bank Report, No 183292, 2023) 3.

<sup>27</sup> Adeyinka Olure-Bank and others, 'Diversification of the Nigerian Economy Towards a Sustainable Growth and Economic Development' (2015) 3(2) *Intl Econ Financ Manag Sci* 107; see also The Nigerian Economic Summit Group, 'National Independent Warehouse Receipt System Bill FactBook' (*Financial*

The agricultural sector in Nigeria is essential as it contributes over 25 per cent of its GDP and provides the highest employment, income, and food to the Nigerian population.<sup>28</sup> Before Nigeria started depending mainly on crude oil as a significant source of revenue, agriculture was the bedrock of the Nigerian economy as it contributed about 54 to 63 per cent of the country's GDP between the 1950s and 60s.<sup>29</sup> To date, this sector remains indispensable to Nigeria. For instance, in 2020, the agricultural industry was declared the most resilient due to its role in sustaining the country during COVID-19.<sup>30</sup>

Although the agricultural sector is resilient, serious problems such as poor access to finance still plague its stakeholders and have affected the availability of sufficient storage.<sup>31</sup> These contribute to post-harvest losses, which lead to the high cost of food prices and inflation.<sup>32</sup> The problems could be mitigated where access to finance is made easy for farmers.<sup>33</sup> The collective phrase 'farmers' used in this research means commercial farmers.

Commercial farmers engage in the business of farming for profit-making.<sup>34</sup> They are different from subsistence farmers who farm for personal consumption.<sup>35</sup> Commercial farming, like

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*System Strategy*, 2020) 4 <<https://agra.org/wp-content/uploads/2019/12/Nigeria-National-Warehouse-Receipt-System-Bill-Factbook.pdf>> accessed 12 July 2022; see also Muhammad Zayyanu Bello and Chika Umar Aliyu, 'Diversification of the Nigerian Economy for Sustainable Development: Issues and Challenges' (2016) 3(2) *Intl J Econ Bus M Stud* 75; Karolina Pawlak and Małgorzata Kołodziejczak, 'The Role of Agriculture in Ensuring Food Security in Developing Countries: Considerations in the Context of the Problem of Sustainable Food Production' (2020) 12 *Sust* 1.

<sup>28</sup> Alex Sienaert, Gloria Joseph-Raji and Miguel Angel Saldarriaga, *Nigerian Development Update: Seizing the Opportunity* (IBRD/The World Bank Report, No 183292, 2023) 2; see also A T Adewale and others, 'Effect of Credit to Farmers and Agricultural Productivity in Nigeria' (2022) 1(3) *East Asian J Multidiscip Res* 377.

<sup>29</sup> Omorogbe Omorogiuwa, Jelena Zivkovic and Fatima Ademoh, 'The Role of Agriculture in Economic Development in Nigeria' (2014) 10(4) *Eur Sci J* 133.

<sup>30</sup> Gloria Joseph-Raji and others, *The World Bank Nigeria Development Update: Time for Business Unusual* (The World Bank Report, No 166305, 2021) 12.

<sup>31</sup> Babajide Fowowe, 'The Effects of Financial Inclusion on Agricultural Productivity in Nigeria' (2020) 22(1) *J Econ Dev* 61.

<sup>32</sup> The Food and Agriculture Organisation (FAO), 'Nigeria at a Glance: Nigeria Agriculture at a Glance' (FAO, 2021) <<https://www.fao.org/nigeria/fao-in-nigeria/nigeria-at-a-glance/en/>> accessed 2 December 2021; see also Gloria Joseph-Raji and others, *The World Bank Nigeria Development Update: Time for Business Unusual* (The World Bank Report, No 166305, 2021) 18.

<sup>33</sup> UNIDROIT, 'Study LXXXIII: Model Law on Warehouse Receipts' (*UNCITRAL/ UNIDROIT*, 30 March 2021) <<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>> accessed 18 May 2023; see also Jonathan Coulter and Gideon Onumah, 'The Role of Warehouse Receipt Systems in Enhanced Commodity Marketing and Rural Livelihood in Africa' (2002) 27 *Food Policy* 319, 323; Anthony Aboagye, 'Structuring African Warehouse Receipt Systems to Succeed' (2023) 9(4) *Athens J Bus Econ* 475, 477.

<sup>34</sup> Steven Glover and Sam Jones, 'Can Commercial Farming Promote Rural Dynamism in Sub-Saharan Africa? Evidence from Mozambique' (2016) United Nations University Wider Working Paper 2016/120, 1 <<https://www.wider.unu.edu/sites/default/files/wp2016-120.pdf>> accessed 16 June 2024; see also Steven Glover and Sam Jones, 'Can Commercial Farming Promote Rural Dynamism in Sub-Saharan Africa? Evidence from Mozambique' (2019) 114 *World Dev* 110; Alufohai GO and Oyoboh DE, 'Environmental Impacts of Commercial Agriculture in Nigeria: A Review' (4<sup>th</sup> International Conference of the African Association of Agricultural Economists, Tunisia, 22-25 September 2013).

<sup>35</sup> *ibid*.

many businesses, can be small, medium, or large-scale.<sup>36</sup> Consequently, while there are large commercial farmers, there is also the MSMEs form of commercial farming.<sup>37</sup> The smallest form of these MSMEs is smallholders.<sup>38</sup> Therefore, this research intends to find a reliable means of facilitating access to finance for farmers who are significant stakeholders in the agricultural sector.

Countries like Tanzania demonstrate that WRs can be considered tools to tackle the problem of access to finance for farmers.<sup>39</sup> Tanzania is a country where agriculture accounts for about 80 per cent of jobs and about 24.1 per cent of the country's GDP.<sup>40</sup> However, farmers faced numerous challenges in accessing credit from financial institutions because they were mostly made available to large farmers, especially those in urban areas.<sup>41</sup> In 2005, Tanzania introduced the warehouse receipt system (WR system) to help curb this challenge.<sup>42</sup>

WRs are also associated with the promotion of storage.<sup>43</sup> It provides an opportunity for farmers to store their goods for safekeeping while avoiding spoilage or wastage, which are some of the significant causes of hunger and poverty.<sup>44</sup> Already, Nigeria is in a vulnerable state of poverty.<sup>45</sup> In 2020, the UN reported that Nigeria makes up one-third of the world's extremely impoverished countries.<sup>46</sup> Hunger is influenced by poverty.

In Nigeria, the high cost of food, food scarcity, and food insecurity are on the rise due to the impact of COVID-19, including other challenges like terrorism and natural disasters like floods, among others.<sup>47</sup> In July 2023, the Nigerian government declared a state of emergency on the

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<sup>36</sup> Damian Tom-Dery and others, 'Effects of Commercial Farming on Livelihoods and Woody Species in the Mion District, Ghana' (2023) 13 J Agric Food Res 100637; see also Mike Muzekenyi, Jethro Zuwarimwe and Beata M Kilonzo, 'Utilizing Small-Scale Commercial Farming to Enhance Local Economic Development in South Africa' (2022) 19(2) J Comtemp Manag 22.

<sup>37</sup> MSMEs, just as in page 1 of this thesis, means Micro, Small and Medium Enterprises; see also Sitti Hajerah Hasyim and others, 'Analysis of Factors Affecting the Development of MSME Business Scale in the Agricultural Sector of Soppeng Regency' (2022) 205 Advan Econ Bus Manag Res 195.

<sup>38</sup> George Rapsomanikis The Economic Lives of Smallholder Farmers: An Analysis Based on Household Data from Nine Countries (December 2015) UN FAO Doc I5251E/1/12.15.

<sup>39</sup> Nathaniel N Towo and Prosper John Kimaro, 'Warehouse Receipt System: A Solution Towards Smallholder Farmers' Financial Constraints? (2014) 2(7) Intl J Econ Commmerc Manag 1.

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid.*

<sup>42</sup> *ibid.*

<sup>43</sup> Devajit Mahanta, 'Review of Warehouse Receipt as an Instrument for Financing in India' (2012) 1(9) Intl J Sci Tech Res 42.

<sup>44</sup> *ibid.*; see also Jenny Gustavsson and others Global Food Losses and Food Waste: The Extent, Cause and Prevention (March 2011) UN FAO Doc I2697E/5/03.16.

<sup>45</sup> UN DESA World Economic Situation and Prospects (16 January 2020) UN Doc 19-17521.

<sup>46</sup> *ibid.*

<sup>47</sup> Abiodun Olusola Omotayo and others, 'Rising Food Prices and Farming Households Food Insecurity During the COVID-19 Pandemic: Policy Implications from South-West Nigeria' (2022) 12(3) Agric 363;

food security situation in the country.<sup>48</sup> More sadly, it is predicted that by June to August 2024, about 26.5 million people in Nigeria will experience acute hunger, an overwhelming increase from about 18.6 million people facing food insecurity at the end of 2023.<sup>49</sup>

A viable means of mitigating the above challenges in Nigeria is effectively employing WRs to promote food security and storage.<sup>50</sup> In other words, there is a need to encourage domestic food production and improve storage to preserve the food using WRs.<sup>51</sup> Furthermore, the second objective of the UN SDG is to end hunger, achieve food security and improved nutrition, and promote sustainable agriculture.<sup>52</sup> One of the ways to achieve this is by providing adequate storage facilities and infrastructure.<sup>53</sup> This will help conserve goods in times of scarcity and avoid spoilage of the excess.<sup>54</sup> Where the excess is saved, some can be consumed nationally, and the rest can be exported to improve Nigeria's revenue.<sup>55</sup> It will be easier to attain this when farmers have adequate access to finance.<sup>56</sup> Thus, WRs are also relevant in achieving the second objective of the UN SDG in Nigeria.

## 1.2. The Purpose of Research

The purpose of this research is to propose how WRs can be employed in Nigeria to improve its economy by facilitating access to finance for farmers. As stated in section 1.1 of this thesis,

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see also Agofure Otovwe and others, 'Impact of Boko Haram Insurgency on Food Security: An Experimental Account from Two Affected Communities in Yobe State Nigeria' (2022) 9(2) Acad J Current Res 62; also see International Bank for Reconstruction and Development, *Nigeria Poverty Assessment 2022: A Better Future for All Nigerians* (WBG 2022) 59.

<sup>48</sup> Hussaini Abdu, 'State of Emergency Declaration on Food Security: Policy Brief' (Care, August 2023) <<https://www.care-international.org/sites/default/files/2023-08/State-Of-Emergency-Declaration-On-Food-Security-A-Policy-Brief.pdf>> accessed 23 November 2023.

<sup>49</sup> Joke Ekundayo, 'Nigeria: Country Brief' (*World Food Programme*, February 2023) <[https://docs.wfp.org/api/documents/WFP0000158233/download/?\\_ga=2.236810626.247044499.1719150885-1370068267.1719150884](https://docs.wfp.org/api/documents/WFP0000158233/download/?_ga=2.236810626.247044499.1719150885-1370068267.1719150884)> accessed 2 March 2024; see also David Tsokar and others, '26.5 Million Nigerians Projected to be Food Insecure in 2024' *FAO in Nigeria* (Abuja, 9 November 2023).

<sup>50</sup> Maximo Torero Cullen COVID-19 and the Risk to Food Supply Chains: How to Respond? (29 March 2020) UN FAO Doc CA8388EN/1/03.20.

<sup>51</sup> Tope Shola Akinyetun, 'Towards Achieving Food Security in Nigeria: The Economic Strains and Strategies for Way Forward' (2018) 2(1) Glob J Econ F 11.

<sup>52</sup> Department of Economic and Social Affairs, *Global Sustainable Development Report 2023: Times of Crisis, Times of Change - Science for Accelerating Transformations to Sustainable Development* (UN 2023); see also International Centre for Trade and Sustainable Development, *Achieving Sustainable Development Goal 2: Which Policies for Trade and Market* (ICTSD 2018) 35; The United Nations Sustainable Development Goals Report (2022) UN Doc 22-04175.

<sup>53</sup> *ibid.*

<sup>54</sup> Maximo Torero Cullen COVID-19 and the Risk to Food Supply Chains: How to Respond? (29 March 2020) UN FAO Doc CA8388EN/1/03.20, 3.

<sup>55</sup> Ime Okon Utuk and others, 'Agricultural Export and Economic Growth in Nigeria: Does Agriculture Value Added Matter?' (2023) 7(11) Intl J Res Innov Soc Sci 880.

<sup>56</sup> A T Adewale and others, 'Effect of Credit to Farmers and Agricultural Productivity in Nigeria' (2022) 1(3) East Asian J Multidiscip Res 377.

WRs are utilised in Nigeria, yet the problems identified in section 1.1, including section 1.1.1 of this study, persist.<sup>57</sup> Thus, this study proposes to investigate whether the issue of farmers' access to finance prevails in Nigeria because WRs are not effectively used as collateral by farmers.

Also, the Nigerian legislature produced several WR Bills in response to farmers' long-standing challenge of poor access to finance.<sup>58</sup> Yet, none has been enacted into a warehouse receipts legislation (WRs legislation). The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022 (WR Bill) will be utilised in this research because it is the latest and has the same content as the previous Bills. It provides an idea of what the legislators intend the WR system and WR legislation to look like when enacted into an Act. Therefore, the purpose of this research is to examine the WR Bill and inquire whether there will be a need for a law reform to the WR Bill to make it easier for farmers to access credit from creditors using WRs as collateral. Where a law reform is required, I will propose an amendment to the WR Bill before it is passed into law in Nigeria.

If the above is achieved, it will enhance Nigeria's economy by improving domestic production, storage, commodity exchange, and export, among other things. This implies that the agricultural sector will be strengthened as a better source of income for Nigeria than crude oil, and the result will be the mitigation of poverty and hunger.

### 1.3. Significance of Study

Studies, including those that centre on Africa and Sub-Saharan Africa, have been conducted on WRs and the WR system.<sup>59</sup> Still, just a few mentioned Nigeria, but they did not go into

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<sup>57</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 19.

<sup>58</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2016; see also The Nigerian Independent Warehouse Regulatory Agency (Establishment, Etc.) Bill 2018, The Warehouse Receipts and Other Related Matters Bill 2020; The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022; The Nigerian Economic Summit Group, 'National Independent Warehouse Receipt System Bill FactBook' (*Financial System Strategy*, 2020) 4 <<https://agra.org/wp-content/uploads/2019/12/Nigeria-National-Warehouse-Receipt-System-Bill-Factbook.pdf>> accessed 12 July 2022.

<sup>59</sup> UNCITRAL Warehouse Receipt: Developing an UNCITRAL Instrument on Warehouse Receipt (2019) 77 <[https://uncitral.un.org/sites/uncitral.un.org/files/warehouse\\_receipts\\_report\\_final.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf)> accessed 10 May 2021; see also Gideon Onumah, 'Implementing Warehouse Receipt Systems in Africa: Potential and Challenges' (Fourth African Agricultural Markets Program Policy Symposium, Lilongwe, 6-7 September 2010); Jonathan Coulter and Gideon Onumah, 'The Role of Warehouse Receipt Systems in Enhanced Commodity Marketing and Rural Livelihood in Africa' (2002) 27 Food Policy 319; Anthony Aboagye, 'Structuring African Warehouse Receipt Systems to Succeed' (2023) 9(4) Athens J Bus Econ 475; African Development Bank Group, *Agricultural Market Access Sub-Strategy for Africa: Commodity Exchanges, Warehouse Receipt Systems, and New Standards* (African Development Bank, 2017); Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt

details on how WRs are utilised or how the WR system operates in Nigeria, let alone describe how they can contribute to the enhancement of Nigeria's economy.<sup>60</sup> Even the few research specifically conducted for Nigeria concerning WRs and the WR system did not detail how the WR system operates in Nigeria or evaluate how they can facilitate access to finance to improve the economy.<sup>61</sup> This shows that adequate research has not been conducted in this area concerning Nigeria, especially regarding the enhancement of its economy. Therefore, this thesis contributes to the limited literature in this field.

From the above, it is inferred that although WRs are used in Nigeria, they are not well known, especially by the farmers who need them. Also, Nigerian creditors know little about using WRs as collateral for loans. Hence, this study creates awareness and intends to draw the interest of more researchers in proposing a solution to Nigeria's declining economy through WRs.

Furthermore, this research is essential because it will enlighten legal and political institutions like the Nigerian Law Reform Commission (NLRC) and the Nigerian legislature, among others, on the importance of making a definite plan for the enactment of a WR legislation to set out principles on how WRs can be used including their usage by farmers to access credit from creditors. This is expedient because the legislators in the past years have produced several WR Bills with the same content.<sup>62</sup> The unfortunate effect is that taxpayers' resources are wasted on the same Bill when Nigeria is in a food state of emergency.<sup>63</sup>

Even the NLRC established by the Nigerian Reform Commission Act 2022 (NLRCA), entrusted with the responsibility of researching, receiving, and considering proposals for the

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Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) xi; Mario J Miranda, Francis M Mulangu and Francis H Kemeze, 'Warehouse Receipt Financing for Smallholders in Developing Countries: Challenges and Limitations' (2019) 50 *Agric Econ* 629.

<sup>60</sup> *ibid.*

<sup>61</sup> Iliya Bawa, 'Enhancing Competitiveness of Agro Commodity Marketing in Nigeria' in Bassey Anam and Nathaniel Ozigbo (eds), *Development Perspectives in Economics, Public Finance and Entrepreneurship* (Advanced 2019) 37; see also Elizabeth Mwaniki and others, 'Investments in Warehouse Receipt Systems Urgently Needed to Reduce Food Waste and Post-harvest Losses in Nigeria' <<https://agra.org/wp-content/uploads/2023/03/Policy-Brief-Nigeria-Warehouse-Receipt-Systems.pdf>> accessed 27 May 2024; The Nigerian Economic Summit Group, 'National Independent Warehouse Receipt System Bill FactBook' (*Financial System Strategy*, 2020) 4 <<https://agra.org/wp-content/uploads/2019/12/Nigeria-National-Warehouse-Receipt-System-Bill-Factbook.pdf>> accessed 12 July 2022; Richard Downie, *Growing the Agriculture Sector in Nigeria* (CSIS Report, 2017).

<sup>62</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2016; see also The Nigerian Independent Warehouse Regulatory Agency (Establishment, Etc.) Bill 2018, The Warehouse Receipts and Other Related Matters Bill 2020; The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022. Note that although the Bills have the same content, they have different sections, and some have different titles.

<sup>63</sup> Hussaini Abdu, 'State of Emergency Declaration on Food Security: Policy Brief' (*Care*, August 2023) <<https://www.care-international.org/sites/default/files/2023-08/State-Of-Emergency-Declaration-On-Food-Security-A-Policy-Brief.pdf>> accessed 23 November 2023.

review of laws in Nigeria, has not acted on the impact the lack of WRs legislation in Nigeria has caused.<sup>64</sup> Therefore, I intend to motivate the Commission through this research to recognise how WRs can contribute to the enhancement of the economy and act on the issue of the absence of WRs legislation in Nigeria.

It is trite that a vast population of farmers in developing countries like Nigeria are small-scale farmers or smallholders, although there are medium and large-scale farmers.<sup>65</sup> Nigeria has about 80 per cent of smallholders.<sup>66</sup> Notwithstanding that farmers who are MSMEs have the potential to mitigate poverty by providing employment and rural area development, among other benefits, they are the group of farmers that are mainly vulnerable to lack of access to finance.<sup>67</sup> Therefore, this research is crucial because it suggests ways WRs can be utilised to mitigate the issue of poor access to finance for these farmers. This research is also vital because where its purpose is achieved, it will aid in achieving the first and second United Nations Sustainable Development Goals in Nigeria, especially since the current economic crisis in Nigeria has led to a state of emergency regarding food.<sup>68</sup>

#### 1.4. Research Questions

This section identifies the questions this research will answer to determine whether WRs can facilitate farmers' access to finance and enhance Nigeria's economy.

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<sup>64</sup> The Nigerian Law Reform Commission Act 2022, s 1(1); s 5(1) and (2).

<sup>65</sup> Department of Economic and Social Affairs, *Micro-, Small and Medium-sized Enterprises (MSMEs) and their Role in Achieving the Sustainable Development Goals* (UN DESA 2020) 7.

<sup>66</sup> R N Mgbenka, E N Mbah and C I Ezeano, 'A Review of Smallholder Farming in Nigeria: Need for Transformation' (2015) 5(2) *Agric Engr Res J* 19.

<sup>67</sup> P C Ike, I E Ezeaku and A S Akenbor, 'Financing Agro-Based Small and Medium Scale Enterprises by Selected Commercial Banks in Enugu State, Nigeria' (2014) 4(28) *J Biol Agric Health* 109; see also Oluwatoba J Omotilewa and others, 'A Revisit of Farm Size and Productivity: Empirical Evidence from a Wide Range of Farm Sizes in Nigeria' (2021) 146 *World Dev* 105592; Ugbor I Kalu, Ambrose Nnaemeka Omeje and Augustine Jideofor Mba, 'Financial Inclusion in the Agricultural Sector in Nigeria: An Index of Penetration' (2018) 8(5) *Intl J Econ Financ Iss* 35.

<sup>68</sup> UN SDG 1: To end poverty in all its forms everywhere; see also UN SDG 2: to end hunger, achieve food security and improved nutrition, and promote sustainable agriculture; Department of Economic and Social Affairs, *Global Sustainable Development Report 2023: Times of Crisis, Times of Change - Science for Accelerating Transformations to Sustainable Development* (UN 2023); International Centre for Trade and Sustainable Development (ICTSD), *Achieving Sustainable Development Goal 2: Which Policies for Trade and Market* (ICTSD 2018) 35; The United Nations Sustainable Development Goals Report (2022) UN Doc 22-04175; Hussaini Abdu, 'State of Emergency Declaration on Food Security: Policy Brief' (Care, August 2023) <<https://www.care-international.org/sites/default/files/2023-08/State-Of-Emergency-Declaration-On-Food-Security-A-Policy-Brief.pdf>> accessed 23 November 2023.



#### **1.4.1. What Form of Warehouse Receipt Will Be More Suitable in Nigeria to Facilitate Access to Finance for Farmers and Enhance Nigeria's Economy?**

In section 1.1 of this thesis, it was identified that there are two forms of WRs, paper WRs and e-WRs, which will be explored in chapter two. Thus, there is a need to evaluate the form of WRs that will be more effective in facilitating access to finance for farmers in Nigeria. This will involve analysing the characteristics of both forms of WRs to understand how they function before determining which is most suitable for Nigeria. Thus, it is possible to find that both forms of WRs are appropriate for Nigeria, or it could be that either of them can effectively facilitate access to finance for farmers and boost Nigeria's economy.

#### **1.4.2. Can the Form(s) of Warehouse Receipts Identified as Suitable for Nigeria be Considered Property in Nigeria, and Can Security Interests be Created over Them?**

After answering the first question and determining the form(s) of WRs suitable for Nigeria, it is necessary to identify whether they can be recognised as property in Nigeria. This is important because enhancing access to finance is a crucial aspect of this research, and access to finance involves creating a security interest over a property, which will be used as collateral by the debtor, that is, farmers, and accepted as security by creditors.<sup>69</sup> Thus, it is only possible to inquire whether security interests can be created over the form of WR identified as suitable for Nigeria by exploring whether they can be recognised as property in the first place. This will also determine whether it is possible to facilitate access to finance for farmers using WRs.

#### **1.4.3. Is There a Potential for Successfully Operating the Warehouse Receipt System in Nigeria with the Form(s) of Warehouse Receipt Selected, and How Can it be Managed to Facilitate Access to Finance for Farmers while Improving Nigeria's Economy?**

This question is necessary because Nigeria utilises paper WRs run by the Africa Exchange or AFEX Commodities Exchange Limited (AFEX), but the problems identified in sections 1.1 and 1.1.1 of the study persist.<sup>70</sup> This implies that the WR system is not successfully operated in

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<sup>69</sup> Annelise Riles, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets* (UCP 2011) 38; see also Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 55.

<sup>70</sup> Bob Baulch and others, 'Commodity Exchange and Warehouse Receipts in Malawi: Current Status and their Implications for the Development of Structured Markets' (2018) IFPRI Malawi 25, 6 <<http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/132922/filename/133133.pdf>> accessed 4 June 2021.

Nigeria. Thus, there is a need to examine the prospect of productively operating the WR system to facilitate access to finance for farmers and improve Nigeria's economy.

Furthermore, the form(s) of WRs that will be identified in this study as suitable for Nigeria will determine the system of WR that will be proposed for Nigeria and how to operate it successfully. For example, where the study finds that paper WRs should be maintained in Nigeria and considered more suitable WRs than e-WRs, then there will be a need to assess how to operate the paper WR system to make it succeed in facilitating access to finance for farmers. This will include evaluating whether the WR Bill will require an amendment and proposing a WR legislation that will effectively support the use of paper WR to facilitate access to finance for farmers.

In contrast, where e-WRs are found to be more suitable than paper WRs in Nigeria; because Nigeria does not utilise e-WRs and e-WRs are relatively new in commercial law, a feasibility study is necessary to discover whether Nigeria has the potential to initiate e-WRs and operate the e-WR system to facilitate access to finance for farmers.<sup>71</sup> This will also include an analysis of whether the Nigerian legal system can support this. Again, this will involve an examination of the WR Bill to find if it can be amended to provide for e-WRs only and to propose a WR legislation that will support the use of e-WRs.

The above viability study will equally be essential if it is found that both forms of WRs should coexist in Nigeria to facilitate access to finance for farmers. In any of the three scenarios identified in this section, it will be expedient to analyse the potential challenges of utilising any form(s) of WRs and operating their systems as part of the feasibility study.

## **1.5. Theoretical Frameworks**

Theoretical frameworks are important because they are the foundation through which arguments are formulated in this research.<sup>72</sup> They serve as the anchor that supports the construction of other aspects of the research, such as the methodology, literature review and, indeed, the entire research.<sup>73</sup> The following legal theories serve as the base for this research.

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<sup>71</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) xi.

<sup>72</sup> Cynthia Grant and Azadeh Osanloo, 'Understanding, Selecting and Integrating a Theoretical Framework in Dissertation Research: Creating the Blueprint for your 'House'' (2014) 4(2) Admin Iss J Conn Ed Prac Res 12.

<sup>73</sup> *ibid.*

### 1.5.1. Law Reform

Law reform is the process of influencing the lawmakers of a country, group of countries or regions to modify an aspect(s) of their law to rectify a problem.<sup>74</sup> It can also encourage lawmakers to refine and sometimes unify their laws to make them consistent among the countries involved in the reform.<sup>75</sup> Although this research does not deal with the unification of laws, it is centred on encouraging Nigeria to support the creation of security interests on WRs by farmers and creditors to enable farmers to obtain finance to improve their trade and contribute to enhancing Nigeria's economy. This can be done by refining the WR Bill, which will be the WR legislation in Nigeria when amended and passed into law. Therefore, one of the foundations of this research is law reform.

Law reform can be done in a wholesale or a piecemeal method.<sup>76</sup> Wholesale law reform entails significantly overhauling a particular legal system, an area of law or an entire legislation.<sup>77</sup> This is undertaken when a restructuring is required to address problems in a jurisdiction or to make the law or any area of law function effectively.<sup>78</sup> In contrast, a piecemeal reform involves making targeted and sometimes isolated modifications of an aspect of the law to solve a specific problem.<sup>79</sup> That is, instead of changing the entire law, a small part is altered.<sup>80</sup>

It is argued that wholesale law reform is more effective than piecemeal legal reform because it considers all aspects of the situation and allows enough time to evaluate, which usually results in consistency and clarity in the law.<sup>81</sup> Because time is taken to ensure the law remains effective in the long run, it erases the need for a consistent piecemeal review.<sup>82</sup> Nevertheless, the amount of time the process takes is one of the weaknesses of the wholesale review.<sup>83</sup>

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<sup>74</sup> Martin Boodman, 'The Myth of Harmonization of Laws' (1991) 39(4) Am J Comp L 699.

<sup>75</sup> *ibid.*

<sup>76</sup> Jeannette M E Tramhel, 'Coordinated Technical Assistance: Inter-organisational Collaboration for Better Results in Secured Transactions Law Reform' (2017) 22(4) Unif L Rev 891; see also Thad Kousser, 'The Blessings and Curses of Piecemeal Reform' (2011) 44 (2) Loy LA L Rev 569.

<sup>77</sup> Jeannette M E Tramhel, 'Coordinated Technical Assistance: Inter-organisational Collaboration for Better Results in Secured Transactions Law Reform' (2017) 22(4) Unif L Rev 891.

<sup>78</sup> *ibid.*

<sup>79</sup> Thad Kousser, 'The Blessings and Curses of Piecemeal Reform' (2011) 44 (2) Loy LA L Rev 569.

<sup>80</sup> *ibid.*

<sup>81</sup> *ibid* 585.

<sup>82</sup> Jeannette M E Tramhel, 'Coordinated Technical Assistance: Inter-organisational Collaboration for Better Results in Secured Transactions Law Reform' (2017) 22(4) Unif L Rev 891, 902.

<sup>83</sup> *ibid* 905.

Even with the above notion that wholesale reform is more effective than the piecemeal approach, piecemeal reform has some advantages.<sup>84</sup> For example, it is more straightforward and tailored towards proffering instant solutions in the law rather than waiting for a frame of time where a comprehensive review of the law will be done.<sup>85</sup> Thus, it removes the many obstacles, such as the availability of funds and time, involved in making a complete evaluation of a law or an aspect of the law.<sup>86</sup>

The piecemeal approach also has some shortcomings. For instance, it is a patchwork and may not bring the magnitude of transformation and effectiveness the wholesale approach offers.<sup>87</sup> Also, because there is no thorough evaluation of the law, the reform could raise inconsistencies in the law.<sup>88</sup> Nevertheless, where the law is reviewed appropriately to ensure no inconsistency will arise because of the targeted change, the piecemeal approach saves time and efficiently brings instant solutions. However, it is only suitable for some reform situations.<sup>89</sup>

Therefore, the law reform theoretical framework will encourage an analysis of the research questions to determine whether a law reform is required to apply WRs in Nigeria to facilitate access to finance for farmers. Where it is discovered that a law reform is necessary, I will adopt either a wholesale or piecemeal approach in proposing a reform to the WR Bill, which will become the WRs legislation in Nigeria. This could either bring about an overhaul of the WR system in Nigeria or cause a slight change.<sup>90</sup>

Since there could be a requirement for wholesale or piecemeal law reform, the potential process of this reform, or any legal reform that occurs in the commercial legal frameworks of countries, does not happen inadvertently.<sup>91</sup> They are a product of the formulation of best practice benchmarks or guidelines, which have contributed immensely to the economic enhancement of States.<sup>92</sup> Law reform frameworks could be formulated as hard laws or soft

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<sup>84</sup> Thad Kousser, 'The Blessings and Curses of Piecemeal Reform' (2011) 44 (2) Loy LA L Rev 569.

<sup>85</sup> *ibid* 585.

<sup>86</sup> *ibid* 583.

<sup>87</sup> Jeannette M E Tramhel, 'Coordinated Technical Assistance: Inter-organisational Collaboration for Better Results in Secured Transactions Law Reform' (2017) 22(4) Unif L Rev 891, 902.

<sup>88</sup> Thad Kousser, 'The Blessings and Curses of Piecemeal Reform' (2011) 44 (2) Loy LA L Rev 593.

<sup>89</sup> *ibid* 572.

<sup>90</sup> Jeannette M E Tramhel, 'Coordinated Technical Assistance: Inter-organisational Collaboration for Better Results in Secured Transactions Law Reform' (2017) 22(4) Unif L Rev 891; see also Thad Kousser, 'The Blessings and Curses of Piecemeal Reform' (2011) 44 (2) Loy LA L Rev 569.

<sup>91</sup> Boris Kozolchyk, 'Modernization of Commercial Law: International Uniformity and Economic Development' (2009) 34(3) Brook J Intl L 709.

<sup>92</sup> *ibid*.

laws.<sup>93</sup> Although these terms are usually applied in international law, in recent times, they have also been used in other branches of law, including domestic laws and research.<sup>94</sup>

Hard laws differ from soft laws regarding whether they are legally binding on countries.<sup>95</sup> Hard laws are generally rigid and formally binding on countries, while soft laws are non-binding.<sup>96</sup> Soft laws are flexible, allowing legislators to adopt them in a way that suits their national needs.<sup>97</sup> Due to the flexibility of soft laws, they are easier and less technical to adopt than hard laws.<sup>98</sup> This is because hard laws are ratified just as they are, without the adopting country making any significant amendment unless the contractual stipulation of the hard law allows for changes.<sup>99</sup> Examples of hard laws are conventions and treaties, while legal guides, model laws and principles are examples of soft laws.<sup>100</sup>

There is a notion that soft laws are not laws as they are not legally binding on any state or, at best, inferior laws because they only serve as a step to the achievement of the hard law, which is referred to as the real law.<sup>101</sup> However, this is a fallacy because soft laws are laws just as hard laws, and countries tend to prefer soft laws because they are less technical and cheaper to adopt.<sup>102</sup> Besides, soft laws tend to promote transnational interaction and inter-state socialisation.<sup>103</sup> This is where state interests are formed, resulting in shared norms.<sup>104</sup>

Rather than treating hard and soft laws as competitive, they should be treated as complementary because they sometimes overlap.<sup>105</sup> That is, soft laws can be used to amend

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<sup>93</sup> Gregory C Shaffer, Melvin C Steen and Mark A Pollack, 'How Hard and Soft Law Interact in International Regulatory Governance: Alternatives, Complements and Antagonists' (Society of International Economic Law Inaugural Conference, Geneva, 15-17 July 2008).

<sup>94</sup> Anna Di Robilant, 'Genealogies of Soft Law' (2006) 54(3) Am J Comp L 499.

<sup>95</sup> *ibid*; see also Lijun Zhao, 'Soft or Hard Law' (2014) 11 (1) Intl Organ L Rev 172, 176.

<sup>96</sup> Andrew T Guzman and Timothy L Meyer, 'International Soft Law' (2010) 2(1) J Leg Anal 171; see also Gregory C Shaffer, Melvin C Steen and Mark A Pollack, 'How Hard and Soft Law Interact in International Regulatory Governance: Alternatives, Complements and Antagonists' (Society of International Economic Law Inaugural Conference, Geneva, 15-17 July 2008) 1.

<sup>97</sup> *ibid*.

<sup>98</sup> Roy Goode, Herbert Kronke and Ewan Mckendrick, *Transnational Commercial Law: Texts, Cases and Materials* (2<sup>nd</sup> edn, OUP 2015) 80.

<sup>99</sup> Loukas Mistelis, 'Is Harmonisation a Necessary Evil?: The Future of Harmonisation and a New Source of International Trade Law' in Ian Fletcher and others (eds), *Foundations and Perspectives of International Trade Law* (Sweet and Maxwell 2001) 11.

<sup>100</sup> Loukas A Mistelis, 'Regulatory Aspects: Globalization, Harmonization, Legal Transplants, and Law Reform - Some Fundamental Observations' (2000) 34(3) Intl Lawy 1061.

<sup>101</sup> Gregory C Shaffer, Melvin C Steen and Mark A Pollack, 'How Hard and Soft Law Interact in International Regulatory Governance: Alternatives, Complements and Antagonists' (Society of International Economic Law Inaugural Conference, Geneva, 15-17 July 2008) 2.

<sup>102</sup> *ibid*.

<sup>103</sup> *ibid*.

<sup>104</sup> *ibid*.

<sup>105</sup> Dinah Shelton, 'Law, Non-Law and the Problem of 'Soft Law' in Dinah Shelton (ed), *Commitment and Compliance: The Role of Non-Binding Norms in International Legal System* (OUP 2000); see also

hard laws by filling gaps that make the hard law ineffective.<sup>106</sup> Following this analysis and based on the qualities of soft laws, where law reform is required in applying WRs in Nigeria to facilitate access to finance, soft laws will be prioritised over hard laws in this research as benchmarks for the reform.

Based on the topic of this research, some soft laws, like the International Institute for the Unification of Private Law (UNIDROIT) and the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Warehouse Receipts, which was in its draft stage (draft MLWR) at the time of this research, including its guide to enactment, which was also a draft during this study, are suitable as potential law reform instruments in this thesis.<sup>107</sup> This is because both instruments are designed to help adopting countries reform their WR legislation.<sup>108</sup>

Upon examination of the WR Bill and it is revealed that the WR Bill provides for, or should provide for, e-WRs, then it will be essential to consider the UNCITRAL Model Law on Electronic Transferable Records (MLETR) alongside the draft MLWR for the potential reform of the WR Bill.<sup>109</sup> This is because the MLETR was designed to facilitate the development of electronic documents like the electronic Bill of Lading and e-WR, among others.<sup>110</sup>

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John J Kirton and Michael J Trebilcock, *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance* (1<sup>st</sup> edn, Routledge 2004).

<sup>106</sup> Marie von Engelhardt, 'Opportunities and Challenges of a Soft Law Track to Economic and Social Rights - The Case of the Voluntary Guidelines on the Right to Food' (2009) 42(4) L Polit Afr Asia Lat Am 502, 504.

<sup>107</sup> The Model Law on Warehouse Receipts was adopted by UNCITRAL and UNIDROIT on the 26<sup>th</sup> of June 2024 after a substantial part of this research had been concluded; see also UNCITRAL/UNIDROIT, 'UNCITRAL/UNIDROIT Model Law on Warehouse Receipts adopted by the United Nations Commission on International Trade Law' (UNCITRAL/UNIDROIT, 27 June 2024) <<https://www.unidroit.org/uncitral-unidroit-model-law-on-warehouse-receipts-adopted-by-the-united-nations-commission-on-international-trade-law/#:~:text=On%2026%20June%202024%2C%20the,57th%20session%20in%20New%20York.>> accessed 4 July 2024; UNIDROIT, 'Study LXXXIII: Model Law on Warehouse Receipts' (UNCITRAL/UNIDROIT, 30 March 2021) <<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>> accessed 18 May 2023; UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4 <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; UNIDROIT Working Group on Model Law on Warehouse Receipts-Guide to Enactment, 'Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIIIA – W.G.1 – Doc. 2 <<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>> accessed 11 December 2023.

<sup>108</sup> *ibid.*

<sup>109</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114.

<sup>110</sup> *ibid.*; see also Henry D Gabriel, 'The UNCITRAL Model Law on Electronic Transferable Records' (2019) 24 Unif L Rev 261, 264.

In addition, since an essential aspect of this study is centred on access to finance for farmers using WRs, the UNCITRAL Model Law on Secured Transactions, its legislative guide and practice guide, which helps states reform their secured transactions legislation, will be considered in this research.<sup>111</sup> Although the purpose of this research is not to reform the secured transactions legislation in Nigeria, that is, the Secured Transactions in Movable Assets Act 2017 (STMAA), creating security interests on WRs will not be appropriately done unless the secured transactions practice in Nigeria is examined to investigate whether it will support the use of WRs as collateral. These soft laws will serve as the standard to measure whether it will be proposed for STMAA to be amended following this research findings.<sup>112</sup>

### 1.5.2. Comparative Law: Functionalism

One of the foundations of this thesis is functionalism. Functionalism is an aspect of comparative law.<sup>113</sup> It is also called the functional method of comparative law.<sup>114</sup> Historically, it has been described as one of the most influential approaches to comparative law.<sup>115</sup> Zweigert and Kötz, in their famous literature, described functionalism as the major approach of comparative law from which other theories of comparative law, like legal transplant, derive their origin.<sup>116</sup>

Functional comparative researchers argue that every society faces the same problem, and comparison arises from the various solutions to those problems.<sup>117</sup> It involves stating the country's problems and finding solutions.<sup>118</sup> However, stating that every society faces the same challenge is a bogus claim as countries have varying problems, mainly because they possess different legal systems.<sup>119</sup> This assertion by Zweigert and Kötz has presented one of the criticisms of functionalism.<sup>120</sup> Hyland argued that Zweigert and Kötz asserted this claim to

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<sup>111</sup> UNCITRAL Model Law on Secured Transactions (1 July 2016) UNCITRAL Doc V.19-08779(V.16-04667); see also UNCITRAL Legislative Guide on Secured Transaction (20 July 2017) UNCITRAL Doc V.17-07549; UNCITRAL Practice Guide to the Model Law on Secured Transactions (2019) V.19-10910.

<sup>112</sup> *ibid.*

<sup>113</sup> Christopher A Whytock, 'Legal Origins, Functionalism and the Future of Comparative Law' (2009) 2009(6) Brigham Young UL Rev 1879.

<sup>114</sup> *ibid.*

<sup>115</sup> *ibid.*

<sup>116</sup> Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (Tony Weir tr, 3<sup>rd</sup> edn, OUP 2011).

<sup>117</sup> *ibid.*; see also Christopher A Whytock, 'Legal Origins, Functionalism and the Future of Comparative Law' (2009) 2009(6) Brigham Young UL Rev 1879, 1882.

<sup>118</sup> *ibid.*

<sup>119</sup> Christopher A Whytock, 'Legal Origins, Functionalism and the Future of Comparative Law' (2009) 2009(6) Brigham Young UL Rev 1879, 1885.

<sup>120</sup> James Q Whiteman, 'The Neo-Romantic Turn' in Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transitions* (CUP 2009); see also Richard Hyland,

evade examining the steps to determine whether countries face the same or at least similar problems.<sup>121</sup>

While this study does not agree that every society faces the same problem, it aligns with the latter claim of Zweigert and Kötz that comparison is based on principles or laws that perform the same function and address the same problem in each jurisdiction. These sorts of comparisons usually invoke law reforms.<sup>122</sup> Since there could be a need for a reform of the WR Bill, which will become legislation in Nigeria, this theoretical framework will potentially prompt a comparison of laws and policies from other jurisdictions that centre on the form of WRs, which will be indicated as suitable for Nigeria in this research, to create an opportunity for their thorough examination.<sup>123</sup> This will give insight into various hidden problems of the form of WRs identified, and help design prospective solutions to those problems in Nigeria.<sup>124</sup>

### 1.5.3. Comparative Law: Legal Transplant

Another area of comparative law is legal transplant.<sup>125</sup> In simple terms, legal transplant is transferring legal principles or rules and institutions from one jurisdiction to another.<sup>126</sup> Legal transplant has been illustrated using organ transplant in medicine to depict how technical legal transplant can be.<sup>127</sup> It occurs when an adopting country borrows principles designed in the originating country.<sup>128</sup> Sometimes, the principles are designed with the originating country in mind.<sup>129</sup>

The laws, principles and others to be borrowed by a jurisdiction must not originate from another country or be designed in and for that country. As Alan Watson puts it, legal transplant is the transfer of rules, not specifically statutory rules or the spirit of the legal system.<sup>130</sup> It

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'Comparative Law' in Dennis Patterson (ed), *A Companion to Philosophy of Law and Legal Theory* (Wiley-Blackwell 1996).

<sup>121</sup> Richard Hyland, 'Comparative Law' in Dennis Patterson (ed), *A Companion to Philosophy of Law and Legal Theory* (Wiley-Blackwell 1996) 188-89.

<sup>122</sup> Rudolf B Schlesinger and others, *Comparative Law: Cases, Text, Materials* (5<sup>th</sup> edn, Foundation 1988).

<sup>123</sup> *ibid.*

<sup>124</sup> *ibid.*

<sup>125</sup> Mathias Siems, 'The Power of Comparative Law' (2019) 67(4) *Am J Comp L* 861; see also Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2<sup>nd</sup> edn, UGA Press 1993).

<sup>126</sup> Antonina Bakardjieva Engelbrekt, 'Legal and Economic Discourses on Legal Transplants: Lost in Translation' in Antonina Bakardjieva Engelbrekt and Peter Wahlgren (eds), *Law and Development* (vol 60, *Scand Stud L* 2015) 111.

<sup>127</sup> Otto Kahn-Freund, 'On Uses and Misuses of Comparative Law' (1974) 37 *Mod L Rev* 1.

<sup>128</sup> Jean-Frédéric Morin and Edward Richard Gold, 'An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries' (2014) 58 *Intl Stud Q* 781, 782.

<sup>129</sup> *ibid.*

<sup>130</sup> Alan Watson, *Legal Transplants and European Private Law* (vol 4, *Metro* 2000).



entails the transfer of institutions, legal concepts, and structures.<sup>131</sup> This description covers legal transplants emanating from countries and other sources like intergovernmental organisations such as UNCITRAL frameworks and UNIDROIT instruments, among others.<sup>132</sup> Since this research potentially involves comparing laws, principles, and policies from other jurisdictions and intergovernmental organisations with Nigeria regarding WRs; there is a possibility of legal transplant, that is, moving the solutions proffered in those jurisdictions or frameworks to Nigeria.

Unsurprisingly, Alan Watson offered this description of legal transplants. After all, he propounded the concept when he published the first book on legal transplant in 1974.<sup>133</sup> Watson submitted that the purpose of comparative law is to examine the relationship between various legal systems.<sup>134</sup> He also claimed that moving laws from one place to another is easy since laws are often borrowed from elsewhere; thus, laws could successfully be operated in places where they did not originate.<sup>135</sup> The basis for his argument was that there was usually no close correlation between laws and the society in which they operate.<sup>136</sup>

A French judge and comparative lawyer, Marc Ancel, agreed with most of Watson's submissions, including that legal transplant is not new in ancient or modern times.<sup>137</sup> However, he disagreed regarding the relationship between law and society.<sup>138</sup> This is rightly so because law is often seen as directly linked to its people.<sup>139</sup> Thus, law reflects society.<sup>140</sup> For instance, in the 1960s and 70s, law and development were usually perceived by scholars as transplanting laws and institutions from Western countries to emerging economies to establish education and professional organisations founded on Western culture.<sup>141</sup> The legal transplant failed as rapidly as it was carried out because the transplanted laws and institutions were incompatible with the recipients. This demonstrates that law is related to society. Therefore, for a successful legal transplant to occur, a legal, social, and political examination of the

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<sup>131</sup> *ibid.*

<sup>132</sup> *ibid.*

<sup>133</sup> Alan Watson, *Legal Transplants: An Approach to Comparative Law* (1<sup>st</sup> edn, UPVA 1974).

<sup>134</sup> *ibid* 6.

<sup>135</sup> *ibid* 21.

<sup>136</sup> *ibid.*

<sup>137</sup> Marc Ancel, 'Book Review: A. Watson, *Légal Transplants. An Approach to Comparative Law*' (1975) 27(1) *Revue Internationale de Droit Comparé* 303.

<sup>138</sup> *ibid.*

<sup>139</sup> *ibid*; see also Brian Z Tamanaha, 'The Primacy of Society and the Failures of Law and Development' (2011) 44 (2) *Cornell Intl LJ* 209; John W Cairns, 'Watson, Walton, and the History of Legal Transplants' (2013) 41 *Ga J Intl Comp L* 637, 642.

<sup>140</sup> *ibid.*

<sup>141</sup> Brian Z Tamanaha, 'The Primacy of Society and the Failures of Law and Development' (2011) 44 (2) *Cornell Intl LJ* 209, 211.

originating country or organisation and the recipient must be done to determine their compatibility.<sup>142</sup>

It does not matter whether the law or rule transplanted serves a different purpose in the receiving country than in the originating country.<sup>143</sup> The bottom line is that the receiving country must have a functional means of amending the law to suit its people.<sup>144</sup> Ancel was not the only scholar to disagree with Watson over the relationship of law with society. Robert B Seidman equally submitted that it was too costly to ignore social factors when discussing the concept of legal transplant.<sup>145</sup>

Based on the above, while carrying out the potential comparison of laws, policies or principles in this research, this theoretical framework will support the evaluation of whether those laws, policies or principles will be compatible with Nigeria, that is, its legal system and its people before proposing a transplant.<sup>146</sup> The theoretical framework will help determine whether Nigeria has a functional means of amending transplanted laws to suit its people if the transplant does not go well.<sup>147</sup>

## **1.6. Research Methodology**

This section is essential because it provides a plan for how the research will be conducted to arrive at an objective, systematic and rigorous result to fulfil the purpose of the study. The following methodology is employed in this research:

### **1.6.1. Doctrinal Research**

Doctrinal research is a traditional research methodology used by law professionals because they rely on it to arrive at logical conclusions in their matters.<sup>148</sup> The doctrinal research

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<sup>142</sup> Chris Nwachukwu Okeke, 'African Law in Comparative Law: Does Comparativism Have Worth?' (2011) 16(1) Roger Williams UL Rev 1; see also Ahmad A Alshorbagy, 'On the Failure of a Legal Transplant: The Case of Egyptian Takeover Law' (2012) 22(2) Ind Intl Comp L Rev 237, 240.

<sup>143</sup> Ahmad A Alshorbagy, 'On the Failure of a Legal Transplant: The Case of Egyptian Takeover Law' (2012) 22(2) Ind Intl Comp L Rev 237.

<sup>144</sup> *ibid.*

<sup>145</sup> Robert B Seidman, 'Book Review: Legal Transplants: An Approach to Comparative Law' (1975) 55 Boston UL Rev 682.

<sup>146</sup> Chris Nwachukwu Okeke, 'African Law in Comparative Law: Does Comparativism Have Worth?' (2011) 16(1) Roger Williams U L Rev 1; see also Ahmad A Alshorbagy, 'On the Failure of a Legal Transplant: The Case of Egyptian Takeover Law' (2012) 22(2) Ind Intl Comp L Rev 237, 240.

<sup>147</sup> Ahmad A Alshorbagy, 'On the Failure of a Legal Transplant: The Case of Egyptian Takeover Law' (2012) 22(2) Ind Intl Comp L Rev 237.

<sup>148</sup> M D Pradeep, 'Legal Research- Descriptive Analysis on Doctrinal Methodology' (2019) 4(2) Intl J Manag Tech Soc Sci 96, 97.

methodology was predominant in 19<sup>th</sup> and 20<sup>th</sup>-century law research and continues until today.<sup>149</sup> The phrase doctrine from which doctrinal research was coined is defined as a combination of interpretive guidelines, principles, rules, values or norms.<sup>150</sup> It was derived from the Latin word '*doctrina*', which means knowledge, instruction, or learning.<sup>151</sup> Thus, doctrinal research involves examining a combination of legal concepts, principles, philosophies or doctrines found in statutes, judicial precedents (case law), and legal rules.<sup>152</sup>

Another name for doctrinal research is black letter methodology because it directly examines the letters of the law: statutes, case law, and principles.<sup>153</sup> Therefore, primary sources like case law and statutes will be employed in this research to evaluate how WRs can be effectively used as collateral to make access to finance easy for farmers in Nigeria. For example, STMAA will be examined in this research because it is a statute that governs security interests in movable property in Nigeria, and an essential aspect of this research concerns security interests in WRs.<sup>154</sup> Although MLETR, for instance, is a non-binding law, it also aligns with doctrinal research because doctrines can be binding or non-binding.<sup>155</sup> It can also be abstract.<sup>156</sup>

Applying the doctrinal research method in this thesis will involve evaluating facts and information related to WRs that could lead to a reform of the WR system in Nigeria.<sup>157</sup> This makes this research a qualitative one.<sup>158</sup> Furthermore, the use of the doctrinal method in this thesis is intended to expose the lacunae and ambiguities or inconsistencies in the laws that will facilitate the use of WRs to enhance access to finance for farmers in Nigeria.<sup>159</sup>

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<sup>149</sup> Desmond Manderson and Richard Mohr, 'From Oxymoron to Intersection: An Epidemiology of Legal Research' (2002) 6(1) L Text Culture 159, 161; see also Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) Deakin L Rev 83, 85.

<sup>150</sup> Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) Deakin L Rev 83, 84.

<sup>151</sup> *ibid*; see also Rita Abhavan Ngwoke, Ibiene P Mbano and Oriaifo Helynn, 'A Critical Appraisal of Doctrinal and Non-Doctrinal Legal Research Methodologies in Contemporary Times' (2023) 3(1) Intl J Civ L Leg Res 8, 9.

<sup>152</sup> *ibid*.

<sup>153</sup> Rita Abhavan Ngwoke, Ibiene P Mbano and Oriaifo Helynn, 'A Critical Appraisal of Doctrinal and Non-Doctrinal Legal Research Methodologies in Contemporary Times' (2023) 3(1) Intl J Civ L Leg Res 8, 9.

<sup>154</sup> Secured Transactions in Movable Assets Act 2017 (Nigeria).

<sup>155</sup> Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) Deakin L Rev 83, 84.

<sup>156</sup> *ibid*.

<sup>157</sup> Rita Abhavan Ngwoke, Ibiene P Mbano and Oriaifo Helynn, 'A Critical Appraisal of Doctrinal and Non-Doctrinal Legal Research Methodologies in Contemporary Times' (2023) 3(1) Intl J Civ L Leg Res 8, 9-10.

<sup>158</sup> *ibid*.

<sup>159</sup> *ibid* 10.

Secondary sources in the public domain, such as legal documents of different intergovernmental organisations, government reports, journal articles, and textbooks, are also extensively consulted in this research. This is to showcase existing literature, provide an in-depth explanation of WRs, and determine whether and how WRs can facilitate access to finance and contribute to the enhancement of Nigeria's economy.

### **1.7. Summary of Chapters**

This section gives an insight into the chapters contained in this thesis and indicates which chapters address each research question. The first chapter provides a background of this study. It describes its purpose and importance, including identifying the questions this research sets to answer. Furthermore, this chapter discusses the theoretical frameworks that influence this study and highlights the method utilised in conducting this research.

The second chapter will overview WRs and the WR system by reviewing the literature on the subject. It will set the foundation for other discussions that will follow in the subsequent research chapters because it will be easier to understand the other chapters with an adequate analysis of the concept of WRs. Therefore, it will amplify the definition of WRs, types of warehouses, and the forms of WRs, including their characteristics, similarities, and differences, among other related matters. Thus, this chapter will attempt the first research question to indicate the form of WRs that will be suitable for Nigeria.

The third chapter will evaluate property and proprietary rights to determine whether the form of WR proposed as suitable for Nigeria will be recognised as property in Nigeria and ascertain the kind of property it is. This chapter will equally deal with the concept of ownership and possession that relates to the form of WR chosen. It will also evaluate the status of WR in Nigeria to determine if it can be used as collateral. This indicates that this chapter will address the second research question.

Chapter Four will continue addressing the second research question, especially the part that deals with security interests in WRs because it will examine security interests and allied laws in Nigeria. It will determine whether security interests can be created over the form of WR that will be chosen in this research as suitable for Nigeria. In this chapter, a comparative analysis between security interests in English law and Nigeria will be done to highlight what Nigeria's secured transactions used to be and what they are now.<sup>160</sup>

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<sup>160</sup> The context of English law in this research is the law of England and Wales.

Chapter five will critically analyse the WR Bill in line with the draft MLWR and MLETR to find whether a law reform is required in the WR Bill, which will become the WRs legislation in Nigeria when passed.

Chapter Six will discuss the legal challenges the form of WR proposed for Nigeria could face and attempt to propose solutions to these problems. This chapter will equally try to recommend a practical means of operating the WR system in Nigeria. This will cover matters like the issuance of WRs, qualified creditors, and registration of WRs, among others. Thus, this chapter will address the third research question.

Chapter seven will examine the socio-economic challenges the form of WR proposed for Nigeria could face. Some of those problems could include the sustainability of warehouses and the nature of farmers, among others. As in chapter six, this chapter will equally propose possible solutions to these problems. Hence, it will continue to address the third research question.

Finally, the eighth chapter concludes the thesis and makes recommendations for Nigeria concerning how WRs can facilitate access to finance for farmers and enhance Nigeria's economy.

## **CHAPTER TWO: OVERVIEW OF WAREHOUSE RECEIPTS**

### **2.1. Introduction**

The previous chapter introduced this research and discussed its background. This chapter will attempt to answer the first research question in this study, which is, 'What form of warehouse receipt will be more suitable in Nigeria to facilitate access to finance for farmers and enhance Nigeria's economy?'

To answer the above research question, it is expedient to analyse the concept of WRs and the warehouse receipt system (WR system) generally. This is done by reviewing various literature to explain, in more detail than in the first chapter, the definition of WRs, the nature of WRs, the historical development of WRs, the WR system, and the type of warehouses that exist in a WR system, including the forms of WRs. This analysis will help identify the form of WR that is more suitable for Nigeria.

The evaluation of the concept of WRs and the WR system is equally relevant in this research because this study explores the use of WRs to facilitate access to finance for farmers, and there is no way to find out how this is possible without first inquiring into what WRs are. Therefore, this chapter will lay a foundation for the discussions that will follow in other chapters of this thesis. For instance, where the form of WR that will be more suitable for Nigeria is identified, this chapter will examine whether security interests can be created over them, and the potential challenges they could have, among other topics that will emanate from determining the better form of WR for Nigeria.

### **2.2. Background of the Warehouse Receipt System**

#### **2.2.1. The Nature of Warehouse Receipts**

It has been argued that WRs are instruments that facilitate commercial transactions, including access to finance, which leads to economic development in various countries.<sup>161</sup> This

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<sup>161</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 37 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021; see also Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 722.

argument was substantiated by evidence in countries such as Malawi, Tanzania, Mexico, Indonesia, and others.<sup>162</sup> For instance, Malawi performed poorly in the 2017 World Bank Enabling the Business of Agriculture, scoring 20 per cent in access to finance because farmers could not access credit to improve their business.<sup>163</sup> In 2018, Malawi enacted a WR legislation.<sup>164</sup> Following this development, Malawi scored 80 per cent in access to finance in the 2019 World Bank Enabling the Business of Agriculture, much higher than they have ever performed.<sup>165</sup> This demonstrates that the presence of WRs in Malawi contributed to improving farmers' access to finance, as shown in the 2019 World Bank Enabling the Business of Agriculture.<sup>166</sup>

WRs, like many instruments, have been defined by different sources. As stated in section 1.1 of this study, UNIDROIT describes a WR as a document issued by a warehouse operator as evidence of ownership of the goods deposited in the warehouse, and the WR could be sold, given as a gift, or utilised as collateral to obtain credit from a creditor.<sup>167</sup>

Bade's definition of a WR is like UNIDROIT's, but it incorporates the delivery of the said goods to the depositor upon demand or to a specified person.<sup>168</sup> Also, the International Dictionary of Finance defines a WR as a document issued to a depositor of goods by a warehouse operator when the goods are deposited for safekeeping, and the WR usually indicates the nature and quantity of the goods deposited.<sup>169</sup> This dictionary also refers to WRs as depository receipts.<sup>170</sup>

The significance of a WR depends on how it is dealt with. In some jurisdictions like the United States of America (the United States), WRs are regarded as documents of title.<sup>171</sup> They serve as evidence of deposit for the goods in the warehouse and allow depositors to transfer the

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<sup>162</sup> World Bank Group, *Enabling the Business of Agriculture 2019* (Report, 978-1-4648-1387-0, 2019) pg 6; see also Endro Gunawan and others, 'Farmers' Perceptions of the Warehouse Receipt System in Indonesia' (2019) 11(6) *Sustain* 1690; UNCITRAL, 'Warehouse Receipt: Developing an UNCITRAL Instrument on Warehouse Receipt' (2019) UNCITRAL 30.

<sup>163</sup> World Bank Group, *Enabling Business of Agriculture 2017* (Report, 10.1596/978-4648-1021-3, 2017) pg 4.

<sup>164</sup> Warehouse Receipts Act (Act 3) 2018 (Malawi).

<sup>165</sup> World Bank Group, *Enabling Business of Agriculture 2019* (Report, 978-1-4648-1387-0, 2019) pg 6.

<sup>166</sup> *ibid.*

<sup>167</sup> UNIDROIT, 'International Developments Activités Internationales' (2021) 26(4) *Unif L Rev* 684.

<sup>168</sup> Donna L Bade, *Export/Import Procedures and Documentation* (5<sup>th</sup> edn, AMACOM 2015) 589.

<sup>169</sup> *International Dictionary of Finance* (4<sup>th</sup> edn, 2003) 280; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (World Bank Group (WBG) Guide, 2013) xii.

<sup>170</sup> *ibid.*

<sup>171</sup> Drew L Kershen, 'Warehouse Receipts in United States Law: Summary for the Pacific-Rim' (2016) 33(1) *Ariz J Intl Comp L* 179, 186.

WRs, consequently transferring the goods the WRs cover.<sup>172</sup> In other words, the holder of the document of title, that is, the WR, could efficiently utilise it as collateral to access finance.<sup>173</sup> Hence, the creditor will hold the WR only as a possessor but not the owner of the WR unless there is a default in the repayment of the loan, in which case, the creditor could assume ownership of the WR.<sup>174</sup> Whereas, in other jurisdictions like England and Wales, WRs are not considered documents of title.<sup>175</sup> They only serve as evidence of deposit.<sup>176</sup> This means the goods are kept in the warehouse mainly for safekeeping.<sup>177</sup>

It is essential to indicate that WRs are maximised where the law of a country provides legislation to govern the use of WRs, in addition to adequate warehousing infrastructure, especially in jurisdictions that recognise WRs as documents of title.<sup>178</sup> The issue of whether a WR is considered a document of title or not in Nigeria is examined in section 3.4.1 of this thesis.

In section 1.1 of this thesis and the first paragraph of this section, I indicated that some researchers argued that WRs are instruments that facilitate commercial transactions, including access to finance, which leads to economic development in various countries.<sup>179</sup> Although evidence of the validity of this argument has been presented in the case of Malawi, for instance, as seen in the first paragraph of this section, the next section of this thesis will examine the historical development of WRs to further test the reasoning behind this argument.

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<sup>172</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 3.

<sup>173</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) xii.

<sup>174</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 3.

<sup>175</sup> *Natixis SA v Marex Financial & Anor* [2019] EWHC 2549 (Comm).

<sup>176</sup> *ibid.*

<sup>177</sup> *ibid.*

<sup>178</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 722.

<sup>179</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 37 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021; see also Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 722.



### 2.3. Historical Development of Warehouse Receipts

In about 2400 BC, in ancient Mesopotamia, where it is believed that WRs originated from, deposit receipts, or grain receipts as they were called, were issued to the depositors of barley and silver.<sup>180</sup> Such receipts were accepted by creditors as collateral.<sup>181</sup> A proof of the economic advancement in ancient Mesopotamia influenced by WRs was their renowned reputation for agricultural strength.<sup>182</sup> It is argued that due to the growth in the ancient Mesopotamian economy, WRs spread to other regions like ancient Egypt, Rome, Athens, Persia, and Jerusalem.<sup>183</sup>

Archaeological evidence proves that ancient Rome utilised goods, mainly crops and livestock, stored in bonded warehouses as collateral to overcome financial difficulties in their business.<sup>184</sup> This was done through the inventory credit system, an equivalent to using WRs as collateral to obtain credit in modern times.<sup>185</sup>

In 17<sup>th</sup>-century Japan, WRs contributed to the development of the credit system through rice storage and trade from the *Daimyo*'s warehouse, that is, a warehouse belonging to a member of one of the governing classes in Japan.<sup>186</sup> Although creditors advanced loans to businesses using other forms of property like land, credit was also granted using WRs as collateral.<sup>187</sup> WRs were more convenient as collateral because of the nature of the business, mainly agriculture and rural handicrafts. Such goods could easily be stored in warehouses.<sup>188</sup>

The impact of access to finance in Japan during this era led to rapid economic development, which helped them match up with Europe economically by the end of the 17<sup>th</sup> century.<sup>189</sup>

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<sup>180</sup> Jason Roderick Donaldson, Giorgia Piacentino and Anjan Thakor, 'Warehouse Banking' (2018) 129(2) J Financ Econ 250; see also World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 10; Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351.

<sup>181</sup> *ibid.*

<sup>182</sup> John Marston, 'Consequences of Agriculture in Mesopotamia, Anatolia and Levant' *Oxford Research Encyclopaedia of Environmental Sciences* (2017) <<https://oxfordre.com/environmentalscience/environmentalscience/view/10.1093/acrefore/9780199389414.001.0001/acrefore-9780199389414-e-167>> accessed 24 July 2022.

<sup>183</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 10.

<sup>184</sup> Jonathan Coulter and Andrew Shepherd, *Inventory Credit: An Approach of Developing Agricultural Markets* (FAO 1995).

<sup>185</sup> *ibid* ix.

<sup>186</sup> Sydney Crawcour, 'The Development of a Credit System in Seventeenth Century Japan' (1961) 21(3) J Econ Hist 342, 347; 350.

<sup>187</sup> *ibid* 356.

<sup>188</sup> *ibid* 344; 350.

<sup>189</sup> *ibid* 342.

Therefore, historically, WRs contributed to the growth of economies by enhancing access to finance and storage.

In ancient Egypt, WRs were utilised as the earliest form of paper money.<sup>190</sup> Also, in the 18<sup>th</sup>-century Tobacco trade in Virginia, WRs were used as legal tender.<sup>191</sup> Thus, besides access to finance and economic development through agriculture, WRs helped advance the banking sector.

Furthermore, in 19<sup>th</sup>-century America, an era associated with the emergence of modern WRs, the presence of WRs massively enhanced commodity exchange.<sup>192</sup> This was primarily because of the concept of storing grains in large quantities with steam-powered grain elevators, making tradable WRs common.<sup>193</sup> Hence, the use of WRs spread to other regions like Argentina.<sup>194</sup>

The use of WRs in Africa commenced in the 1990s, the 20<sup>th</sup>-century post-liberalisation era.<sup>195</sup> It contributed to enhancing the storage of goods for farmers, thereby reducing post-harvest losses in Africa.<sup>196</sup> Since WRs contain the exact quantity of goods stored in the warehouse, the emergence of WRs in Africa helped mitigate the problem of weights and measures of goods where farmers, especially smallholders, felt cheated.<sup>197</sup> Thus, the advent of WRs in Africa contributed to overcoming some of the challenges mentioned above, including poor access to finance, which plagued the agricultural markets in Africa due to liberalisation.<sup>198</sup>

The outcome of examining the historical development of WRs in this section supports the submission of some scholars that WRs are instruments that facilitate commercial transactions,

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<sup>190</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 717; see also Jason Roderick Donaldson, Giorgia Piacentino and Anjan Thakor, 'Warehouse Banking' (2018) 129(2) J Financ Econ 250.

<sup>191</sup> Jason Roderick Donaldson, Giorgia Piacentino and Anjan Thakor, 'Warehouse Banking' (2018) 129(2) J Financ Econ 250, 251.

<sup>192</sup> Bob Baulch and others, 'Commodity Exchange and Warehouse Receipts in Malawi: Current Status and their Implications for the Development of Structured Markets' (2018) IFPRI Malawi 25, 1 <<http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/132922/filename/133133.pdf>> accessed 4 June 2021.

<sup>193</sup> *ibid.*

<sup>194</sup> *ibid.*

<sup>195</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351, 353.

<sup>196</sup> *ibid* 366.

<sup>197</sup> *ibid.*

<sup>198</sup> *ibid*; see also Gideon Onumah, 'Implementing Warehouse Receipt Systems in Africa: Potential and Challenges' (Fourth African Agricultural Markets Program Policy Symposium, Lilongwe, 6-7 September 2010) 2.

including access to finance, which leads to economic development in various countries.<sup>199</sup> However, the WRs discussed in this section mainly refer to paper WRs.

Recall that in section 1.1 of this thesis, it was identified that there are two forms of WRs, that is, paper WRs and electronic warehouse receipts (e-WRs).<sup>200</sup> E-WRs are similar to paper WRs, except that an e-WR is a more advanced technology, and its data is contained in electronic form, unlike a paper WR, which is in paper form.<sup>201</sup> This will be expatiated in section 2.5 of this chapter. The history of e-WRs is evaluated below to inquire whether it supports the argument that WRs enhance commercial transactions and farmers' access to finance to develop economies.

### 2.3.1. Historical Development of Electronic Warehouse Receipts

E-WRs are relatively new in commercial transactions.<sup>202</sup> They originated around the end of the 20<sup>th</sup> century and continued in the 21<sup>st</sup> century.<sup>203</sup> They commenced in the United States in 1993 through the cotton industry by the Plains Cotton Cooperative Association of Lubbock, Texas.<sup>204</sup> E-WRs were relevant in the cotton business because they enhanced access to finance since they made transparency and professionalism possible when they were used as

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<sup>199</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 37 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021; see also Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 722.

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<sup>201</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 3; see also Su Lei and Wang Haiying, 'Analysis of Electronic Warehouse Receipts of Bulk Commodity in Supply Chain Finance Practice' (2020 International Conference on Computer Information and Big Data Application (CIBDA), Guiyang, 17-19 April 2020) 35; UNIDROIT Working Group on Model Law on Warehouse Receipts-Guide to Enactment, 'Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIIIA – W.G.1 – Doc. 2, para 37 <<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>> accessed 11 December 2023.

<sup>202</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) xi.

<sup>203</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801.

<sup>204</sup> *ibid* 804.

collateral.<sup>205</sup> Transparency in e-WR transactions is necessary because creditors need to trust the integrity of e-WRs to lend against them.<sup>206</sup>

The e-WR system in the United States works under the United States Department of Agriculture (USDA) supervision.<sup>207</sup> In 2003, the Uniform Commercial Code (UCC) of 1951 was revised to accommodate electronic documents of title, including e-WRs.<sup>208</sup> Following the new development of using e-WRs in the United States and the economic impact they made through providing transparent commercial transactions and enhancing access to finance for farmers, they spread to other countries like Kazakhstan, Serbia, and Kenya, among others.<sup>209</sup> This shows that e-WRs, just like their paper counterpart, contribute to the enhancement of commercial transactions and access to finance for farmers, which also develops the economy of the countries that employ them.

### 2.3.2. Overview of Warehouse Receipts in Nigeria

WRs are not well known in Nigeria, although a few private companies who specialise in commodity exchange, like the Africa Exchange or AFEX Commodities Exchange Limited (AFEX), which began operation in Nigeria in 2013, manage the WR system and issues WRs to the few farmers that participate in the system.<sup>210</sup> Nevertheless, it appears AFEX deals with paper WRs only. This is because in 2020, they announced that they would soon commence using e-WRs, which would be controlled through blockchain.<sup>211</sup> However, this has not occurred at the time of this research.

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<sup>205</sup> Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) *Ariz J Intl Comp L* 205.

<sup>206</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 21 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021.

<sup>207</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 804 see also Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) *Ariz J Intl Comp L* 205, 209.

<sup>208</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 9; see also The Uniform Commercial Code 2003, § 7-102(a)(10).

<sup>209</sup> *ibid*; see also Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801; The Warehouse Receipt System Regulations 2021 (Kenya).

<sup>210</sup> Bob Baulch and others, 'Commodity Exchange and Warehouse Receipts in Malawi: Current Status and their Implications for the Development of Structured Markets' (2018) *IFPRI Malawi* 25, 6 <<http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/132922/filename/133133.pdf>> accessed 4 June 2021.

<sup>211</sup> Felix Thompson, 'Nigeria's AFEX to Roll Out Blockchain Solution for Warehouse Receipts' (*Global Trade Review*, 30 September 2020) <<https://www.gtreview.com/news/africa/nigerias-afex-to-roll-out-blockchain-solution-for-warehouse-receipts/>> accessed 22 January 2023.

Unlike in many countries that utilise WRs, like Tanzania, Kenya, and the United States, among others, where the government is involved in the WR system, the Nigerian government has not formally adopted the WR system, and there is insufficient research on the subject in Nigeria.<sup>212</sup> This could be because it is not common, especially among farmers. Notwithstanding this, Nigeria has several WR Bills produced by the Nigerian legislative arm of government, the National Assembly.<sup>213</sup> The latest is the Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022. This Bill will be examined in chapter five of this thesis.

Nigeria has attempted to initiate e-WRs.<sup>214</sup> In 2014, the Nigerian Commodity Exchange (NCX) collaborated with other agencies and private companies like Stanbic (Investment Bank and Trust Company Limited (IBTC) Holding Plc to announce their intention to establish e-WRs in Nigeria.<sup>215</sup> There is no evidence that this plan materialised, as e-WRs are not used in Nigeria. Nonetheless, Nigeria possesses the potential to employ technological advancements like e-WRs to improve its economy.<sup>216</sup> It has also established some systems which could accelerate the introduction of e-WRs.

In 2007, Nigeria enacted the National Information Technology Development Agency Act (NITDAA), which creates initiatives to promote information technology (IT) in all spheres of life, including businesses in Nigeria.<sup>217</sup> Although there is an NITDA Bill 2021 which provides for licensing and regulation of companies that deliver digital services and products in Nigeria, including other innovative provisions, the spirit of both instruments concerns the promotion of IT in Nigeria.<sup>218</sup> This is complemented by the enactment of the Nigerian Data Protection Act 2023 (NDPA), which guarantees privacy just like the Nigerian Constitution but further specifies how data can be handled online and offline.<sup>219</sup>

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<sup>212</sup> Nathaniel N Towo and Prosper John Kimaro, 'Warehouse Receipt System: A Solution Towards Smallholder Farmers' Financial Constraints? (2014) 2(7) Intl J Econ Commerc Manag 1, 6; see also The Warehouse Receipts Act 2005 (Tanzania); The Warehouse Receipt System Regulations 2021 (Kenya); Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) Ariz J Intl Comp L 205, 209.

<sup>213</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2016; see also The Nigerian Independent Warehouse Regulatory Agency (Establishment, Etc.) Bill 2018, The Warehouse Receipts and Other Related Matters Bill 2020; The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022.

<sup>214</sup> Nkiruka Nnorom, 'Commodity Exchange to Boost Agric Development with Electronic Warehouse' *Vanguard* (Lagos, 25 June 2014).

<sup>215</sup> *ibid.*

<sup>216</sup> The World Bank, *Nigeria Development Update: Time for Business Unusual* (WBG Report, 2021) 12.

<sup>217</sup> National Information Technology Development Agency Act 2007, s 6(g-h). (Nigeria)

<sup>218</sup> National Information Technology Development Agency Bill 2021, s 20. (Nigeria)

<sup>219</sup> Nigerian Data Protection Act 2023, s 1; see also The Constitution Federal Republic of Nigeria 1999, s 37.

In 2013, AFEX launched a commodity exchange electronic platform to encourage electronic commodity exchange.<sup>220</sup> Although this is not e-WRs or the e-WR system, it demonstrates how digital technology can be embraced in Nigeria. Also, blockchain technology, one of the systems that could be used to operate the e-WR system, is beginning to develop in Nigeria to the extent that the National Information Technology Agency (NITDA) established the National Blockchain Policy for Nigeria in May 2023.<sup>221</sup> This was to create a roadmap for the official adoption of blockchain technology by the Nigerian government.<sup>222</sup> It will improve the quality of service the public and private sectors provide and create jobs, among other things.<sup>223</sup>

A secured transactions law is essential for WRs to be used as collateral.<sup>224</sup> In 2017, Nigeria enacted the Secured Transactions in Movable Assets Act (STMAA).<sup>225</sup> This enabled individuals and businesses to utilise their movable property as collateral to obtain credit.<sup>226</sup> Nigeria also has an electronic collateral registry managed by the Central Bank of Nigeria (CBN) to register movable assets.<sup>227</sup> Although STMAA does not expressly state that the collateral registry is electronic, it infers this by providing that all registries created by an Act of the National Assembly, that is, the legislative arm of Nigeria's government, shall be operated in a manner that creates an automated interface between such registry and the National Collateral Registry created by STMAA.<sup>228</sup> The phrase '*automated interface*' could be

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<sup>220</sup> Bob Baulch and others, 'Commodity Exchange and Warehouse Receipts in Malawi: Current Status and their Implications for the Development of Structured Markets' (2018) IFPRI Malawi 25, 6 <<http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/132922/filename/133133.pdf>> accessed 4 June 2021.

<sup>221</sup> The National Information Technology Development Agency and Federal Ministry of Communications and Digital Economy, *National Blockchain Policy for Nigeria* (NITDA Doc, 2023) <<https://nitda.gov.ng/wp-content/uploads/2023/05/National-Blockchain-Policy.pdf>> accessed 13 March 2024; see also Felix Thompson, 'Nigeria's AFEX to Roll Out Blockchain Solution for Warehouse Receipts' (*Global Trade Review*, 30 September 2020) <<https://www.gtreview.com/news/africa/nigerias-afex-to-roll-out-blockchain-solution-for-warehouse-receipts/>> accessed 22 January 2023.

<sup>222</sup> The National Information Technology Development Agency and Federal Ministry of Communications and Digital Economy, *National Blockchain Policy for Nigeria* (NITDA Doc, 2023) <<https://nitda.gov.ng/wp-content/uploads/2023/05/National-Blockchain-Policy.pdf>> accessed 13 March 2024.

<sup>223</sup> *ibid.*

<sup>224</sup> UNCITRAL Warehouse Receipt: Developing an UNCITRAL Instrument on Warehouse Receipt (2019) 3; 87 <[https://uncitral.un.org/sites/uncitral.un.org/files/warehouse\\_receipts\\_report\\_final.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf)> accessed 10 May 2021; see also Vassil D Zhivkov, 'Warehouse Receipts: A Roadmap for the Harmonization of Trans-Pacific Law and Practice' (2016) 33 *Ariz J Intl Comp L* 191, 193; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 730.

<sup>225</sup> Secured Transactions in Movable Assets Act 2017. (Nigeria)

<sup>226</sup> Secured Transactions in Movable Assets Act 2017 (Nigeria); see also Betha Igbinosun, 'Security Interests in Personal Property and the Nigerian Secured Transactions in Movable Assets Act 2017: An Appraisal' (2020) 64(3) *J Afr L* 357.

<sup>227</sup> Secured Transactions in Movable Assets 2017, s 10(1). (Nigeria)

<sup>228</sup> *ibid* s 2(1)(c).

interpreted to mean electronic. Also, the Nigerian Collateral Registry website provides that registration and search in the registry are web-based.<sup>229</sup>

At this point, having analysed the historical development of WRs, including an overview of WRs in Nigeria, and affirmed that WRs can contribute to the enhancement of commercial transactions while improving economies, it is necessary to examine the structure that enables WRs to exist, that is, the WR system. This will provide a better understanding of how WRs work.

## **2.4. The Warehouse Receipt System**

WRs exist in a WR system, which facilitates their use. Höllinger and Rutten defined a WR system as a financing system that allows a group of stakeholders in agriculture, like farmers, to obtain credit from financial institutions for their business using movable collateral.<sup>230</sup> WRs are the movable collateral.<sup>231</sup> Onumah equally recognises a WR system as one which enables a depositor, who could be a body corporate, a group, such as a farming group, or individuals, to pledge the goods stored as collateral for credit.<sup>232</sup>

Different countries also recognise a WR system as a financing system. For example, the Tanzanian Warehouse Licensing Board defined a WR system as one that employs WRs to track ownership of goods deposited in a warehouse and access short-term credit.<sup>233</sup> Although this definition emphasises short-term loans, the tenure of loans creditors are willing to grant is determined by different factors, such as the purpose of the loan, the nature of goods stored, and the agreement entered by parties, among others.<sup>234</sup> Therefore, it is disputable that WRs are only for short-term loans.

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<sup>229</sup> Nigerian Collateral Registry, <[www.ncr.gov.ng](http://www.ncr.gov.ng)> Accessed 16 January 2023; see also Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) xx; Secured Transactions in Movable Assets Act 2017, s 10. (Nigeria)

<sup>230</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, vii <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021

<sup>231</sup> *ibid.*

<sup>232</sup> Gideon Onumah, 'Implementing Warehouse Receipt Systems in Africa: Potential and Challenges' (Fourth African Agricultural Markets Program Policy Symposium, Lilongwe, 6-7 September 2010) 2.

<sup>233</sup> Nathaniel N Towo and Prosper John Kimaro, 'Warehouse Receipt System: A Solution Towards Smallholder Farmers' Financial Constraints? (2014) 2(7) Intl J Econ Commmerc Manag 1, 6.

<sup>234</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 13.

In the United States, the e-WR system enabled cotton farmers to use e-WRs as collateral to access credit for their businesses.<sup>235</sup> Thus, it can be deduced that a WR system is necessary for storing goods and enhancing access to finance through the goods stored in the warehouse, irrespective of whether the system allows paper WRs or e-WRs.

The WR system cannot exist without warehouses because that is where goods are stored before they are sold or used as collateral, depending on the jurisdiction.<sup>236</sup> This is why it is said that the WR system reduces waste by encouraging storage.<sup>237</sup> There are different types of warehouses, and some are argued to be more effective for access to finance than others.<sup>238</sup> This is evaluated below to determine whether Nigeria can adopt any or all the warehouses analysed to facilitate access to credit for farmers.

#### 2.4.1. Types of Warehouses in a Warehouse Receipt System

In general, a warehouse is a storage facility used in preserving goods to prevent them from spoilage.<sup>239</sup> This includes silos, vaults, bunkers and others.<sup>240</sup> It could also be in the form of a traditional warehouse, which is a large area that can be divided into different sections.<sup>241</sup> In a WR system, some types of warehouses can be used for financing, especially if they meet certain conditions like storage capacity, insurance, and licensing.<sup>242</sup> They include public warehouses, field warehouses, private warehouses, government warehouses, and bonded warehouses.<sup>243</sup> However, the public, private, and field warehouses are the most common.<sup>244</sup> These will be analysed below.

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<sup>235</sup> Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) *Ariz J Intl Comp L* 205.

<sup>236</sup> Drew L Kershen, 'Warehouse Receipts in United States Law: Summary for the Pacific-Rim' (2016) 33(1) *Ariz J Intl Comp L* 179, 186; see also *Natixis SA v Marex Financial & Anor* [2019] EWHC 2549 (Comm).

<sup>237</sup> Devajit Mahanta, 'Review of Warehouse Receipt as an Instrument for Financing in India' (2012) 1(9) *Intl J Sci Tech Res* 42; see also Jenny Gustavsson and others *Global Food Losses and Food Waste: The Extent, Cause and Prevention* (March 2011) UN FAO Doc I2697E/5/03.16.

<sup>238</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 1.

<sup>239</sup> *ibid.*

<sup>240</sup> *ibid.*

<sup>241</sup> *ibid.*; see also Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, vii <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

<sup>242</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 719.

<sup>243</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 18.

<sup>244</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme



#### 2.4.1.1. Public Warehouses

'Public warehouses' do not imply that the warehouses belong to the public.<sup>245</sup> Private persons or corporate bodies could own them.<sup>246</sup> Public warehouses are large storage areas that serve the public for a fee.<sup>247</sup> People transport their goods to the warehouse to be stored for a period, sometimes for a long time, after they have paid the storage charges.<sup>248</sup>

Public warehouses issue WRs, but the ability of creditors to accept the WR as collateral depends on the country's legislation and the integrity of the warehouses, among other factors.<sup>249</sup> However, in many jurisdictions like Tanzania, Kenya, Mexico, and others, WRs issued by public warehouses are largely accepted by creditors as collateral.<sup>250</sup>

#### 2.4.1.2. Field Warehouses

It is argued that the field warehouse is a type of public warehouse.<sup>251</sup> However, this research contends that they are different.<sup>252</sup> In a public warehousing arrangement, the goods are

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Technical Background Paper, vii <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

<sup>245</sup> United Nations Conference on Trade and Development Review of Warehouse Receipt System and Inventory Credit Initiatives in Eastern & Southern Africa (September 2009) 1; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 2.

<sup>246</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 2.

<sup>247</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, vii <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

<sup>248</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 719.

<sup>249</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, vii <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

<sup>250</sup> *ibid*; see also United Nations Conference on Trade and Development Review of Warehouse Receipt System and Inventory Credit Initiatives in Eastern & Southern Africa (September 2009).

<sup>251</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 720.

<sup>252</sup> Tibor Taiji, 'The Resurrection of Field Warehousing' (2014) 55(3) Acta Juridica Hungarica 191; see also Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, vii <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021; The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) xii.

conveyed to the warehouse by the depositor, whereas, in field warehousing, sometimes there is no need to transport the goods to a specific warehouse.<sup>253</sup> This is because the creditor temporarily sets up the warehouse at the venue where the goods are produced, such as farms or near the venue.<sup>254</sup>

The field warehouse is said to be specifically for access to credit because it often houses goods used as collateral.<sup>255</sup> It is also considered flexible and designed to suit the needs of the secured borrower (grantor).<sup>256</sup> Conversely, goods are sometimes kept in public warehouses for storage only.<sup>257</sup> However, they can also be used as collateral, and the warehouses may provide other services like drying, weighing and bagging.<sup>258</sup>

In field warehousing, besides setting up impermanent storage to house the goods used as collateral, a creditor could temporarily take over the goods belonging to a depositor, which have already been moved to and stored in a public warehouse.<sup>259</sup> Here, the creditor leases the whole or a part of the public warehouse for a fee and puts its employees or representatives in charge of the goods and warehouse.<sup>260</sup> The creditor could also utilise the services of a Collateral Management Company (CMC) to set up the warehouse and monitor the collateral.<sup>261</sup> The warehouse operator then put a notice in the venue notifying the public that the field warehouse is controlled.<sup>262</sup>

In field warehousing, there are some mechanisms to monitor the goods utilised as security for credit.<sup>263</sup> They include direct financial institution supervision, a Collateral Management

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<sup>253</sup> Tibor Taiji, 'The Resurrection of Field Warehousing' (2014) 55(3) (2014) 55(3) *Acta Juridica Hungarica* 191.

<sup>254</sup> *ibid.*

<sup>255</sup> *ibid.*

<sup>256</sup> *ibid.*

<sup>257</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 2.

<sup>258</sup> *ibid.*

<sup>259</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, vii <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 7.

<sup>260</sup> *ibid.*

<sup>261</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 7.

<sup>262</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 720.

<sup>263</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 1.

Agreement (CMA), and a Stock Management Agreement (SMA).<sup>264</sup> A CMA is a tripartite agreement involving a CMC, a secured creditor or their agent, and a grantor, and in this case, typically the same person as the depositor of the goods.<sup>265</sup> The CMA assures creditors that the goods which the WR represents, utilised as collateral, are safe and that the loan will be repaid when the goods are sold or disposed of by any other means.<sup>266</sup>

The CMC takes possession of the goods on behalf of the creditor, which they store in the field warehouse they set up.<sup>267</sup> The CMA demonstrates one of the advantages of field warehousing because it can be employed in countries with insufficient warehousing infrastructure.<sup>268</sup> Although field warehousing and the CMA are flexible and can facilitate access to finance, setting up field warehouses and processing a CMA is expensive.<sup>269</sup> Another challenge is that a CMA is ordinarily applicable to non-negotiable WRs.<sup>270</sup> This is to prevent grantors from transferring the WR to a third party without an express agreement with the other parties to the CMA.<sup>271</sup>

An SMA, just like a CMA, is another agreement that assures creditors that the goods which the WR covers, used as collateral, are monitored to guarantee their quality and for trackability purposes.<sup>272</sup> Unlike the CMA, which is a tripartite agreement, the SMA involves two parties:

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<sup>264</sup> *ibid.*

<sup>265</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 721; see also Panos Varangis and Jean Saint-Geours, 'Using Commodities as Collateral for Finance (Commodity-Backed Finance)' (2017) World Bank Working Paper 117359, 2 <<https://documents1.worldbank.org/curated/en/619781498850171182/pdf/Using-commodities-as-collateral-for-finance-commodity-backed-finance.pdf>> accessed 20 August 2021; The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 43.

<sup>266</sup> Panos Varangis and Jean Saint-Geours, 'Using Commodities as Collateral for Finance (Commodity-Backed Finance)' (2017) World Bank Working Paper 117359, 2 <<https://documents1.worldbank.org/curated/en/619781498850171182/pdf/Using-commodities-as-collateral-for-finance-commodity-backed-finance.pdf>> accessed 20 August 2021.

<sup>267</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 42.

<sup>268</sup> *ibid* xii; World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 14.

<sup>269</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 2; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 719; Tibor Taiji, 'The Resurrection of Field Warehousing' (2014) 55(3) *Acta Juridica Hungarica* 191.

<sup>270</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 43; 27.

<sup>271</sup> *ibid.*

<sup>272</sup> Panos Varangis and Jean Saint-Geours, 'Using Commodities as Collateral for Finance (Commodity-Backed Finance)' (2017) World Bank Working Paper 117359, 3 <<https://documents1.worldbank.org/curated/en/619781498850171182/pdf/Using-commodities-as-collateral-for-finance-commodity-backed-finance.pdf>> accessed 20 August 2021.

the CMC and the creditor.<sup>273</sup> An SMA entails periodic monitoring of the goods by an inspector who the creditor can appoint, although the inspector does not exercise control over the goods.<sup>274</sup> Since there is no regular monitoring and control, the quality of the goods is not guaranteed.<sup>275</sup> Thus, it is less secure than a CMA, although it is less expensive.<sup>276</sup> Also, unlike the CMA, where loans are secured by WRs over the lenders' goods, under an SMA, loans are secured by floating charges or pledges over the goods stored.<sup>277</sup>

#### **2.4.1.3. Private Warehouses**

In private warehousing, a company carries out several activities in its ordinary course of business, including warehousing in the same venue.<sup>278</sup> The company could manufacture, process and retail goods, including warehousing.<sup>279</sup> Therefore, the company is not primarily a warehouse operator. In some jurisdictions like the Philippines, these companies may allow the public to deposit their goods in their warehouse.<sup>280</sup> They can also issue WRs to cover the goods deposited.<sup>281</sup> They can equally issue WRs to parties who have not deposited their goods but intend to utilise the goods manufactured and stored in the warehouse by the company as collateral.<sup>282</sup> This promotes cheaper capital for the potential grantor's business.<sup>283</sup>

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<sup>273</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 43.

<sup>274</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) xii; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 721.

<sup>275</sup> *ibid.*

<sup>276</sup> *ibid.*

<sup>277</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 43.

<sup>278</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 5 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

<sup>279</sup> *ibid.*

<sup>280</sup> *ibid.*; see also Devajit Mahanta, 'Review of Warehouse Receipt as an Instrument for Financing in India' (2012) 1(9) Intl J Sci Tech Res 42, 43.

<sup>281</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 5 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021; see also Devajit Mahanta, 'Review of Warehouse Receipt as an Instrument for Financing in India' (2012) 1(9) Intl J Sci Tech Res 42, 43.

<sup>282</sup> Devajit Mahanta, 'Review of Warehouse Receipt as an Instrument for Financing in India' (2012) 1(9) Intl J Sci Tech Res 42, 43.

<sup>283</sup> *ibid.*

For instance, they can save transport costs, which would have been used to take the goods to the private warehouse.<sup>284</sup>

In some jurisdictions like India, financial institutions reject WRs issued by private warehouses because they perceive them as risky.<sup>285</sup> This is because there is no guarantee that the goods stored in the warehouse will still be present as the creditors have no control over the goods or their movement in and out of the warehouse, especially since the companies are not solely for warehousing.<sup>286</sup> Regarding this challenge, spot checks by creditors can provide better monitoring of the goods to mitigate the problem.<sup>287</sup> This demonstrates that it is not only in field warehousing that monitoring of goods covered by WRs in the warehouse is essential. Once WRs are used as collateral, the creditors must monitor the goods to ensure they are safe.

Furthermore, financial institutions tend to reject WRs issued by private warehouses because of the perceived legal problems associated with the WRs in the case of bankruptcy of the company.<sup>288</sup> Where this happens, other creditors usually take priority over the financial institutions, which makes it difficult for them to recover their loan sum and interest.<sup>289</sup> Some jurisdictions even give priority to taxes and salaries of staff of the warehouses before any creditor.<sup>290</sup> However, the problem of priority can be mitigated by the perfection of WRs depending on the country's secured transactions law.<sup>291</sup> Alternatively, the financial institutions can move the goods to their warehouse as in field warehousing.<sup>292</sup> This arrangement will no longer be classified as a private warehouse.

Suppose it is determined that WRs are recognised as property in Nigeria and can be used as collateral. In that case, Nigeria needs to contemplate whether it will allow private warehouses to issue WRs and whether to encourage creditors to accept WRs emanating from private

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<sup>284</sup> *ibid.*

<sup>285</sup> *ibid* 44; see also Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 5 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

<sup>286</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 5 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

<sup>287</sup> *ibid.*

<sup>288</sup> *ibid.*

<sup>289</sup> *ibid.*

<sup>290</sup> *ibid* 16.

<sup>291</sup> *ibid*; see also Brian Duncan and Mahmood Bagheri, 'The Relationship between the Development of Financial Markets and Security Interest Laws' (2017) 32(4) J Intl Bank L Reg 141.

<sup>292</sup> *ibid* vii; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 7.

warehouses as collateral. Field warehousing is the most appropriate for security interests over WRs from the analysis in this section. However, in deciding which warehouse will issue WRs, Nigeria has to consider that their decision could impact the storage alternatives available for farmers.<sup>293</sup> Consequently, applying flexibility in the type of warehousing farmers can patronise to obtain loans using WRs should be prioritised. After all, it was indicated in the previous two paragraphs that it is not only field warehouses that monitoring goods is possible. This will give creditors more confidence that the goods in the warehouse are safe, irrespective of where the WRs emanate from.

## 2.5. Forms of Warehouse Receipts

As stated in the last paragraph of section 2.3 of this chapter, WRs can either be in paper or electronic form.<sup>294</sup> Paper WRs are the traditional and common form of WRs.<sup>295</sup> Paper WRs and e-WRs are similar in definition and functions.<sup>296</sup> However, the details on a paper WR are contained on physical paper, while an e-WR is a more advanced technology with records or data stored electronically.<sup>297</sup> E-WRs are regarded as the more modern version of WRs, especially because the world is fast transforming digitally.<sup>298</sup>

Before the International Institute for the Unification of Private Law (UNIDROIT) and the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Warehouse Receipts, which was in its draft stage (draft MLWR) at the time of collecting data for this research, but has now been adopted on 26<sup>th</sup> of June 2024, some intergovernmental organisations published documents to provide guides for countries to reform their WR system.<sup>299</sup> Although they recognised e-WRs, their works were majorly done on paper WRs,

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<sup>293</sup> Devajit Mahanta, 'Review of Warehouse Receipt as an Instrument for Financing in India' (2012) 1(9) Intl J Sci Tech Res 42, 45.

<sup>294</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801.

<sup>295</sup> *ibid.*

<sup>296</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 3; see also Su Lei and Wang Haiying, 'Analysis of Electronic Warehouse Receipts of Bulk Commodity in Supply Chain Finance Practice' (2020 International Conference on Computer Information and Big Data Application (CIBDA), Guiyang, 17-19 April 2020) 35; UNIDROIT Working Group on Model Law on Warehouse Receipts-Guide to Enactment, 'Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIIIA – W.G.1 – Doc. 2, para 37 <<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>> accessed 11 December 2023.

<sup>297</sup> *ibid.*

<sup>298</sup> Alan J Malter and Aric Rindfleisch, 'Transitioning to a Digital World' (2019) 16 Rev Market Res 1; see also UNCTAD Digital Economy Report 2019- Value Creation and Capture: Implication for Developing Countries (4 September 2019) UNCTAD Doc UNCTAD/DER/2019.

<sup>299</sup> UNIDROIT, 'Study LXXXIII: Model Law on Warehouse Receipts' (UNCITRAL/ UNIDROIT, 30 March 2021) <<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>> accessed 18 May 2023; see also UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model

except for the Organisation of American States (OAS), which addressed e-WRs in American states.

The European Bank of Reconstruction and Development (EBRD), in collaboration with the Food and Agriculture Organisation (FAO), provided practical examples of how the WR system is practised in some countries like the United States, Brazil, and others.<sup>300</sup> It also provided for issues like the negotiability of WRs and the rights of parties, among others.<sup>301</sup> While it recognised e-WRs as a relatively new trend, it focused on paper WRs.<sup>302</sup>

The World Bank provided a sample model law on WRs, which it believes reflects what a WR legislation should be.<sup>303</sup> It provided for different aspects of a WR system, including the recognition of WRs as documents of title.<sup>304</sup> Although its primary focus is paper WRs, it provided for re-issuing paper WRs as e-WRs and vice versa, including the control of e-WRs.<sup>305</sup> However, the provisions are recommended as optional in WR legislations, suggesting that e-WRs should be utilised only when necessary, but not regularly.<sup>306</sup>

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Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4 <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; UNCITRAL/UNIDROIT, 'UNCITRAL/UNIDROIT Model Law on Warehouse Receipts adopted by the United Nations Commission on International Trade Law' (UNCITRAL/UNIDROIT, 27 June 2024) <<https://www.unidroit.org/uncitral-unidroit-model-law-on-warehouse-receipts-adopted-by-the-united-nations-commission-on-international-trade-law/#:~:text=On%2026%20June%202024%2C%20the,57th%20session%20in%20New%20York.>>> accessed 4 July 2024; UNCITRAL Warehouse Receipt: Developing an UNCITRAL Instrument on Warehouse Receipt (2019) 1 <[https://uncitral.un.org/sites/uncitral.un.org/files/warehouse\\_receipts\\_report\\_final.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf)> accessed 10 May 2021; UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Background Research Paper' (2020) UNIDROIT Working Paper, First Session, Study LXXXIII – W.G.1 – Doc. 4, 4 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-04-e.pdf>> accessed 7 February 2022; World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016); see also Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015).

<sup>300</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 56.

<sup>301</sup> *ibid* 4.

<sup>302</sup> *ibid* xi.

<sup>303</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 58.

<sup>304</sup> *ibid* 11, 20.

<sup>305</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 64; 65.

<sup>306</sup> *ibid* 57.

The OAS WR document suggested that e-WRs are an alternative to paper WRs.<sup>307</sup> It also provided two prerequisites for using e-WRs for agriculture in American states.<sup>308</sup> That is, the recognition of modern secured transactions and secured financing, including recognising e-WRs in the same way as paper WRs.<sup>309</sup> However, it is essential to indicate that the recognition of modern secured transactions and secured financing is not only applicable when utilising e-WRs, especially for access to credit; it is also required when utilising paper WRs.<sup>310</sup>

The International Finance Corporation (IFC), which designed a guide to help banks provide credit to businesses and individuals using WRs as collateral, specifically recommended a shift from paper WRs to e-WRs.<sup>311</sup> Nevertheless, it only recognised e-WRs as it did not conduct extensive research to justify its recommendation.<sup>312</sup>

The draft MLWR, which has now been adopted, recognises e-WRs as another form of WR and provides for control of e-WRs.<sup>313</sup> Other than that, it did not go into an in-depth provision of e-WRs. It is important to highlight that this research is not intended to diminish the content of the draft MLWR. It underscores the economic significance of WRs in Nigeria, including enlisting factors that will facilitate practical and easy usage of WRs to ease access to finance for farmers.

## **2.6. Analyses of the Similarities and Differences between Paper and Electronic Warehouse Receipts through Defining the Characteristics of Warehouse Receipts**

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<sup>307</sup> David P Stewart, 'Electronic Warehouse Receipts for Agricultural Products' (OAS Report, CJI/doc.427/13, 2013); see also Organisation of American States, *Inter-American Judicial Report: Electronic Warehouse Receipts for Agricultural Products* (Report, CJI/doc. 505/16 rev. 2, 2016).

<sup>308</sup> *ibid.*

<sup>309</sup> *ibid.*

<sup>310</sup> UNCITRAL Warehouse Receipt: Developing an UNCITRAL Instrument on Warehouse Receipt (2019) 87 <[https://uncitral.un.org/sites/uncitral.un.org/files/warehouse\\_receipts\\_report\\_final.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf)> accessed 10 May 2021; see also Vassil D Zhivkov, 'Warehouse Receipts: A Roadmap for the Harmonization of Trans-Pacific Law and Practice' (2016) 33 *Ariz J Intl Comp L* 191, 193; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 730.

<sup>311</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 2; 9.

<sup>312</sup> *ibid* 29.

<sup>313</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 1(2); 2(2); 3;19(b) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.



### 2.6.1. Content of Warehouse Receipts

One of the characteristics of WRs is that they must contain certain information that enables easy identification of goods and their owners.<sup>314</sup> This serves as notice to all participants in WR transactions.<sup>315</sup> It also minimises the problem of conveying the wrong goods to a depositor or transferring the goods belonging to a depositor to the wrong person.

Paper WRs and e-WRs contain similar information.<sup>316</sup> That is, they contain the depositor's details, the date of deposit, the details of the warehouse, and information about the goods deposited, such as the type of goods, quality, quantity, and the exact location where the goods are stored.<sup>317</sup> WRs, whether paper or electronic, also contain a unique identification or receipt number.<sup>318</sup> They could equally include the charges the goods stored will attract, any opportunity for instalment or advance payment and whether there will be the possibility of a lien over the goods.<sup>319</sup> WRs also indicate whether they are negotiable or non-negotiable.<sup>320</sup> Where a WR, whether a paper WR or an e-WR, is negotiable, it is issued to the order of a named person or bearer.<sup>321</sup> Whereas, when a WR is non-negotiable, the name of the persons to whose order the receipt is issued will be contained in the WR.<sup>322</sup> This is because the WR is

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UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; see also Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 37.

<sup>315</sup> *ibid.*

<sup>316</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>317</sup> *ibid.*; see also Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 37.

<sup>318</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(j) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; see also Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 37.

<sup>319</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 38.

<sup>320</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(b) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; see also Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 37.

<sup>321</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(4)(a-b) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>322</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(5) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

issued in favour of that named person.<sup>323</sup> This will be discussed further in section 2.6.3 of this chapter.

In addition, WRs could contain the list of the basic rights and obligations of the warehouse operators and the depositors.<sup>324</sup> This content is absent in the draft MLWR because there is a provision for a storage agreement which will define the terms and conditions of storage, including the rights and obligations of warehouse operators and depositors.<sup>325</sup> It is also believed that the storage agreement will contain the duration of the goods in the warehouse, whether the goods are insured, and the fees the goods will attract.<sup>326</sup>

Furthermore, WRs contain the laws that regulate them.<sup>327</sup> The storage agreement provided for by the draft MLWR should include the governing laws of WRs as it is absent as content of WRs in the draft MLWR.<sup>328</sup> WRs equally comprise the signature section for parties to the transaction.<sup>329</sup> Also, where the information in a WR is incorrectly written or omitted by any chance, the warehouse operator will be liable for any losses incurred by the depositor due to this mistake.<sup>330</sup> However, this mistake or omission is insufficient to invalidate the WR.<sup>331</sup>

The above demonstrates the similarities between the content of paper WRs and e-WRs. However, the main difference in the content of paper WRs and e-WRs is their security.<sup>332</sup>

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[content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf](#)> accessed 20 June 2023.

<sup>323</sup> *ibid.*

<sup>324</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 37.

<sup>325</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1); art 2(7); art 8 <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>326</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(7); art 8 <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>327</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 37.

<sup>328</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>329</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 37.

<sup>330</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(2) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>331</sup> *ibid.*

<sup>332</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.17.

Paper WRs contain only human-readable texts and do not have any other form of safety measures, which makes them prone to forgery.<sup>333</sup> In contrast, e-WRs contain more than just human-readable documents that could be, for instance, in portable data format (PDF); they also contain some encryption, making it difficult for unauthorised persons to access the information in e-WRs.<sup>334</sup>

In other words, while anybody can easily access paper WRs, for example, a thief who stole the receipt, it will be difficult for just anyone to take control of e-WRs because of their requirement for encryption and passwords, among others, just like many electronic platforms.<sup>335</sup> This is unless the perpetrators are exceptionally technically savvy or the authorised persons who have control of the e-WRs make the safety measures available wilfully, under duress or due to carelessness.<sup>336</sup> This makes e-WRs safer than paper WRs.<sup>337</sup>

### 2.6.2. Proof of Ownership

One of the features of WRs is their ability to serve as proof of ownership of the goods deposited in the warehouse.<sup>338</sup> It is immaterial that the goods are in the possession of the warehouse operator and not the depositor.<sup>339</sup> Unless the depositor sells the goods in the warehouse or gives them as a gift, they remain the owner of such goods, even when the warehouse suffers bankruptcy.<sup>340</sup> This right of ownership allows the depositor to claim damages against the warehouse if the stored goods get destroyed while in the warehouse.<sup>341</sup> The proof of ownership feature of WRs applies to all the jurisdictions that use WRs, whether they recognise them as documents of title or not.

The above is the reason why the safety of WRs is expedient. That is, where a WR is in the possession of an illegitimate person, as it is easily possible with paper WRs, the person can claim ownership of the goods stored in the warehouse. This could also give the illegitimate

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<sup>333</sup> *ibid.*

<sup>334</sup> *ibid.*

<sup>335</sup> Arkan Mahmood and Ibrahim Taner Okumus, 'Design and Implementation of an Electronic Document Management System' (2017) 1(1) Mehmet Akif Ersoy Üniversitesi Uygulamalı Bilimler Dergisi 9.

<sup>336</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.17.

<sup>337</sup> *ibid*; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 724.

<sup>338</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 20.

<sup>339</sup> *ibid.*

<sup>340</sup> *ibid.*

<sup>341</sup> Jonathan Coulter and Gideon Onumah, 'The Role of Warehouse Receipt Systems in Enhanced Commodity Marketing and Rural Livelihood in Africa' (2002) 27 Food Policy 319, 323.

person the power to do away with the WR and the goods it covers in any manner that pleases them or claim damages from the warehouse operator. Unlike paper WRs, e-WRs can minimise this problem because an e-WR can be designed to allow the user of the e-WR to view other participants in the e-WR transaction and can also enable the participants to monitor the activities happening in the transaction instantaneously.<sup>342</sup> That is, it would be easier to determine the person in control of the e-WR at any point.<sup>343</sup> This makes e-WRs more transparent than paper WRs.

### 2.6.3. Transferability and Negotiability of Warehouse Receipts

Another characteristic of WRs is their ability to be transferred.<sup>344</sup> This applies to jurisdictions like the United States, where WRs are documents of title, as explained in section 2.2.1 of this chapter.<sup>345</sup> Transfer begins with the way WRs are issued. A WR can be issued as a single or a double document.<sup>346</sup> While civil law jurisdictions commonly utilise the double WR, common law jurisdictions usually practise the single WR.<sup>347</sup>

WRs are a single document where one receipt is used to transfer ownership of the deposited goods and create a security interest.<sup>348</sup> In contrast, double WR encompass two parts.<sup>349</sup> The first part serves as proof of ownership and a storage agreement, while the second part, known as pledge bonds or warrants, is used to create security interests.<sup>350</sup>

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<sup>342</sup> Michael Crosby, 'Blockchain Technology: Beyond Bitcoin' (2016) 2 Applied Innov Rev 6; see also Zibin Zheng and others, 'An Overview of Blockchain Technology: Architecture, Consensus, and Future Trends' (2017) 85 Inst Elect Eng Comput Soc 557; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 725.

<sup>343</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 725.

<sup>344</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 20.

<sup>345</sup> Drew L Kershen, 'Warehouse Receipts in United States Law: Summary for the Pacific-Rim' (2016) 33(1) Ariz J Intl Comp L 179, 186.

<sup>346</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 723.

<sup>347</sup> *ibid*; see also UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Background Research Paper' (2020) UNIDROIT Working Paper, First Session, Study LXXXIII – W.G.1 – Doc. 4, 4 < <https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-04-e.pdf> > accessed 7 February 2022; Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 149.

<sup>348</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 723.

<sup>349</sup> *ibid*.

<sup>350</sup> *ibid*.

When a WR is issued as a double document, each of its parts, the proof of ownership and the pledge bond section, can be transferred to another party separately or together, although they are commonly transferred together.<sup>351</sup> Nevertheless, double WRs cause a delay in transactions because where they are to be used as collateral to obtain credit, the holder of the WR completes the required information needed for the secured transactions on the pledge segment of the WR and delivers the WR to the secured creditor.<sup>352</sup> This is in addition to fulfilling any other legal requirement for transferring WRs or secured transactions relevant in a jurisdiction.<sup>353</sup> For example, the transferor of the WR could be required to enter into an agreement with the warehouse operator to ensure that the goods which the double WR covers are delivered to the secured creditor.<sup>354</sup>

Conversely, single WRs are better because they make transactions faster and reduce the rigorousness and delays in transactions that could be caused by the legal formalities involved in using a two-part WR.<sup>355</sup> This is why some civil law jurisdictions like Mexico are transitioning from double to single WRs.<sup>356</sup>

Following the above analysis, unless paper WRs are issued as a single document, they can slow down transactions. In contrast, speed, a technological advantage of e-WRs, eliminates the need for the rigorous process involved in issuing WRs as double documents since they are done instantly and automatically depending on how the software that operates the e-WR is programmed.<sup>357</sup> Therefore, unlike paper WRs, it is immaterial how e-WRs are issued since

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<sup>351</sup> *ibid*; see also Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 6 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

<sup>352</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 723.

<sup>353</sup> *ibid*.

<sup>354</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 22.

<sup>355</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 723; see also Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805.

<sup>356</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 724; see also UNCITRAL Warehouse Receipt: Developing an UNCITRAL Instrument on Warehouse Receipt (2019) 30 <[https://uncitral.un.org/sites/uncitral.un.org/files/warehouse\\_receipts\\_report\\_final.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf)> accessed 10 May 2021.

<sup>357</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805, see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 724-25.

they often make transactions faster by mitigating any issuing and transfer formalities due to their technological speed.<sup>358</sup>

Moreover, a country that uses paper WRs may find it challenging to carry out international transactions even when its legislation allows WRs to be used internationally.<sup>359</sup> This is because the potential parties to the international transaction must ensure that their jurisdictions issue WRs similarly. In other words, a party whose jurisdiction issues paper WRs as a single document could find it challenging to do business with another whose jurisdiction issues paper WRs as a double document. This problem is minimal with e-WRs as both parties do not have to bother about how the e-WRs are issued since e-WRs always make transactions fast by dispensing with rigorous formalities, irrespective of how they are issued due to technology.<sup>360</sup> This supports the argument that e-WRs make transactions more straightforward and accessible than paper WRs.<sup>361</sup>

Furthermore, with paper WRs, one may need to travel to complete a transaction, which ordinarily delays the transaction and makes it more expensive whether the business is done internationally or domestically.<sup>362</sup> The chances of this problem arising with e-WRs are slim because the transactions are done electronically and in real-time, which breaks geographical barriers and makes transactions faster.<sup>363</sup> Therefore, e-WRs make transactions faster and cheaper. Transaction cost is vital in this research because many farmers are micro, small, and medium enterprises (MSMEs) who prefer cheaper, faster, and more efficient transactions to those that are slower and more expensive.<sup>364</sup> Besides, regarding speed, cost and efficiency, it will be easier to have a combined platform for trading and secured transactions, which will function simultaneously and in real-time with e-WRs than paper WRs.<sup>365</sup> This equally demonstrates that e-WRs are better than paper WRs.

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<sup>358</sup> *ibid.*

<sup>359</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805.

<sup>360</sup> *ibid*; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 724-25.

<sup>361</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805.

<sup>362</sup> *ibid*; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 725.

<sup>363</sup> *ibid.*

<sup>364</sup> R N Mgbenka, E N Mbah and C I Ezeano, 'A Review of Small holder Farming in Nigeria: Need for Transformation' (2015) 5(2) *Agric Eng Res J* 19.

<sup>365</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 725.

Apart from issuing WRs as single or double documents, as analysed above, WRs can be issued as negotiable or non-negotiable documents.<sup>366</sup> That is, the mode of transferability of the WR depends on whether it is negotiable or non-negotiable.<sup>367</sup> As a matter of fact, transferability in law means negotiability.<sup>368</sup> This implies that the negotiability of WRs only affects jurisdictions that recognise WRs as transferable documents.

Transferable documents are the same as documents of title.<sup>369</sup> The UCC describes a document of title as a legal document which covers goods subject to a commercial transaction and serves as evidence that the person legitimately in possession of it is eligible to receive, hold and dispose of the document, including the goods it covers.<sup>370</sup> The documents that constitute documents of title include bills of lading, WRs, and dock warrants, among others.<sup>371</sup>

Although documents of title can be associated with land and other immovable property, they can also refer to bills of lading, including other movable property like WRs.<sup>372</sup> According to the UNCITRAL Model Law on Electronic Transferable Records (MLETR), transferable documents are documents in paper form like paper WRs and not electronic documents such as e-WRs.<sup>373</sup> However, it provides information on how electronic records can be used as transferable documents, qualifying them as electronic transferable records.<sup>374</sup>

Electronic records constitute any data generated, communicated, received, or stored electronically.<sup>375</sup> Where these information link together with each other or are associated with each other by any means, they expressly or impliedly form part of a record, making them equally transferable just like their paper counterparts.<sup>376</sup> The UCC also recognises electronic

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<sup>366</sup> *ibid* 722; see also World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 20.

<sup>367</sup> *ibid*.

<sup>368</sup> James Steven Rogers, *The End of Negotiable Instruments* (OUP 2012) 8.

<sup>369</sup> Henry D Gabriel, 'The UNCITRAL Model Law on Electronic Transferable Records' (2019) 24 *Unif L Rev* 261, 262.

<sup>370</sup> *ibid*; see also Eli Goldston and Paul J McKenzie, 'Documents of Title-Article 7 of the Uniform Commercial Code' (1962) 23 *Ohio St J* 280; The Uniform Commercial Code 2001 § 1—201(16).

<sup>371</sup> *ibid*.

<sup>372</sup> U Frank-Igwe and G C Okara, 'Proof of Ownership of Land in Nigeria by Documents of Title: A Critical Analysis' (2018) 2 *U Port Harcourt J Privat L* 177; see also Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 114.

<sup>373</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 2.

<sup>374</sup> *ibid* art 10.

<sup>375</sup> *ibid* art 2.

<sup>376</sup> *ibid*; see also Zvonimir Safranko, 'The Notion of Electronic Transferable Records' (2016) 3 (2) *Inter EU L East J Intl Eur L Econ Market Integ* 1.

documents like e-WRs as documents of title.<sup>377</sup> Since e-WRs are transferable, what then is transferability or negotiability?

Negotiability suggests that where certain legal requirements are met, transferees of WRs take hold of their interests without any adverse claims.<sup>378</sup> As indicated in section 2.6.1 of this chapter, negotiable WRs can transfer title and the rights of further transfer to legitimate holders of the WRs without the need for an endorsement on the WRs.<sup>379</sup>

Endorsement means that the depositor of the goods in the warehouse leaves specific instructions with the warehouse operator to deliver the goods to a particular named third party but does not transfer ownership of the goods to such party.<sup>380</sup> Thus, the goods will be delivered to the bearer of the negotiable WR.<sup>381</sup> However, the bearer of the WR could be an illegitimate holder, such as a thief.<sup>382</sup> Hence, a transferee can obtain a good title from an illegal transferor or a person with a defective title.<sup>383</sup> This is known as the holder in due course rule, one of the flaws of negotiability.<sup>384</sup> The principle of holder in due course will be examined in section 2.6.3.1 of this chapter.

Conversely, non-negotiable WRs are not ordinarily transferable; they require an endorsement to transfer their title and rights from person to person.<sup>385</sup> Thus, the goods will be delivered to a named person.<sup>386</sup> Regarding access to finance, it is argued that creditors prefer negotiable WRs to non-negotiable WRs. This is because, with a negotiable WR, the title to the document can easily pass from the depositor to the creditor and from the creditor to another third party

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<sup>377</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 9.

<sup>378</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 722.

<sup>379</sup> Henry Gabriel, 'Warehouse Receipts and Securitization in Agricultural Finance' (2012) 17 Unif L Rev 369.

<sup>380</sup> *ibid* 370.

<sup>381</sup> The Uniform Commercial Code 2003, § 7-104 (b); see also UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(5) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>382</sup> James Steven Rogers, 'Negotiability as a System of Title Recognition' (1987) 48 (1) Ohio St LJ 197, 199; see also Kurt Eggert, 'Not Dead Yet: The Surprising Survival of Negotiability' (2013) 66 (1) Ark L Rev 145, 154.

<sup>383</sup> *ibid*.

<sup>384</sup> James Steven Rogers, 'Negotiability as a System of Title Recognition' (1987) 48 (1) Ohio St LJ 197, 198.

<sup>385</sup> Henry Gabriel, 'Warehouse Receipts and Securitization in Agricultural Finance' (2012) 17 Unif L Rev 369, 370; see also James Steven Rogers, *The End of Negotiable Instruments* (OUP 2012) 8.

<sup>386</sup> The Uniform Commercial Code 2003, § 7-104.



without the need for any legal requirements.<sup>387</sup> For example, the need to notify the warehouse operator about the potential transfer, or to enter into a formal agreement with the warehouse operator whenever a transfer occurs.<sup>388</sup> Therefore, the negotiability of the WR can be relevant where creditors intend to quickly recover their loans by taking over title to the WR used as collateral upon default in the repayment of the loans.<sup>389</sup>

Non-negotiable WRs require certain conditions to be met before title transfers take place.<sup>390</sup> As mentioned in the above paragraph, some conditions include issuing notice to the warehouse and drafting an agreement between the transferor and the transferee, among others.<sup>391</sup> Therefore, negotiable WRs make transactions faster than non-negotiable WRs, which are more rigorous.<sup>392</sup>

Non-negotiable WRs were designed to mitigate fraud in WR transactions as title will hardly be transferred to the wrong person due to its stringent requirements.<sup>393</sup> However, because non-negotiable documents make transactions more demanding and time-consuming, e-WRs are more efficient in combating fraud in a WR system.<sup>394</sup> As indicated in section 2.6.2 of this chapter, due to e-WRs' technological advantage, the participants in the e-WR transaction can monitor the activities happening on the e-WR in real time.<sup>395</sup> This does not just eliminate the rigorous process involved in utilising non-negotiable WRs; it reduces the problem of forgery of the WR or fraud. This could be why paper WRs are associated with the term negotiable and

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<sup>387</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 722.

<sup>388</sup> Henry Gabriel, 'Warehouse Receipts and Securitization in Agricultural Finance' (2012) 17 Unif L Rev 369, 370; see also James Steven Rogers, *The End of Negotiable Instruments* (OUP 2012) 8; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 723.

<sup>389</sup> *ibid.*

<sup>390</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 22.

<sup>391</sup> *ibid.*

<sup>392</sup> Dinesh Rai, 'The Potential and Scope for Negotiable Warehouse Receipts in India' (2012) India Commod YB 163.

<sup>393</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 722.

<sup>394</sup> Frank Höllinger, Lamon Rutten and Krassimir Kiriakov, 'The Use of Warehouse Receipt Finance in Agriculture Transition Countries' (World Grain Forum, St Petersburg, 6-7 June 2009) 26.

<sup>395</sup> Michael Crosby, 'Blockchain Technology: Beyond Bitcoin' (2016) 2 Applied Innov Rev 6; see also Zibin Zheng and others, 'An Overview of Blockchain Technology: Architecture, Consensus, and Future Trends' (2017) 85 Inst Elect Eng Comput Soc 557; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 725.

non-negotiable WRs, while e-WRs are more often than paper WRs linked with the term negotiable WRs.<sup>396</sup>

Moreover, paper WRs are more prone to forgery and fraud than e-WRs because one paper WR could be made into multiple copies for different transactions.<sup>397</sup> The notorious Chinese Qingdao event demonstrates this.<sup>398</sup> Here, a company made many copies of one paper WR and used them to obtain credit from several financial institutions.<sup>399</sup> Whereas, with e-WRs, it is difficult to commit this sort of crime depending on how the system that operates the e-WRs is built regarding software and programmes.<sup>400</sup> This is because the system could prevent duplicity of documents and detect forged signatures, including the prevention of similar factors that could lead to forgery or fraud in the transaction.<sup>401</sup> It may take a highly skilled digital technician to breach the system and commit that type of crime.<sup>402</sup> This also emphasises the fact that e-WRs are better than paper WRs.

As evaluated in this section, negotiability or transferability of WRs is required in jurisdictions that recognise WRs as documents of title to transfer WRs from one party to another for sale of the WR, for secured transactions or as a gift.<sup>403</sup> Nevertheless, some scholars argue that negotiability should be erased in commercial transactions.<sup>404</sup> This could affect the possibility of utilising WRs as collateral by farmers. The following section will examine this argument to

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<sup>396</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(3)(a) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 722; Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 9.

<sup>397</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801, 805.

<sup>398</sup> Meng Meng and others, 'Qingdao Metals Scandal Accused Handed 23-Year Jail Term' Reuters (Asia, 10 December 2018).

<sup>399</sup> *ibid.*

<sup>400</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801, 805; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 724-25.

<sup>401</sup> *ibid.*

<sup>402</sup> *ibid.*

<sup>403</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 722; see also Henry Gabriel, 'Warehouse Receipts and Securitization in Agricultural Finance' (2012) 17 Unif L Rev 369.

<sup>404</sup> James Steven Rogers, *The End of Negotiable Instruments* (OUP 2012); see also Kurt Eggert, 'Not Dead Yet: The Surprising Survival of Negotiability' (2013) 66 (1) Ark L Rev 145, 146; see also James Steven Rogers, 'Negotiability as a System of Title Recognition' (1987) 48 (1) Ohio St LJ 197, 199; see also Edward L Rubin, 'Learning from Lord Mansfield: Toward a Transferability Law for Modern Commercial Practice' (1995) 31 (3) Ida L Rev 775.

weigh how important or otherwise negotiability is in commercial law and how it affects WR transactions.

### 2.6.3.1. The Necessity of Negotiability in Commercial Transactions

Irrespective of the notion that negotiability is one of the exceptional achievements of commercial law, some researchers, such as James Steven Rogers, contend that negotiability is no longer necessary in modern commercial transactions.<sup>405</sup> They described negotiability as many things, including dry, irrelevant, inconsistent, a fly in amber, and a zombie.<sup>406</sup> They claimed that negotiability is paper-based because it requires creating and retaining documents in paper form.<sup>407</sup> This means that it is irrelevant in the modern era of commercial transactions, where electronic documents are becoming dominant.<sup>408</sup>

To further bolster the above point, the critics of negotiability argued that the essential element of negotiability is that it is written and that the written part is inseparable from the liabilities embodied in the document.<sup>409</sup> Following this logic, they submitted that commercial documents like WRs could only possess these attributes in paper form.<sup>410</sup> Therefore, they regarded negotiability as a tool that delays transactions and causes organisations to lose money.<sup>411</sup>

Prima facie, this position appears correct because paper WRs have the characteristics of making transactions slower and more expensive than e-WRs, as demonstrated in section 2.6.3 of this thesis.<sup>412</sup> However, the argument that only paper-based documents are negotiable

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<sup>405</sup> William Searle Holdsworth, 'The Origin and Early History of Negotiable Instruments' (1915) 31 LQ Rev 173; see also James Steven Rogers, *The End of Negotiable Instruments* (OUP 2012); Kurt Eggert, 'Not Dead Yet: The Surprising Survival of Negotiability' (2013) 66 (1) Ark L Rev 145, 146; see also James Steven Rogers, 'Negotiability as a System of Title Recognition' (1987) 48 (1) Ohio St LJ 197, 199; see also Edward L Rubin, 'Learning from Lord Mansfield: Toward a Transferability Law for Modern Commercial Practice' (1995) 31 (3) Ida L Rev 775.

<sup>406</sup> Ronald J Mann, 'Searching for Negotiability in Payment and Credit Systems' (1997) 44 UCLA L Rev 951, 971-72; see also James Steven Rogers, *The End of Negotiable Instruments* (OUP 2012); Neil B Cohen, 'The Calamitous Law of Notes' (2007) 68 (1) Ohio St LJ 161, 162; Grant Gilmore, 'Formalism and the Law of Negotiable Instruments' (1979) 13 Creighton L Rev 441, 461.

<sup>407</sup> Kurt Eggert, 'Not Dead Yet: The Surprising Survival of Negotiability' (2013) 66 (1) Ark L Rev 145, 155-56; see also Dale A Whitman, 'How Negotiability Has Fouled Up the Secondary Mortgage Market, and What to do About It' (2010) 37 Pepperdine L Rev 737, 758.

<sup>408</sup> *ibid.*

<sup>409</sup> James Steven Rogers, 'Negotiability as a System of Title Recognition' (1987) 48 (1) Ohio St LJ 197, 200.

<sup>410</sup> *ibid.*

<sup>411</sup> Dale A Whitman, 'How Negotiability Has Fouled Up the Secondary Mortgage Market, and What to do About It' (2010) 37 Pepperdine L Rev 737, 758; see also Kurt Eggert, 'Not Dead Yet: The Surprising Survival of Negotiability' (2013) 66 (1) Ark L Rev 145, 156.

<sup>412</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme

because they are in writing is fallacious.<sup>413</sup> This is because electronic trade documents, such as e-WRs, like their paper counterparts, contain some written sections that represent the liabilities of the parties to the transactions.<sup>414</sup> The difference is that the written sections are in electronic form, which is abstract rather than physical.<sup>415</sup> Therefore, negotiability can affect both paper and electronic documents, making it relevant in modern commercial transactions where electronic documents dominate.

Furthermore, negotiability is an age-long concept, which implies that it was conceived in an era when there were few or no electronic documents, including abstract instruments.<sup>416</sup> Hence, the pioneers of the concept might not have envisaged the vast nature of electronic documents to enable them to agree that negotiability applies to both paper and electronic documents.<sup>417</sup>

Another basis for the argument that negotiability is outdated in commercial law is the problem of the holder in due course.<sup>418</sup> This was identified in section 2.6.3 of this chapter as one of the challenges of negotiability. A holder in due course or a bona fide purchaser of a negotiable instrument takes it free from all adverse claims.<sup>419</sup> This could result in an unintentional problem for a transferee of a negotiable document who acquires their title from an illegitimate transferor.<sup>420</sup> The transferee risks losing their claims, especially when there is a claim from the actual owner of the negotiable document.<sup>421</sup>

Generally, the holder in due course right is unnatural because it is considered an avenue for the strong to take advantage of the weak.<sup>422</sup> However, this problem created by negotiability has been resolved through equity in the interest of justice.<sup>423</sup> Thus, the party who loses out because of the transfer made by a person with illegitimate title to the property has the right to

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Technical Background Paper, 6 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

<sup>413</sup> David Frisch and Henry D Gabriel, 'Much Ado about Nothing: Achieving Essential Negotiability in an Electronic Environment' (1995) 31 *Ida L Rev* 747.

<sup>414</sup> *ibid* 750.

<sup>415</sup> *ibid*.

<sup>416</sup> *ibid* 749.

<sup>417</sup> *ibid*.

<sup>418</sup> Kurt Eggert, 'Not Dead Yet: The Surprising Survival of Negotiability' (2013) 66 (1) *Ark L Rev* 145, 156.

<sup>419</sup> James Steven Rogers, 'Negotiability as a System of Title Recognition' (1987) 48 (1) *Ohio St LJ* 197, 198.

<sup>420</sup> Kurt Eggert, 'Not Dead Yet: The Surprising Survival of Negotiability' (2013) 66 (1) *Ark L Rev* 145, 171.

<sup>421</sup> *ibid* 156.

<sup>422</sup> Curtis Nyquist, 'A Spectrum Theory of Negotiability' (1995) 78 (4) *Marquette L Rev* 897, 900.

<sup>423</sup> James Steven Rogers, 'Negotiability as a System of Title Recognition' (1987) 48 (1) *Ohio St LJ* 197, 202.

recover damages or claim from the misleading party.<sup>424</sup> Also, the transferee has the right to rescind the transaction where there is a misrepresentation or mistake.<sup>425</sup> It is even easier with electronic documents like e-WRs because the electronic platform registers information about the transfer, encouraging traceability.<sup>426</sup> This analysis demonstrates that the principle of holder in due course is insufficient to make the concept of negotiability irrelevant since there are practical remedies to mitigate this challenge.

Furthermore, it is observed that the literature that critiques negotiability mainly refers to laws that govern cheques, that is, negotiable instruments such as promissory notes, but not necessarily negotiable documents of title like WRs.<sup>427</sup> Negotiable instruments are documents that guarantee the payment of money to a specific person at a given time upon demand.<sup>428</sup> Although negotiable instruments seem like negotiable documents of title, they differ in certain ways. First, they vary in the commodity they guarantee.<sup>429</sup> While negotiable instruments guarantee the payment of money, negotiable documents of title guarantee that goods be delivered to a person upon demand or at a particular time.<sup>430</sup>

Although both affect movable properties, negotiable instruments can apply to other commercial transactions like mortgages.<sup>431</sup> However, negotiable documents of title apply to documents involving WRs, Bills of lading, and similar commercial documents.<sup>432</sup> While both documents are not the same, they have similar principles. An example is that both documents transfer title or the rights of further transfer to the document holder or are delivered to the order of a specific named person.<sup>433</sup>

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<sup>424</sup> *ibid.*

<sup>425</sup> *ibid.*

<sup>426</sup> Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) *Ariz J Intl Comp L* 205, 209; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 725.

<sup>427</sup> Kurt Eggert, 'Not Dead Yet: The Surprising Survival of Negotiability' (2013) 66 (1) *Ark L Rev* 145; see also James Steven Rogers, 'Negotiability as a System of Title Recognition' (1987) 48 (1) *Ohio St LJ* 197; James Steven Rogers, *The End of Negotiable Instruments* (OUP 2012); Neil B Cohen, 'The Calamitous Law of Notes' (2007) 68 (1) *Ohio St LJ* 161, 184.

<sup>428</sup> A C Onuorah, 'Negotiable Instruments and the Nigerian Financial System' (2018) 2(5) *Intl J Bus Manag Tech* 72.

<sup>429</sup> The Uniform Commercial Code 2002, § 3-104; see also The Uniform Commercial Code 2003, § 7-104.

<sup>430</sup> *ibid.*

<sup>431</sup> Kurt Eggert, 'Not Dead Yet: The Surprising Survival of Negotiability' (2013) 66 (1) *Ark L Rev* 145.

<sup>432</sup> The Uniform Commercial Code 2003, § 7-104.

<sup>433</sup> *ibid.*; The Uniform Commercial Code 2002, § 3-104.

The above analysis indicates that most of the criticisms of negotiability emanate from American scholars based on the UCC.<sup>434</sup> While UCC Article 3 deals with negotiable instruments, UCC Article 7 deals with negotiable documents of title.<sup>435</sup> Nevertheless, formulating agencies like UNCITRAL do not seem to be affected by the critics of negotiability. This is because recent instruments like the draft MLWR, MLETR, and others still refer to the concept.<sup>436</sup> Following the evaluation of negotiability in this section, it is submitted that negotiability is relevant in modern commercial transactions.

#### **2.6.4. The Preferred Warehouse Receipt Proposed for Nigeria**

Examining the similarities and differences between paper WRs and e-WRs through their characteristics, carried out in sections 2.6.1 to 2.6.3 of this chapter, it can be deduced that e-WRs perform better than paper WRs. This is because e-WRs are safer than paper WRs due to their additional encryption and password requirements, which reduce the chances of unauthorised access.<sup>437</sup> It was also demonstrated that e-WRs are better than paper WRs because of their tendency to instantaneously enable participants of an e-WR transaction to monitor the activities on the e-WR.<sup>438</sup> This is to minimise the problem of illegitimate claims of goods deposited in the warehouse, including the illegal claim of damages from the warehouse by the wrong person when there is damage to the goods.<sup>439</sup> Thus, it was submitted that e-WR transactions are more transparent than paper WR transactions.<sup>440</sup>

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<sup>434</sup> Kurt Eggert, 'Not Dead Yet: The Surprising Survival of Negotiability' (2013) 66 (1) Ark L Rev 145; see also James Steven Rogers, 'Negotiability as a System of Title Recognition' (1987) 48 (1) Ohio St LJ 197; James Steven Rogers, *The End of Negotiable Instruments* (OUP 2012); Neil B Cohen, 'The Calamitous Law of Notes' (2007) 68 (1) Ohio St LJ 161, 184.

<sup>435</sup> The Uniform Commercial Code 2002, § 3; see also The Uniform Commercial Code 2003, § 7.

<sup>436</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Background Research Paper' (2020) UNIDROIT Working Paper, First Session, Study LXXXIII – W.G.1 – Doc. 4, 7 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-04-e.pdf>> accessed 7 February 2022; see also UNIDROIT Working Group on a Model Law on Warehouse Receipts, 'Preliminary Drafting Suggestions for the Model Law on Warehouse Receipts' (2021) Working Paper, LXXXIII – W.G.2 – Doc. 3 <<https://www.unidroit.org/english/documents/2021/study83/wg02/s-83-wg02-03-e.pdf>> accessed 7 February 2022; UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 15.

<sup>437</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.17.

<sup>438</sup> Michael Crosby, 'Blockchain Technology: Beyond Bitcoin' (2016) 2 Applied Innov Rev 6; see also Zibin Zheng and others, 'An Overview of Blockchain Technology: Architecture, Consensus, and Future Trends' (2017) 85 Inst Elect Eng Comput Soc 557; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 725.

<sup>439</sup> *ibid.*

<sup>440</sup> *ibid.*

Furthermore, in section 2.6.3 of this thesis, it was identified that e-WRs possess a technological advantage of speed over paper WRs, eliminating the need for the rigorous requirements involved in issuing WRs as a double document depending on the technology used in operating the e-WRs.<sup>441</sup> This demonstrates that it does not matter how e-WRs are issued in terms of single or double documents since they usually make transactions faster by eliminating the difficult legal formalities involved in the issuance process.<sup>442</sup>

Based on the above, it was pointed out that e-WRs facilitate transnational and domestic WR transactions because they break geographical barriers.<sup>443</sup> This implies that they make transactions cheaper and swifter since they save the cost of transportation of parties and the courier correspondences involved in paper WR transactions.<sup>444</sup> Moreover, unlike paper WRs, it was demonstrated that the speed, cost-effectiveness and efficiency advantage of e-WRs make it easier to establish a combined platform for commodity exchange and secured transactions that will be operated simultaneously in real-time.<sup>445</sup>

In addition, it was indicated that in secured transactions, creditors usually prefer negotiable WRs to non-negotiable WRs because it allows them to dispose of the security quickly, that is, the WR utilised as collateral to obtain credit without dealing with the rigorous formalities involved in disposing a non-negotiable WR.<sup>446</sup> While it was identified that the purpose of non-negotiable WRs is to combat fraud, it was submitted that e-WRs perform better than non-negotiable WRs in combating fraud and forgery depending on the technology employed in operating the system.<sup>447</sup> E-WR systems do this by preventing the duplicity of documents and verifying signatures, among other services that minimise fraudulent activities while eliminating

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<sup>441</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805, see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 724-25.

<sup>442</sup> *ibid.*

<sup>443</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 725.

<sup>444</sup> *ibid.*

<sup>445</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 725.

<sup>446</sup> Henry Gabriel, 'Warehouse Receipts and Securitization in Agricultural Finance' (2012) 17 *Unif L Rev* 369, 370; see also James Steven Rogers, *The End of Negotiable Instruments* (OUP 2012) 8; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 723.

<sup>447</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 724-25.

non-negotiation formalities.<sup>448</sup> Thus, unlike paper WRs, e-WRs are more associated with negotiation than they are linked to non-negotiation.<sup>449</sup>

All the analyses contained in sections 2.6.1 to 2.6.3 of this chapter demonstrate in a few words that e-WRs are safer, faster, more cost-effective, more efficient, more transparent, and easier to use for commercial transactions involving WRs than paper WRs. Therefore, this research submits that e-WRs are the preferred and more suitable form of WRs proposed to Nigeria to consider regarding facilitating access to finance for farmers and contributing to the improvement of Nigeria's economy.

Furthermore, where an argument arises, as has arisen before under the OAS WR document, that e-WRs should be recognised in the same way as paper WRs, this research slightly agrees.<sup>450</sup> While paper WRs have a similar definition and perform similar functions as e-WRs, regarding efficiency and achieving better results in commercial transactions, it will be difficult for e-WRs to be on par with paper WRs.<sup>451</sup> This is because e-WRs have been demonstrated to be faster, safer, cheaper, more efficient and more transparent than paper WRs, especially as the world is quickly advancing technologically.<sup>452</sup> Therefore, Nigeria should consider adopting e-WRs alone rather than making them an alternative to paper WRs by allowing both forms of WRs in their proposed WR legislation, which is currently a Bill.<sup>453</sup>

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<sup>448</sup> *ibid.*

<sup>449</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(3)(a) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 722; Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 9.

<sup>450</sup> David P Stewart, 'Electronic Warehouse Receipts for Agricultural Products' (OAS Report, CJI/doc.427/13, 2013); see also Organisation of American States, *Inter-American Judicial Report: Electronic Warehouse Receipts for Agricultural Products* (Report, CJI/doc. 505/16 rev. 2, 2016).

<sup>451</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 3; see also Su Lei and Wang Haiying, 'Analysis of Electronic Warehouse Receipts of Bulk Commodity in Supply Chain Finance Practice' (2020 International Conference on Computer Information and Big Data Application (CIBDA), Guiyang, 17-19 April 2020) 35; UNIDROIT Working Group on Model Law on Warehouse Receipts-Guide to Enactment, 'Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIIIA – W.G.1 – Doc. 2, para 37 <<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>> accessed 11 December 2023; Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801, 805.

<sup>452</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801, 805; see also Alan J Malter and Aric Rindfleisch, 'Transitioning to a Digital World' (2019) 16 Rev Market Res 1; UNCTAD Digital Economy Report 2019- Value Creation and Capture: Implication for Developing Countries (4 September 2019) UNCTAD Doc UNCTAD/DER/2019.

<sup>453</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022.



Following the preference of e-WRs over paper WRs for Nigeria in this research, from now on, this study will consider other issues relating to the use of WRs to facilitate access to finance for farmers in Nigeria and enhance its economy with respect to e-WRs.

## **2.7. Conclusion**

This chapter gave an overview of the concept of WRs and the WR system. It defined WRs, examined their historical development to determine whether they can transform economies, assessed the kinds of warehouses obtainable in a WR system, and analysed the notion of WRs in Nigeria. The chapter also evaluated the forms of WRs, which enabled the selection of e-WRs as the more suitable form of WR for Nigeria.

In terms of warehouses, public, field, and private warehouses were examined. It was submitted that although field warehouses are ideal for secured transactions, Nigeria should consider not limiting the WR system to only one type of warehouse but allow flexibility to increase storage alternatives for farmers.

This chapter traced the history of WRs from 2400 BC to the present. It was submitted that since WRs contribute to the development of economies, they can enhance the Nigerian economy, especially by facilitating farmers' access to finance.

In answering the second research question, this chapter compared the forms of WRs by analysing their characteristics, like content, proof of ownership, and transferability.<sup>454</sup> It was submitted that e-WRs are better because they are more secure, reliable, faster, transparent, and cost-effective than paper WRs. Thus, it was projected that financial institutions would be more inclined to accept e-WRs as collateral instead of paper WRs, where Nigeria chooses to adopt them.

This chapter also evaluated the argument that negotiability is outdated and irrelevant in modern commercial transactions since it is paper based. However, it was observed in this chapter that the pioneers of negotiability might not have considered electronic trade documents due to their absence or insufficient existence at the time. Also, contrary to the opinion of the critics of negotiability, electronic trade documents like e-WRs contain written sections in electronic form, which are abstract. Thus, the written sections equally embody the

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<sup>454</sup> The second research question of this thesis is, 'Can the Form(s) of Warehouse Receipts Identified as Suitable for Nigeria be Considered Property in Nigeria, and Can Security Interests be Created over Them?'

rights and liabilities of parties, just as the writings on paper trade documents encompass the rights and liabilities of parties to the transaction.

Furthermore, this chapter proffered a solution to the challenge of holder in due course associated with negotiability, which poses a problem to a transferee who obtains a defective title from an illegitimate transferor. The remedy holds that a party who incurs losses because of the transfer made by an illegitimate person can recover damages in court or vitiate the transfer where elements such as misrepresentation are detected. It was submitted that electronic trade documents like e-WRs equally mitigate this challenge because they aid the traceability of transactions and their participants. Therefore, it was concluded that negotiability is still relevant in modern commercial transactions.

Since e-WRs have been suggested to Nigeria as a better form of WR than paper WR, this research will now focus on how e-WRs can facilitate access to finance for farmers in Nigeria to boost its economy. Therefore, the next chapter will examine the concept of property and how it affects e-WRs.

## **CHAPTER THREE: ELECTRONIC WAREHOUSE RECEIPTS AS PROPERTY**

### **3.1. Introduction**

The preceding chapter examined the concept of warehouse receipts (WRs), including an overview of WRs in Nigeria. Amidst this evaluation was an attempt to appraise the form of WR that would be suitable for Nigeria in discussing the issue of facilitating access to finance for farmers using WRs and contributing to enhancing Nigeria's economy. It was submitted that electronic warehouse receipts (e-WRs) would be more beneficial to Nigeria than paper WRs because e-WRs have been indicated to have more advantages in terms of speed, cost, geographical flexibility, and efficiency, among other qualities. Thus, it was stated that, henceforth, this research would be conducted in terms of using e-WRs to facilitate access to finance for farmers in Nigeria.

Based on the above, this chapter will examine whether e-WRs would be considered property in Nigeria and whether they will qualify as the type of property that can be regarded as collateral for credit in Nigeria. Therefore, this chapter commences an attempt to answer the second research question.<sup>455</sup> By virtue of this, the chapter will explore the concept of property by determining what property is in the general context before narrowing it down to Nigeria. It will also examine the types of property available in commercial transactions, proprietary rights that could arise from e-WRs, and the significance of e-WRs in Nigeria. This would determine whether they are considered documents of title in Nigeria, which could enable the creation of security interests over them.

### **3.2. What is Property in Law?**

This section largely analyses the description of property in English law. This is because the Nigerian definition of property is influenced by English law due to legal transplant.<sup>456</sup> Nevertheless, some American and Australian cases are cited to support arguments in the absence of relevant English and Nigerian cases.

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1.1 <sup>455</sup> *ibid.*

<sup>456</sup> Wisdom Okereke Anyim, 'Research Under Nigerian Legal System: Understanding the Sources of Law for Effective Research Activities in Law Libraries' (2019) LPP <<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=5939&context=libphilprac>> accessed 20 January 2024.

Early England had no legal definition of property until about the 17<sup>th</sup> century.<sup>457</sup> The earlier law books at the time did not specifically define property.<sup>458</sup> They described possession.<sup>459</sup> However, possession is an element of property, not the definition of property itself.<sup>460</sup> Early scholars continued to describe possession instead of property, although some lawyers used the word property to address ownership in disputes.<sup>461</sup> Between 1290 and 1490, common law attributed property to interests in animals and goods, not lands.<sup>462</sup> However, by the 17<sup>th</sup> century, John Cowell provided the first legal definition of property.<sup>463</sup> He described property as the highest right a person can have to anything, which in no way depends on another person's courtesy.<sup>464</sup>

Other scholars like John Rastell, Richard Zouche, Thomas Blount, and William Shepard, among others, also agreed that property is the highest right a person has to anything.<sup>465</sup> Cowell, like his colleagues, links the meaning of property to movable goods and animals but not lands.<sup>466</sup> At least, as it concerns anyone other than the Crown, the English monarch at the time.<sup>467</sup> This is because of his concept of dominium, which stipulates that only the crown has sole ownership and use of immovable property like land.<sup>468</sup> Therefore, other persons were tenants and could not own land. This was referred to as having feudum or fee in land.<sup>469</sup>

Edward Coke elaborated on the above by attributing the word property to movable goods and animals, while ownership depicted lands or immovable property.<sup>470</sup> Thus, property can be defined as the highest right a person can have over movable property. This is important because this study focuses on movable property instead of land or immovable property.

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<sup>457</sup> G E Aylmer, 'The Meaning and Definition of 'Property' in Seventeenth Century England' (1980) 86 Past & Present 87.

<sup>458</sup> *ibid.*

<sup>459</sup> *ibid.*

<sup>460</sup> Henry E Smith, 'Elements of Possession' in Yun-chien Chang (ed), *The Law and Economics of Possession* (CUP 2014).

<sup>461</sup> *ibid* 90.

<sup>462</sup> David J Seipp, 'The Concept of Property in the Early Common Law' (1994) 12(1) L Hist Rev 29, 33.

<sup>463</sup> G E Aylmer, 'The Meaning and Definition of 'Property' in Seventeenth Century England' (1980) 86 Past & Present 87, 88.

<sup>464</sup> *ibid* 93; see also David J Seipp, 'The Concept of Property in the Early Common Law' (1994) 12(1) L Hist Rev 29, 80; John Cowell, *The Interpreter* (1<sup>st</sup> edn, Scolar 1607).

<sup>465</sup> G E Aylmer, 'The Meaning and Definition of 'Property' in Seventeenth Century England' (1980) 86 Past & Present 87, 91-95.

<sup>466</sup> David J Seipp, 'The Concept of Property in the Early Common Law' (1994) 12(1) L Hist Rev 29, 33.

<sup>467</sup> G E Aylmer, 'The Meaning and Definition of 'Property' in Seventeenth Century England' (1980) 86 Past & Present 87, 88.

<sup>468</sup> *ibid.*

<sup>469</sup> *ibid.*

<sup>470</sup> David J Seipp, 'The Concept of Property in the Early Common Law' (1994) 12(1) L Hist Rev 29, 81.

Conversely, some scholars defined property as a bundle of rights.<sup>471</sup> A common phrase in this definition refers to property as a bundle of sticks.<sup>472</sup> That is a combination of a set of individual rights which sometimes formulates property.<sup>473</sup> This definition appears vague because there are many forms of individual rights, like human rights, political rights, cultural rights, and others.<sup>474</sup> Hence, it neither defines what property is nor the combination of the individual rights that constitute property.

The case of *United States v Craft* attempted to describe which rights constitute property.<sup>475</sup> In this case, the appellants, the Internal Revenue Service, tried to place a tax lien on a property jointly owned by the respondents, Mr and Mrs Craft, in its entirety.<sup>476</sup> While the property was jointly owned by the couple, the party defaulting in tax was Mr Craft, who subsequently executed a quit-claim deed to transfer his rights on the property to his wife after the appellant filed the notice of lien.<sup>477</sup> Therefore, the issue for determination was whether Mr Craft had an individual right that amounted to property to which a federal lien could be attached since the tenancy was jointly owned by the couple.

It was held that each tenant had individual rights on the property, notwithstanding that the couple jointly owned it. Hence, a federal lien could be attached on the property.<sup>478</sup> It was further held that State laws, that is, the Michigan laws, determined which rights an individual has in a property, whereas federal laws decide whether those individual rights constitute property.<sup>479</sup> Therefore, the rights and a combination of rights constituting property depend on what the state says.

From the analysis of this case, it is observed that property rights are explained, but there is no definition for the object itself, that is, the subject of the tenancy, which is the property. It is argued that this is the basis for the claim that caselaw is usually vague in defining property.<sup>480</sup> So far, the first 'highest rights' description of property is submitted to be more specific about

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<sup>471</sup> Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 482.

<sup>472</sup> *United States v Craft* [2002] 535 US 274, 278; see also *Drye v United States* [1999] 528 US 49, 58.

<sup>473</sup> *ibid.*

<sup>474</sup> Raphael Cohen-Almagor, 'Between Individual Rights and Group Rights' (2018) *Academicus Intl Sci J* 9.

<sup>475</sup> *United States v Craft* [2002] 535 US 274, 278.

<sup>476</sup> *ibid.*

<sup>477</sup> *ibid.*

<sup>478</sup> *ibid* 278-89.

<sup>479</sup> *ibid* 278-79.

<sup>480</sup> Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 484.

what property is than the bundle of sticks explanation.<sup>481</sup> This is because the former is clear that movable assets constitute property.<sup>482</sup> In contrast, the latter only explains the rights and responsibilities related to property and claims that property can be determined by summing these rights.<sup>483</sup>

Since the bundle of rights does not expressly define what property is, why was it conceived as a definition of property? Wesley Newcomb Hohfeld propounded the notion of the bundle of rights in one of his writings.<sup>484</sup> He argued that property is legal rights-oriented rather than a corporeal or physical phenomenon.<sup>485</sup> Although Hohfeld wrote his essay on property in the 20<sup>th</sup> century, he moved ahead of his time to consider non-physical property in formulating the definition of property. He viewed property as a summation of abstract legal relations between individuals rather than legal rights over an object or a thing.<sup>486</sup> Thus, this definition is essential regarding the nature of digital property like e-WRs. These kinds of property are not physical.<sup>487</sup> However, just like physical objects, they can be stored, sold, transferred, or stolen.<sup>488</sup>

Another school of thought attributed an exclusionist meaning to property.<sup>489</sup> An English lawyer, William Blackstone, provided one of the most popular exclusionist property definitions.<sup>490</sup> He described property as the sole and absolute control a person has and exercises over external things in the world, with the total exclusion of the rights of any other individual in the universe.<sup>491</sup> Like the bundle of rights description of property, the exclusionist definition does not necessarily define the 'thing', that is, property, but describes the rights to the 'object'.<sup>492</sup> In

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<sup>481</sup> G E Aylmer, 'The Meaning and Definition of 'Property' in Seventeenth Century England' (1980) 86 Past & Present 87, 88; see also David J Seipp, 'The Concept of Property in the Early Common Law' (1994) 12(1) L Hist Rev 29, 80; John Cowell, *The Interpreter* (1<sup>st</sup> edn, Scolar 1607).

<sup>482</sup> David J Seipp, 'The Concept of Property in the Early Common Law' (1994) 12(1) L Hist Rev 29, 81.

<sup>483</sup> Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 492-39; see also Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1913) 23(1) Yale LJ 16, 24.

<sup>484</sup> Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1913) 23(1) Yale LJ 16, 24; see also Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 492.

<sup>485</sup> *ibid*.

<sup>486</sup> *ibid*; see also Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 493.

<sup>487</sup> Joshua A T Fairfield, 'Virtual Properties' (2005) 85 Boston UL Rev 1047, 1051.

<sup>488</sup> Jeffrey Ritter and Anna Mayer, 'Regulating Data as Property: A New Construct for Moving Forward' (2018) 16(1) Duke L Tech Rev 220, 221; see also Caitlin J Akins, 'Conversion of Digital Property: Protecting Consumers in the Age of Technology' (2010) 23(2) Loyola Consum L Rev 215, 218.

<sup>489</sup> Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 482.

<sup>490</sup> William Blackstone, *Commentaries on the Laws of England* (1<sup>st</sup> edn, Clarendon 1765) 2.

<sup>491</sup> *ibid* 2.

<sup>492</sup> Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 492.

other words, where there is no exclusion, there is no property.<sup>493</sup> This makes the definition of property rigid.<sup>494</sup>

This exclusionist definition of property is also like 'the highest right' description of property by Cowell.<sup>495</sup> This is because Blackstone considers property and its rights as one of the only concepts that trigger the imagination and affection of a person.<sup>496</sup> Furthermore, Blackstone's exclusionist nature of property evokes a similar understanding of the last phrase of Cowell's definition: '...which in no way depends on another person's courtesy'.<sup>497</sup> Thus, both definitions totally exclude other individuals from the property of another without any restrictions.

Nonetheless, the exclusionist depiction of property is less absolute than it claims since there are situations where exceptions could arise, which would not exclude other persons' rights. The case of *State v Shack* demonstrates this.<sup>498</sup> This was a trespass case brought against government workers who sought to enter the property belonging to the plaintiff to help some migrant farm workers.<sup>499</sup> The plaintiff invited the police to ask the defendants to vacate the property because he solely owns the property trespassed upon with the exclusion of other person's use or enjoyment of the property.<sup>500</sup>

It was held that the organs of the society restrict the exclusionist nature of a person's property to benefit the best interest of others in the society over whom the same organs extend protective responsibilities.<sup>501</sup> Therefore, a natural or artificial person has the right to own a thing, whether land or chattel and has the authority to legally exclude any other person from utilising that thing, although this authority can be limited in some situations, such as a governmental intervention.<sup>502</sup> This is also the position in Nigeria.

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<sup>493</sup> Thomas W Merrill, 'Property and the Right to Exclude' (1998) 77 Nebraska L Rev 730.

<sup>494</sup> Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 488.

<sup>495</sup> G E Aylmer, 'The Meaning and Definition of 'Property' in Seventeenth Century England' (1980) 86 Past & Present 87, 88.

<sup>496</sup> Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 485.

<sup>497</sup> G E Aylmer, 'The Meaning and Definition of 'Property' in Seventeenth Century England' (1980) 86 Past & Present 87, 93; see also David J Seipp, 'The Concept of Property in the Early Common Law' (1994) 12(1) L Hist Rev 29, 80; John Cowell, *The Interpreter* (1<sup>st</sup> edn, Scolar 1607).

<sup>498</sup> *State v Shack* [1971] 58 NJ 297, 277 A.2d 369.

<sup>499</sup> *ibid.*

<sup>500</sup> *ibid.*

<sup>501</sup> *ibid* 372-73.

<sup>502</sup> Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 485.

In Nigerian law, property is the right and interest over land and chattels conferred in a person with the exclusion of others.<sup>503</sup> The person can choose to enjoy or absolutely dispose of the land and chattels as they deem fit so long as they do so within the ambit of the law.<sup>504</sup> This implies that contrary to Blackstone's exclusionist theory of property, where there are no restrictions in terms of absolute control and exclusion of others from an 'external thing in the world', modern societies apply the exclusionist description of property with limits. This was why it was further held in the case of *State v Shack* that such restraint on exclusionism is typical in modern times like this, as opposed to what exclusionism was many years ago.<sup>505</sup> Thus, when contemporary researchers discuss exclusive control over property, they do this with the understanding that there could be limitations to such control.

Kevin Gray also explained property.<sup>506</sup> He contended that any attempt to define property would be futile, as what constitutes property varies depending on the jurisdiction; hence, property is neither an absolute nor a fixed concept.<sup>507</sup> However, he stated some attributes that aid the understanding of property.<sup>508</sup> First, he agrees with Blackstone's excludability perception of property to the extent that a person has the right to exclude others from the 'thing' they own.<sup>509</sup> Nonetheless, he tilts more toward the modern exclusionist concept of property when he argues that excludability is affected by technological innovation, moral (social mores and norms), and legal conditions that vary in time and circumstance.<sup>510</sup> For instance, the rule in *Haynes' case* is that a corpse cannot be regarded as property or property rights held therein.<sup>511</sup> In 1614, when this ruling was given, human corpses were considered by society as belonging to ecclesiastical jurisdiction.<sup>512</sup> However, by 1908, an Australian case, *Doodeward v Spence*, had a different dimension from the English *Haynes' case*.<sup>513</sup>

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<sup>503</sup> Clifford Meesua Sibani and Emmanuel Asia, 'The Right to Property in Nigeria: A Reflection on the Legal and Biblical Laws' (2016) 28(2) Stud Struct Develop Philos Concep 233, 236; see also Chinwe Patricia Iloka, 'Examination of the Rights of Women to Property in Nigeria' (2023) 1(3) Frontline Bar J 74; Saka Toyin Abdulrahman and Kingsley Omengala, 'Contemporary Principles of Ownership in Property Laws in the Realm of Nigeria Copyright Legislation 2022' (2023) 5(4) Intl JL Pol Soc Rev 212, 213; The Constitution Federal Republic of Nigeria 1999, s 43-44(1).

<sup>504</sup> *ibid.*

<sup>505</sup> *State v Shack* [1971] 58 NJ 297, 277 A.2d 369, 372-73.

<sup>506</sup> Kevin Gray, 'Property in Thin Air' (1991) 50(2) Cambridge LJ 252.

<sup>507</sup> *ibid* 296; see also Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 504.

<sup>508</sup> Kevin Gray, 'Property in Thin Air' (1991) 50(2) Cambridge LJ 252.

<sup>509</sup> Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 504.

<sup>510</sup> *ibid.*

<sup>511</sup> *Haynes Case* [1614] 77 ER 1389.

<sup>512</sup> *ibid.*

<sup>513</sup> *Doodeward v Spence* [1908] 6 CLR 409 (Austl).



In Spence's case, a stillborn baby with an extraordinary anomaly was preserved by Dr Donohoe, who delivered the baby.<sup>514</sup> He displayed the corpse of this baby in his office.<sup>515</sup> Sometime later, Dr Donohoe died, and Doodeward purchased the preserved baby's corpse as part of Dr Donohoe's property.<sup>516</sup> A police officer seized the preserved specimen, and an action was brought against Doodeward for regarding the human corpse as property and failing to give the deceased baby a Christian burial.<sup>517</sup> This case again raised the issue of whether a corpse can be regarded as property.

It was held that a corpse is considered property where some skills have been employed to differentiate it from an ordinary corpse, for instance, by mummifying the corpse.<sup>518</sup> This proves that property is defined based on technological advancement, including the moral and legal circumstances of a particular jurisdiction.<sup>519</sup> Moreover, in recent times, cadavers are commonly used as specimens for medical education and, hence, can be regarded as property.<sup>520</sup> This demonstrates that the definition of property changes with time.<sup>521</sup> Therefore, through the courts and legislation, a society determines what constitutes property based on what is socially acceptable in that jurisdiction.<sup>522</sup> This description of property is known as the socially constructivist approach.<sup>523</sup>

From all the definitions of property analysed in this chapter, it can be deduced that there is no general definition of property, just as Gray pointed out in his essay.<sup>524</sup> Although all the definitions have strengths, some are preferred over others in this research. For instance, the highest rights definition by Cowell made it explicit that property relates to movable assets, which is relevant to this research.<sup>525</sup> However, just like Blackstone's exclusionist description of property, it excludes other persons and their rights from the property of another without any exception, which makes them inflexible.<sup>526</sup> Therefore, the highest rights and exclusionist

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<sup>514</sup> *ibid.*

<sup>515</sup> *ibid.*

<sup>516</sup> *ibid.*

<sup>517</sup> *ibid.*

<sup>518</sup> *ibid.*

<sup>519</sup> Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 504.

<sup>520</sup> *ibid* 509.

<sup>521</sup> Kevin Gray, 'Property in Thin Air' (1991) 50(2) Cambridge LJ 252, 296; see also Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 504.

<sup>522</sup> *ibid.*

<sup>523</sup> *ibid.*

<sup>524</sup> Kevin Gray, 'Property in Thin Air' (1991) 50(2) Cambridge LJ 252, 296.

<sup>525</sup> David J Seipp, 'The Concept of Property in the Early Common Law' (1994) 12(1) L Hist Rev 29, 81.

<sup>526</sup> G E Aylmer, 'The Meaning and Definition of 'Property' in Seventeenth Century England' (1980) 86 Past & Present 87, 93; see also David J Seipp, 'The Concept of Property in the Early Common Law'

meanings of property will not be adopted in their strict sense as the definition of property in this study. In other words, while it is affirmed in this research that a person can have exclusive control of a property and possess the right to exclude others from the property, this control and right are subject to restrictions or exceptions. That is, the rights are not absolute. Thus, this research aligns with the modern usage of the exclusionist description of property.

This research also leans towards a combination of social constructivists and the bundle of rights ideologies of property.<sup>527</sup> This is because property can hardly exist independently of its rights, and in many jurisdictions, the law stipulates what rights an individual or body corporate has.<sup>528</sup> In defining property, these two descriptions reference rights over a thing or object rather than describing the object itself.<sup>529</sup> Thus, to determine whether a person owns a thing or an object, the rights to the object have to be examined.<sup>530</sup> In other words, a 'thing' can be determined through the expression of rights and relations. This means that in deciding whether e-WRs are property, the rights and relations associated with parties to e-WR transactions will establish if they are property. The statutes and courts in Nigeria then define these rights.<sup>531</sup>

### 3.2.1. Types of Property

This section of the research will evaluate the types of property available in commercial transactions to determine how they affect e-WRs. In this section, property is classified into two broad categories. The first set comprises public and private property, while the second group includes real and personal property.

#### 3.2.1.1. Public and Private Property

It has been argued that public and private property are classifications of property.<sup>532</sup> Just as it is difficult to have a definite definition for property, it is also challenging to have a universal

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(1994) 12(1) L Hist Rev 29, 80; John Cowell, *The Interpreter* (1<sup>st</sup> edn, Scolar 1607); William Blackstone, *Commentaries on the Laws of England* (1<sup>st</sup> edn, Clarendon 1765).

<sup>527</sup> Kevin Gray, 'Property in Thin Air' (1991) 50(2) Cambridge LJ 252, 296; see also Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1913) 23(1) Yale LJ 16, 23; Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 496.

<sup>528</sup> *United States v Craft* [2002] 535 US 274.

<sup>529</sup> Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 482; see also Kevin Gray, 'Property in Thin Air' (1991) 50(2) Cambridge LJ 252.

<sup>530</sup> Kevin Gray, 'Property in Thin Air' (1991) 50(2) Cambridge LJ 252, 296; see also Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1913) 23(1) Yale LJ 16, 23; Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 496.

<sup>531</sup> *ibid*; see also *United States v Craft* [2002] 535 US 274, 278-79.

<sup>532</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015).

meaning for the concept of private and public property.<sup>533</sup> Nevertheless, private property can be described as property whose ownership is traced to natural or artificial persons.<sup>534</sup> Property in land, houses, cars, animals, televisions, cheques, and others can be construed as private property so long as the ownership of these items is vested in private persons.<sup>535</sup> In contrast, public property is one that the ownership belongs to the government of a particular jurisdiction.<sup>536</sup> This kind of property could be aircraft, parks, museums and others.<sup>537</sup>

This property classification is sometimes ambiguous because it is hard to determine the kind of property associated with private persons or the government, as private individuals can own parks, museums, aircraft, and others. Also, the ownership of cars, lands, and animals, among others, can be traced to the government. For instance, the subject of the English *swan case* of 1593 was the ownership of swans.<sup>538</sup> It was to determine whether the swans in the County of Dorset belonged to Queen Elizabeth I, that is, the government (the public), or whether they belonged to Lady Joan Young and Thomas Saunger, both private individuals.<sup>539</sup> It was held that only wild swans, that is, those that have gained natural liberty and swim in common rivers, belonged to the crown.<sup>540</sup> This implies that private individuals could own swans if they were not wild or swimming in common waters.<sup>541</sup>

Furthermore, it is argued that the classification of property as private or public depends on the jurisdiction. This aligns with the social constructivist description of property, which states that a society determines property through the courts and statutes.<sup>542</sup> For example, in Nigeria, the Land Use Act confers all lands in the 36 states of Nigeria and the Federal Capital Territory on the state.<sup>543</sup> The state holds the land in trust through the governors to benefit all Nigerians.<sup>544</sup> Therefore, all lands in Nigeria are public property held on behalf of private persons who can

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<sup>533</sup> Jeremy Waldron, 'What is Private Property' (1985) 5 (3) Oxford J Leg Stud 313.

<sup>534</sup> Michael Weir, 'Concepts of Property' (2001) 7(1) The National Legal Eagle 16, 17.

<sup>535</sup> *ibid.*

<sup>536</sup> Michael Weir, 'Concepts of Property' (2001) 7(1) The National Legal Eagle 16, 17.

<sup>537</sup> *ibid.*

<sup>538</sup> *The Case of Swans* [1572] EngR 403; see also John Cowell, *The Interpreter* (1<sup>st</sup> edn, Scolar 1607); G E Aylmer, 'The Meaning and Definition of 'Property' in Seventeenth Century England' (1980) 86 Past & Present 87, 90.

<sup>539</sup> *The Case of Swans* [1572] EngR 403.

<sup>540</sup> *ibid.*

<sup>541</sup> *ibid.*

<sup>542</sup> Kevin Gray, 'Property in Thin Air' (1991) 50(2) Cambridge L J 252, 296; see also Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 504.

<sup>543</sup> Land Use Act 1978, preamble. (Nigeria)

<sup>544</sup> *ibid.*

be allotted the land for up to 99 years, after which the land reverts to the government.<sup>545</sup> Thus, land is deemed public property in Nigeria because it is a leasehold for private individuals.<sup>546</sup>

A different school of thought holds that since land is held in trust for Nigerians, under the law of trust, private individuals invariably own the land as beneficiaries, especially since the government is only a trustee and not the settlor who created the trust.<sup>547</sup> Thus, this philosophy holds that lands in Nigeria are considered private property. However, the form of trust held by the Nigerian government is not an express trust as parties to the trust did not intentionally create it; instead, it qualifies as a resulting and constructive trust.<sup>548</sup> This is because it arises through the operation of law, and the property reverts to the transferor, the government, after 99 years.<sup>549</sup> This further buttresses the point that public and private property are so similar that it is sometimes difficult to differentiate them.

Also, the power of the Nigerian government to revoke the title to any land allocated to private individuals means that a land is public property.<sup>550</sup> Whereas, in countries like England and Wales, land can be either freehold or leasehold.<sup>551</sup> A freehold implies that private individuals can fully own lands.<sup>552</sup> This was not the case in early English law, where all lands belonged to the reigning monarch, and private individuals could not own lands.<sup>553</sup>

In terms of e-WRs, it could be easier to classify them as private property rather than public to facilitate their use as collateral for loans, especially as creditors can quickly recover their funds upon default in loan repayment, as opposed to passing the liability to the government, where there is a chance of bureaucracy. Nevertheless, it is submitted that this property classification is unsuitable for e-WRs. This is because it is sometimes challenging to distinguish between public and private property, which could pose a confusion in using e-WRs.

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<sup>545</sup> Namnso Bassey Udoekanem, David Odegwu Adoga and Victor Onyema Onwumere, 'Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectations' (2014) 4(21) J Environ Earth Sci 182, 186.

<sup>546</sup> *ibid.*

<sup>547</sup> Patrick Parkinson, 'Reconceptualising the Express Trust' (2002) 61(3) Cambridge LJ 657.

<sup>548</sup> Remigius N Nwabueze, 'Equitable Bases of the Nigerian Land Use Act' (2010) 54(1) J Afr L 119, 120.

<sup>549</sup> *ibid.*

<sup>550</sup> Land Use Act 1978, s 28, s 38 (Nigeria); see also Namnso Bassey Udoekanem, David Odegwu Adoga and Victor Onyema Onwumere, 'Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectations' (2014) 4(21) J Environ Earth Sci 182, 183.

<sup>551</sup> Antonia Layard, 'Privatising Land in England' (2019) 11(2) J Propy Plann Environ L 151.

<sup>552</sup> *ibid.*

<sup>553</sup> G E Aylmer, 'The Meaning and Definition of 'Property' in Seventeenth Century England' (1980) 86 Past & Present 87, 88.

### 3.2.1.2. Real and Personal Property: Terminology

Real and personal property are two major classifications of property.<sup>554</sup> In most civil law jurisdictions like Germany, real property is called immovable property, while personal property is known as movable property.<sup>555</sup> Common law jurisdictions like Australia refer to this property classification as real and personal property.<sup>556</sup> However, in English law, real property is obsolete. It is now called land, while its opposite remains personal property.<sup>557</sup>

Nigeria uses the terminologies interchangeably.<sup>558</sup> The Nigerian Constitution, which is the grundnorm, uses the term movable and immovable property.<sup>559</sup> It also recognises the term land.<sup>560</sup> The Secured Transactions in Movable Assets Act 2017 (STMAA), Nigeria's secured transactions law, utilises the term movable assets and its opposite as real property.<sup>561</sup> Nigerian scholars often use the terms personal and real property.<sup>562</sup> Although this implies that this research can use personal property interchangeably as movable property or movable asset, this study will adopt the term 'personal property' for consistency.

Also, while references have been made to land, real property or immovable property in the previous sections of this thesis, this research focuses on personal property because, by the nature of WRs in general, e-WRs cannot be classified as immovable property.

### 3.3. The Concept of Personal Property

Under STMAA, personal property is any tangible or intangible property other than real property.<sup>563</sup> Examples of personal property are jackets, agricultural equipment like tractors,

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<sup>554</sup> Michael Weir, 'Concepts of Property' (2001) 7(1) The National Legal Eagle 16.

<sup>555</sup> Andreas Rahmatian, 'A Comparison of German Movable Property Law with English Personal Property Law' (2010) 3(1) J Comp L 197, 248; see also Peter Sparkes, 'Drafting, (and Redrafting) Comparative Property Questionnaires' (2017) 13(3) Utrecht L Rev 142, 147.

<sup>556</sup> Michael Weir, 'Australian Real Property Law, Adrian J Bradbrook, Susan V McCallum & Anthony P Moore, The Law Book Company Limited, 1991' (1991) 3(2) Bond L Rev 298.

<sup>557</sup> Peter Sparkes, 'Drafting, (and Redrafting) Comparative Property Questionnaires' (2017) 13(3) Utrecht L Rev 142, 147; see also Andreas Rahmatian, 'A Comparison of German Movable Property Law with English Personal Property Law' (2010) 3(1) J Comp L 197.

<sup>558</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019).

<sup>559</sup> The Constitution of the Federal Republic of Nigeria 1999, s 43-44.

<sup>560</sup> *ibid* s 297(2).

<sup>561</sup> Secured Transactions in Movable Assets Act 2017, s. 63.

<sup>562</sup> Iyare Otabor-Olubor, 'Stuck in a Time Warp: Security Interests in Chattel Mortgages and the Bills of Sale Legislation in Nigeria' (2015) 26(11) Intl Company & Com L Rev 345; see also Betha Igbinosun, 'Security Interests in Personal Property and the Nigerian Secured Transactions in Movable Assets Act 2017: An Appraisal' (2020) 64(3) J Afr L 357; Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019).

<sup>563</sup> Secured Transactions in Movable Assets Act 2017, s 63. (Nigeria).

goods subject to commercial transactions (chattels) like crops when they are not attached as part of a land, bank accounts, account receivables, inventory, raw materials, and others.<sup>564</sup> This implies that personal property is divided into tangible and intangible property. Some scholars refer to this as things or choses in possession and things or choses in action, respectively.<sup>565</sup> However, the more modern usage of the terminology is tangible and intangible property.<sup>566</sup> This will be adopted in this thesis.

Tangible property are personal property that can be seen or touched because they are corporeal.<sup>567</sup> For a long time, the law recognised majorly tangible property, which was believed to make ownership and possession of property easier.<sup>568</sup> This was because it would be obvious to see who has the right to exercise exclusive control over the property.<sup>569</sup> However, it is a rebuttable presumption that only tangible property can make exclusive control easily detectable.<sup>570</sup>

In contrast, intangible property are incorporeal.<sup>571</sup> They are the residual category of personal property after every tangible property is excluded.<sup>572</sup> Intangible property encompasses modern innovations, and organisations these days have more intangible property than tangible.<sup>573</sup> The concept of intellectual property is an excellent example of intangible property. The rights to recover a debt and the shares of a company are also examples of intangible property.<sup>574</sup>

It is equally important to observe that personal property can be tangible while having elements of intangibility. For instance, a book is a tangible property, but the writer of the book has intellectual property right over the property, which is intangible property.<sup>575</sup> It is crucial to

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<sup>564</sup> Betha Igbinosun, 'Security Interests in Personal Property and the Nigerian Secured Transactions in Movable Assets Act 2017: An Appraisal' (2020) 64(3) J Afr L 357, 358; see also Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 13.

<sup>565</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 13; see also Michael Weir, 'Concepts of Property' (2001) 7(1) The National Legal Eagle 16, 18; Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 631.

<sup>566</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 14.

<sup>567</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 631; see also Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 13; Michael Weir, 'Concepts of Property' (2001) 7(1) The National Legal Eagle 16, 18.

<sup>568</sup> *ibid.*

<sup>569</sup> *ibid.*; see also Michael J R Crawford, *An Expressive Theory of Possession* (Hart 2020) 61.

<sup>570</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 631.

<sup>571</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 14.

<sup>572</sup> *ibid.*

<sup>573</sup> *ibid.*

<sup>574</sup> Michael Weir, 'Concepts of Property' (2001) 7(1) The National Legal Eagle 16, 19.

<sup>575</sup> *ibid.*

ascertain whether e-WRs are classified as tangible property, intangible property or a mixture of both. This will determine how they can be treated in commercial transactions in Nigeria, particularly regarding farmers using them as collateral.

In discovering the type of personal property e-WRs are, it is relevant to determine the kind of personal property paper WRs are since paper WRs have existed much longer than e-WRs, as indicated in sections 2.3 and 2.3.1 of this study. Ordinarily, paper WRs are argued to be tangible property because of their corporeal nature, while e-WRs are said to be intangible because they cannot be physically touched. However, WRs are construed for what they represent rather than what they look like.<sup>576</sup> That is, WRs serve not only as evidence of the rights to claim the goods in the warehouse but also embody those rights.<sup>577</sup> Hence, they are classified as documentary intangibles.<sup>578</sup>

Recognising a document as a documentary intangible means it can be possessed.<sup>579</sup> This is because the party in possession of the document has a proprietary interest in the document and can transfer the rights over the document to another party.<sup>580</sup> Thus, paper WRs will qualify as documentary intangible even though they are physical documents.

In many jurisdictions like Nigeria, Canada, and the United States of America (the United States), intangible property such as e-WRs cannot be possessed.<sup>581</sup> However, since it has been submitted in the above paragraph that WRs are construed for what they represent rather than what they look like, making them documentary intangibles, it equally implies that although e-WRs are abstract, they qualify as documentary intangibles, and thus, can be possessed.<sup>582</sup> It is therefore contended in this research that the notion that electronic trade documents like e-WRs cannot be possessed because they are not corporeal is outdated, and the world has advanced into a technological age.<sup>583</sup> Based on this argument, it is necessary to examine the elements of property rights, ownership, and possession to explain the position of this thesis

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<sup>576</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 626.

<sup>577</sup> *ibid.*

<sup>578</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 14, 117.

<sup>579</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 626.

<sup>580</sup> *ibid.*

<sup>581</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 179; see also Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 31.

<sup>582</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 626.

<sup>583</sup> Tristan Sherliker, 'No Liens Over Electronic Data: Court of Appeal Keeps Equity Out of the Digital World - *Your Response Limited v Datateam Business Media Limited*' (2014) 36(7) Eur Intell Prop Rev 465.

regarding the ability to possess e-WRs as documentary intangibles, even though they are abstract in nature.

### 3.3.1. Ownership and Possession of Personal Property

Although ownership and possession are different, they have some similarities.<sup>584</sup> They are similar because they explain the concept of control over things and the process of allocating property among people in an organised society.<sup>585</sup> Both concepts exclude others from the control of a property.<sup>586</sup> For one to possess a property, they must have enough control over the property, the right to exclude others from the property and the power to signal to other people their intention to exclude others from such property.<sup>587</sup> Similarly, ownership is the exclusive control over a property, enforceable by law.<sup>588</sup>

Unlike possession, ownership establishes the property's history to determine whether anybody claiming to have a legally enforceable right over the property obtained it legitimately.<sup>589</sup> Thus, ownership is a more reliable means of establishing the right to a property than possession.<sup>590</sup> This also implies that within the interest of ownership lies other rights like the right to possess the asset, transfer, destroy or deal with the property in any way that suits the owner.<sup>591</sup> Accordingly, possession exists within ownership.<sup>592</sup>

Another difference is that ownership of a property does not require actual control of the property or for the owner to perform any action that will signify that they have actual control of the property.<sup>593</sup> Conversely, the possessor of a property must perform an act which signals

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<sup>584</sup> Thomas W Merrill, 'Ownership and Possession' in Yun-chien Chang, *Law and Economics of Possession* (CUP 2015) 9.

<sup>585</sup> Thomas W Merrill, 'Formalization, Possession, and Ownership' (2017) 6 Brigham-Kanner Prop Right Conf J 113; see also Thomas W Merrill, 'Ownership and Possession' in Yun-chien Chang, *Law and Economics of Possession* (CUP 2015) 9.

<sup>586</sup> Thomas W Merrill, 'Ownership and Possession' in Yun-chien Chang, *Law and Economics of Possession* (CUP 2015) 17; see also the exception in section 3.2 of this chapter, which states that exclusion of others from the control of a property is usually limited by factors such as the government.

<sup>587</sup> Thomas W Merrill, 'Ownership and Possession' in Yun-chien Chang, *Law and Economics of Possession* (CUP 2015) 17.

<sup>588</sup> H A Birchmore, 'What is a Good Title' (1953) 15(3) Ga B J 281; see also McCune Gill, 'What is Title' (1947) 42 (3) Brief 161; Thomas W Merrill, 'Formalization, Possession, and Ownership' (2017) 6 Brigham-Kanner Prop Right Conf J 113, 115.

<sup>589</sup> Thomas W Merrill, 'Ownership and Possession' in Yun-chien Chang, *Law and Economics of Possession* (CUP 2015) 10.

<sup>590</sup> *ibid.*

<sup>591</sup> Stephanie M Stern and Daphna Lewinsohn-Zamir, *The Psychology of Property Law* (NYUP 2020) 21.

<sup>592</sup> *ibid.*

<sup>593</sup> Thomas W Merrill, 'Ownership and Possession' in Yun-chien Chang, *Law and Economics of Possession* (CUP 2015) 17.



actual control of the property.<sup>594</sup> That is, the property owner is not required to communicate an intention to be in control of the property, whereas, in possession, such communication is required.<sup>595</sup> Being the property owner gives them the right to determine who takes possession of it.<sup>596</sup> In addition, it is possible to own a property without ever possessing it, and it is equally possible for one to possess a property without owning it.<sup>597</sup>

Notwithstanding the above, some jurisdictions hold a different view of the concepts of ownership and possession.<sup>598</sup> In civil law jurisdictions like Germany, ownership, an extensive property right, is distinguished from possession, which is perceived as inadequate to constitute property rights.<sup>599</sup> Whereas, in common law jurisdictions like Nigeria, possession has some content of ownership, in that it is enough to constitute a general property right over the thing possessed.<sup>600</sup> Hence, it creates an entitlement for the possessor. For example, in the case of *Armory v Delamirie*, a boy found a ring and took it to a jeweller to inquire what the stone on the ring was.<sup>601</sup> The jeweller took out the stone and returned an empty ring to him.<sup>602</sup> When the boy demanded the stone on the ring, which the jeweller refused, he brought an action against the jeweller for seizing the stone.<sup>603</sup>

It was held that even though the boy does not acquire ownership of the property by a mere finding of the property, he has a sufficient right to keep the property against everyone except the rightful owner of such property.<sup>604</sup> Therefore, Pratt CJ ruled that the boy is entitled to the ring with its stone and damages awarded to him.<sup>605</sup> This case demonstrates that in common law jurisdictions, a person in possession of a property has the right to exclude others on the property as though they are the owner of the property but cannot exclude the actual owner whose right supersedes theirs.<sup>606</sup> Thus, the protection of the possessor of such property

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<sup>594</sup> *ibid.*

<sup>595</sup> *ibid.*

<sup>596</sup> *ibid.*

<sup>597</sup> *ibid.*

<sup>598</sup> *ibid* 11.

<sup>599</sup> Andreas Rahmatian, 'A Comparison of German Movable Property Law with English Personal Property Law' (2010) 3(1) J Comp L 197, 205.

<sup>600</sup> Robin Hickey, 'Possession as a Source of Property at Common Law' in Eric Descheemaeker (ed), *The Consequences of Possession* (EUP 2017) 77.

<sup>601</sup> *Armory v Delamirie* [1722] EWHC J94; 1 Strange 505; although the *Armory v Delamirie* case is an English case, it is relevant in Nigeria because it constitutes the finder's right, which is applicable in Nigeria as a received English law by virtue of section 32(1) Interpretation Act 2004 (Nigeria); see also The Constitution of the Federal Republic of Nigeria 1999, s 44(2)(k).

<sup>602</sup> *Armory v Delamirie* [1722] EWHC J94; 1 Strange 505.

<sup>603</sup> *ibid.*

<sup>604</sup> *ibid.*

<sup>605</sup> *ibid.*

<sup>606</sup> Robin Hickey, 'Possession as a Source of Property at Common Law' in Eric Descheemaeker (ed), *The Consequences of Possession* (EUP 2017) 77, 78.

emanates from the fact that they have indirectly voluntarily undertaken to keep the property safe for the property owner.<sup>607</sup>

While ownership can involve tangible or intangible property, the concept of possession does not include intangible property in some common law jurisdictions like Nigeria.<sup>608</sup> Legally recognising only tangible property as the type of property that can be possessed would make it difficult for commercial trade and transactions to be paperless, which would affect many businesses in this digital era when paper documents, which are tangible, are becoming less popular.<sup>609</sup>

Since, unlike civil law jurisdictions, there is a strong relationship between ownership and possession in common law countries, and if ownership applies to tangible and intangible property, why can intangible property not be possessed?<sup>610</sup> It is contended that the features of intangible property and the elements of possession should be evaluated to enable tangible and intangible property to have the same legal effect in terms of possession instead of making the inability of intangible property to be possessed a strict rule in some common law jurisdictions like Nigeria.<sup>611</sup>

The inability to possess intangible property like electronic trade documents was a problem in the United Kingdom. For instance, The Court of Appeal held in the case of *Your Response Ltd v Datateam Business Media Ltd* that intangible property, including electronic documents and electronic databases, cannot be possessed.<sup>612</sup> Although this case dealt with the issue of lien in intangible property, the decision of the case equally applies to other situations that concern the treatment of intangible property rights concerning possession.<sup>613</sup> This decision of the Court of Appeal differed from the judgment of the court of first instance, which held that intangible

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<sup>607</sup> *ibid* 80.

<sup>608</sup> Johan David Michels and Christopher Millard, 'The New Things: Property Rights in Digital Files?' (2022) 81(2) Cambridge LJ 323, 338; see also Thomas W Merrill, 'Formalization, Possession, and Ownership' (2017) 6 Brigham-Kanner Prop Right Conf J 113, 115.

<sup>609</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 1.4.

<sup>610</sup> Robin Hickey, 'Possession as a Source of Property at Common Law' in Eric Descheemaeker (ed), *The Consequences of Possession* (EUP 2017) 77; see also Andreas Rahmatian, 'A Comparison of German Movable Property Law with English Personal Property Law' (2010) 3(1) J Comp L 197, 207; Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 1.8.

<sup>611</sup> Sarah Green and John Randall, *The Tort of Conversion* (Hart 2009).

<sup>612</sup> *Your Response Ltd v Datateam Business Media Ltd* [2014] EWCA Civ 281.

<sup>613</sup> Tristan Sherliker, 'No Liens Over Electronic Data: Court of Appeal Keeps Equity Out of the Digital World - *Your Response Limited v Datateam Business Media Limited*' (2014) 36(7) Eur Intellect Prop Rev 465.

property can be possessed.<sup>614</sup> The lower court's judgment recognised the modern trends in property law where different kinds of assets could arise from personal property.<sup>615</sup>

Furthermore, consideration given to other types of property in modern times, which informed the lower court's decision in the above case, resonates with the meaning ascribed to possession by Justice Arden in the case of *Mainline Private Hire Ltd v Nolan*.<sup>616</sup> The judge emphasised actual possession of property rather than physical possession.<sup>617</sup> This clause on possession accommodates other kinds of goods like electronic trade documents, which are regarded as property in modern times.<sup>618</sup>

Indeed, the original notion of possession under English law is that it has to be physical with an element of exclusivity in terms of control.<sup>619</sup> That is, possession referred to factual control over the tangible property with an intention to exercise control or exclude others from exercising control over the property.<sup>620</sup> Regarding physical possession, which is the first element of possession, it was contended that tangible property is emphasised because it was the type of property available and of value many years ago.<sup>621</sup> However, with the changing times and modern trends in commercial law, other kinds of property, like digital property, among others, emerged.<sup>622</sup>

Therefore, the Court of Appeal decision in *Your Response Ltd's* case would have to be reviewed in line with the Electronic Trade Documents Act, which came into force in September 2023 and applies to England, Wales, Scotland and Northern Ireland.<sup>623</sup> This statute recognises the possession of electronic trade documents, making commercial transactions more manageable in the United Kingdom since many transactions are done electronically.<sup>624</sup>

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<sup>614</sup> *ibid.*

<sup>615</sup> *ibid.*

<sup>616</sup> *Mainline Private Hire Ltd v Nolan* [2011] EWCA 189.

<sup>617</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 630.

<sup>618</sup> *ibid.*

<sup>619</sup> *J A Pye (Oxford) Ltd v Graham* [2003] 1 AC 419.

<sup>620</sup> Stephanie M Stern and Daphna Lewinsohn-Zamir, *The Psychology of Property Law* (NYUP 2020) 21; see also Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 33.

<sup>621</sup> Sarah Green, 'To Have and to Hold? Conversion and Intangible Property' (2008) 71(1) Mod L Rev 114, 115.

<sup>622</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 630.

<sup>623</sup> Electronic Trade Documents Act 2023, s 8(1) (United Kingdom).

<sup>624</sup> Electronic Trade Documents Act 2023, s 3(1) (United Kingdom); see also Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 1.4.

Therefore, other jurisdictions like Nigeria should consider reviewing their law to meet modern commercial trends, which enable the possession of intangible property.<sup>625</sup>

### **3.3.1.1. The Proposal for the Possession of Electronic Trade Documents like Electronic Warehouse Receipts**

Section 2.5 of this thesis indicates that e-WRs perform the same function as paper WRs except that they are in electronic form and are more efficient.<sup>626</sup> Based on the analysis in section 3.3.1 above, this section proposes that electronic trade documents such as e-WRs should be possessed just like their paper counterpart. In other words, when it is said that electronic trade documents should be possessed, it implies that they should have the same legal effect of possession as their paper counterparts.<sup>627</sup> This also means that in the eyes of the law, the possession of electronic trade documents, such as e-WRs, should determine who has the right to claim the performance of the obligations associated with the electronic trade document.<sup>628</sup> Possession of electronic trade documents in this instance also signifies that the delivery of the document from one party to another will enable the transfer of the rights and all relevant entitlements associated with the documents, just as it is with paper trade documents.<sup>629</sup>

Since e-WRs are not corporeal, they should be construed as possessed where a person has adequate control over the document, which is accompanied by the necessary intention.<sup>630</sup> 'Control' of the e-WRs in this context means factual control of the document in its literal sense, which involves using, transferring or disposing of the e-WR, irrespective of whether the person dealing with the document in this manner has the legal right to use, transfer or dispose of the document by way of sell, or as a gift.<sup>631</sup> Using the document in this regard entails retaining the

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<sup>625</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 633.

<sup>626</sup> *ibid* 633.

<sup>627</sup> Law Commission of England and Wales, 'Electronic Trade Documents: Summary' (*Law Commission*, 2022) 15 <<https://s3-eu-west-2.amazonaws.com/cloud-platform-e218f50a4812967ba1215eaecede923f/uploads/sites/30/2022/03/Electronic-Trade-Documents-summary-of-final-report-.pdf>> accessed 15 July 2024.

<sup>628</sup> *ibid*.

<sup>629</sup> *ibid*.

<sup>630</sup> Law Commission of England and Wales, 'Electronic Trade Documents: Summary' (*Law Commission*, 2022) 14 <<https://s3-eu-west-2.amazonaws.com/cloud-platform-e218f50a4812967ba1215eaecede923f/uploads/sites/30/2022/03/Electronic-Trade-Documents-summary-of-final-report-.pdf>> accessed 15 July 2024.

<sup>631</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.90.

document to cause or prevent something from happening to it.<sup>632</sup> This phrase excludes mere reading or viewing the document.<sup>633</sup>

Some standards assert that this is possible.<sup>634</sup> The Law Commission of England and Wales argued that the inability of electronic trade documents to be possessed is obsolete, inefficient, and inconsistent with today's rapidly developing digital world.<sup>635</sup> Based on this, they presented a report and draft legislation to the English Parliament to enable the legal recognition of trade documents in electronic form, such as bills of lading and bills of exchange.<sup>636</sup> The report and draft legislation made some recommendations, which were implemented in the Electronic Trade Documents Act 2023 of England and Wales.<sup>637</sup> This indicates that electronic trade documents can currently be possessed in the United Kingdom.<sup>638</sup> Although the Electronic Trade Documents Act 2023 is now in force, this research will evaluate the Law Commission report to understand the reasoning behind their conclusion that electronic trade documents should be possessed.

In chapter six of the report, the Law Commission set some criteria to test whether electronic trade documents can be legally recognised as documents that can be possessed just like their paper counterpart. The UNCITRAL Model Law on Electronic Transferable Records (MLETR) also contains some criteria.<sup>639</sup> This section examines these standards to ascertain the possibility of possessing electronic trade documents in Nigeria. Although electronic trade documents are considered here, this study focuses only on e-WRs.

One of the standards for measuring whether e-WRs should have the same legal implication of possession as paper WRs is that the information contained in e-WRs must correspond with the information on paper WRs.<sup>640</sup> Section 2.6.1 of this thesis examined the information

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<sup>632</sup> *ibid* para 6.91.

<sup>633</sup> *ibid*.

<sup>634</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.1-6.171; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 10-12.

<sup>635</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 1.5.

<sup>636</sup> Law Commission of England and Wales, 'Electronic Trade Documents' (*Law Commission*, September 2023) <<https://lawcom.gov.uk/project/electronic-trade-documents/>> accessed 15 July 2024.

<sup>637</sup> *ibid*.

<sup>638</sup> Electronic Trade Documents Act 2023, s 8(1); s 3(1) (The United Kingdom).

<sup>639</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 10-12.

<sup>640</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.16.

necessary to be included in WRs to qualify them as trade documents.<sup>641</sup> The information comprises a unique identification number, information about the depositor, and warehouse details, among others.<sup>642</sup> Since the information in e-WRs is the same as in paper WRs, a nexus is established between both forms of WRs.<sup>643</sup>

Nevertheless, it is argued that the submission that e-WRs have the same content as paper WRs is wrong because they have different components.<sup>644</sup> Prima facie, this appears to be true because, as discussed in section 2.6.1 of this thesis, paper WR contains only one component, the human-readable text, while e-WRs contain more than one component.<sup>645</sup> That is, information in human-readable form, such as in portable document format (PDF), and components comprised of encrypted data depending on the technology used by the relevant service provider.<sup>646</sup> These additional components make e-WRs safer than paper WRs.<sup>647</sup> However, under the MLETR, all the components of e-WRs are construed as a single document.<sup>648</sup>

The MLETR implied that the above is the standard for treating electronic documents when it merged all the components of an electronic document as one in its definition of electronic records.<sup>649</sup> It defined electronic records as information generated, communicated, received, or stored through electronic means, and all such information linked together to form a record, irrespective of whether they were generated contemporaneously or not.<sup>650</sup> Since all the parts of the information contained in e-WRs are construed as a single part, just as the paper WRs have a single part of human-readable information, it is submitted that e-WRs contain the same information as their paper counterparts. Consequently, e-WRs can have the same legal effect of possession as paper WRs.

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<sup>641</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; see also Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 37.

<sup>642</sup> *ibid.*

<sup>643</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.13.

<sup>644</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.17.

<sup>645</sup> *ibid.*

<sup>646</sup> *ibid.*

<sup>647</sup> *ibid.*

<sup>648</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.18; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 2.

<sup>649</sup> *ibid.*

<sup>650</sup> *ibid.*

Another element to consider in proposing that e-WRs should have the equal legal effect of possession as paper WRs is the reliability of the documents.<sup>651</sup> That is, where both forms of WRs meet the reliability criteria, they can be construed as possessable.<sup>652</sup> The reliability of e-WRs boils down to the integrity of the document.<sup>653</sup> Reliability is the element that will make e-WRs admissible in court as evidence where disputes arise from e-WR transactions.<sup>654</sup> It is also the feature that will persuade creditors to consider e-WRs as sufficient collateral to lend to farmers in Nigeria.<sup>655</sup> Thus, if it is argued that paper WRs are reliable because they have certain features, e-WRs can also be reliable documents in Nigeria where they meet those conditions.

One of the conditions for reliability is that the law has to provide an operational rule that will be a standard for assessing reliability.<sup>656</sup> This implies that data integrity should be taken seriously, and a system should be provided to measure data integrity.<sup>657</sup> Data integrity is a process of assuring and maintaining the accuracy and consistency of data to certify that the data is reliable from the point the data starts to exist to the time it is destroyed.<sup>658</sup> Data integrity will prevent unauthorised interference with the electronic system and unnecessary alteration of e-WRs.<sup>659</sup> Nigeria has enacted the Nigerian Data Protection Act 2023 (NDPA), an equivalent of the General Data Protection Regulation of the European Union (GDPR), to provide for standards that will ensure the accuracy and consistency of data.<sup>660</sup> Thus, where Nigeria adopts e-WRs, the NDPA will also apply to them to ensure data integrity.

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<sup>651</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.50.

<sup>652</sup> *ibid.*

<sup>653</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.32-6.34; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 10(1)(b).

<sup>654</sup> *ibid.*

<sup>655</sup> *ibid.*

<sup>656</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.50; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(i).

<sup>657</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.50; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(ii).

<sup>658</sup> Shmmon Ahmed, Ashok Kumar and Abdul Hafeez, 'The Importance of Data Integrity and its Regulation in Pharmaceutical Industry' (2019) 8(1) J Pharm Innov 306.

<sup>659</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.61; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 10(2).

<sup>660</sup> Nigerian Data Protection Act 2023, s 1; see also The European Union Data Protection Regulation (GDPR), Regulation (EU) 2016/679.

Furthermore, for e-WRs to be considered reliable, there has to be a measure put in place to prevent unauthorised access to the system.<sup>661</sup> Measures should be in place to ensure the security of the hardware and software used by the electronic system.<sup>662</sup> Also, an independent body should regularly and thoroughly audit the electronic system.<sup>663</sup> The extent of this audit and its regularity will help ensure the reliability of e-WRs. It is not enough for an independent body to audit the system. The regulatory body empowered by legislation to supervise the WR system has to frequently assess the reliability of the system and check how efficient the method used for reliability is.<sup>664</sup> In addition, to ensure that e-WRs are reliable, they have to comply with any other standard stipulated by the WR legislation on integrity.<sup>665</sup>

Apart from the fact that the NDPA provides for the Nigerian Data Protection Commission to ensure the security of software and hardware used for electronic systems, the Nigerian Independent Warehouse Regulatory Agency (the Agency) created by the Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022 (WR Bill) to oversee the affairs of WRs in Nigeria can equally perform the responsibility above to ensure that e-WRs are reliable.<sup>666</sup> This demonstrates that e-WRs can be as reliable, even more than paper WRs, since they are not easily lost and are less vulnerable to exposure to sensitive data, just like other electronic documents.<sup>667</sup> This implies that e-WRs meet the reliability criteria, enabling them to have the same legal implication of possession as paper WRs.

Another condition that can make e-WRs as possessable as paper WRs is divestibility.<sup>668</sup> In paper WRs, where the transferor transfers the document to another party, the transferor is

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<sup>661</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.50; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(iii).

<sup>662</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.50; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(iv).

<sup>663</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.50; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(v).

<sup>664</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.50; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(vi).

<sup>665</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.50; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(vii).

<sup>666</sup> Nigerian Data Protection Act 2023, s 4(1) and 5; see also The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 1(1).

<sup>667</sup> Phil Greenwood, 'Securing Information in Paper-efficient Environment' (2012) 3 Comput Fraud Secur 18.

<sup>668</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.111-6.113.



totally deprived of the use of the document.<sup>669</sup> 'Transfer' is utilised here in its literal sense and not legally. This is possible with e-WRs because one can transfer the document to another party, thereby depriving themselves of the total use of the document.<sup>670</sup> This is necessary because where a transferor retains control of an e-WR, it will be easy for the transferor to transfer the documents to another party.<sup>671</sup> For instance, where a transferor uses an e-WR as collateral, divestibility will prevent the transferor from transferring the same e-WR to other creditors or even selling it while it is used as security. Thus, because of divestibility, e-WRs are reliable documents, which can give them the same legal effect as paper WRs in terms of possession.

Furthermore, in paper WRs, the documents can be photocopied to record what has been transferred or disposed of for identification.<sup>672</sup> This is known as the retention of copies of the paper WRs.<sup>673</sup> Retention of copies of e-WRs is equally possible for identification purposes after the transfer or disposal of the documents.<sup>674</sup> This is not the same as retaining control of the documents upon divesting them but retaining copies to be kept for identification purposes only and for distinguishing e-WR.<sup>675</sup> Since copies of e-WRs can be retained just as paper WRs, it means that e-WRs can be as possessable as paper WRs.

Just as the identification of the document is practical, identifying the persons who can exercise control over the document is another requirement to make e-WRs capable of possession.<sup>676</sup> The electronic system usually displays persons with the authority to control the document irrespective of whether any person is exercising any control of the document at the moment.<sup>677</sup> This links the document with the credentials of the persons able to control the document, such as the address of the person (perhaps a form of internet protocol (IP) address), among other security identifications.<sup>678</sup> Since e-WRs can be uniquely linked to the persons who control or are capable of controlling them, they can have the same legal implication of possession as paper WRs.<sup>679</sup>

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<sup>669</sup> *ibid.*

<sup>670</sup> *ibid* para 6.127.

<sup>671</sup> *ibid* para 6.111.

<sup>672</sup> *ibid* para 6.139.

<sup>673</sup> *ibid.*

<sup>674</sup> *ibid* para 6.141.

<sup>675</sup> *ibid* 6.150.

<sup>676</sup> *ibid* 6.154 - 6.156.

<sup>677</sup> *ibid.*

<sup>678</sup> *ibid.*

<sup>679</sup> *ibid* 6.157.

The above feature of e-WRs does not imply that by merely looking at the document, one can identify the person(s) capable of controlling the e-WR.<sup>680</sup> Rather, it means that a person can prove their ability to control the e-WR by providing the necessary credentials where this is in issue.<sup>681</sup> That is, the person(s) in control of e-WR has to demonstrate sufficient control over it and not necessarily exclusive control over the e-WR.<sup>682</sup>

Following the analysis made in this section, e-WRs meet all the criteria in terms of content, reliability, and divestibility, among others, which will enable them to have the same legal implication of possession as paper WRs. Moreover, it was indicated in section 3.3 of this chapter that although e-WRs are abstract, they are considered documentary intangibles because WRs are construed for what they represent instead of how they appear.<sup>683</sup> The import of being a documentary intangible is that e-WRs can be possessed since the party in possession of the document has a proprietary interest in the document and can transfer the rights over the document to another party.<sup>684</sup> Therefore, there is no reason why e-WRs should not be recognised as possessable in the eyes of the law, just as paper WRs.

Having established that e-WRs should be capable of possession just as their paper equivalents, common law jurisdictions like Nigeria, which do not yet recognise the possession of intangible assets, should consider the idea that sufficient 'control' of electronic trade documents like e-WRs has the same legal implication as possession of their paper equivalent. In other words, they should consider reforming their notion that electronic trade documents cannot be possessed. Accordingly, Nigeria should strongly consider this proposal, especially as the WR Bill has not yet been passed into law.

Since the notion of ownership and possession of e-WRs has been examined in this section and section 3.3.1, it is essential to evaluate how e-WRs affect third parties in e-WR transactions. This is important because one of the aims of this research is to facilitate access to finance for farmers using WRs, that is, e-WRs. Therefore, analysing how e-WRs affect third parties and who they can be enforceable against will be beneficial when determining whether e-WRs can be effectively used as collateral. This is expounded in the next section.

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<sup>680</sup> *ibid* 6.154 - 6.156.

<sup>681</sup> *ibid*.

<sup>682</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 629.

<sup>683</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 626.

<sup>684</sup> *ibid*.

### 3.3.2. Proprietary Rights in Electronic Warehouse Receipts

It has been argued that the proprietary rights associated with paper WRs and e-WRs differ.<sup>685</sup> In general, proprietary rights, equally known as rights in *rem*, are those rights that can affect a third party and can be enforced against the whole world.<sup>686</sup> Thus, its exigibility is unlimited.<sup>687</sup> The other type of right, the personal right, otherwise called rights in *personam*, is enforceable against a particular person instead of the whole world.<sup>688</sup> This distinction is relevant, especially regarding insolvency, where it would be determined whether a party has personal or proprietary rights over a property.<sup>689</sup>

It is purported that e-WRs are regarded as rights in *personam* as they are believed to be enforceable against one party alone, that is, the system user alone.<sup>690</sup> This implies that where an e-WR is utilised as collateral to obtain a loan from a creditor, and the secured borrower (grantor) goes bankrupt, the contractual rights which cover the transaction will not give rise to proprietary protection. Hence, the creditor will likely be at a loss, which could make them reluctant to avail credit to farmers using e-WRs as collateral. In contrast, it is claimed that paper WRs confer proprietary rights on the parties to the paper WR transactions regarding access to finance. This is because rights can easily move with the document; thus, in the case of insolvency, the creditor is protected.<sup>691</sup> However, this argument is rebuttable as it is based on the premise of transferability of WRs under possessory rights.

It has been proposed in section 3.3.1.1 of this chapter that Nigeria should consider the modern trends in commercial transactions by enabling electronic trade documents like e-WRs to have the same legal implication of possession as their paper equivalents.<sup>692</sup> Where this is achieved, the transferability of rights that flow from possession would not be a problem associated with e-WRs. Moreover, a school of thought attaches in *rem* rights to the property or thing, that is,

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<sup>685</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 634.

<sup>686</sup> Charlie Webb, 'Three Concepts of Rights, Two of Property' (2018) 38(2) Oxford J Leg Stud 246.

<sup>687</sup> *ibid* 258.

<sup>688</sup> *ibid*.

<sup>689</sup> Richard Calnan, 'Imposing Proprietary Rights' (2004) 12 (1) Restit L Rev 1.

<sup>690</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 632.

<sup>691</sup> *ibid*.

<sup>692</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.1 – 6.171; Electronic Trade Documents Act 2023, s 3(1) (The United Kingdom); see also Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625.

the *res* rather than the person.<sup>693</sup> This suggests that the exigibility of the rights associated with the property is made with respect to the existence and the location of the property.<sup>694</sup> Therefore, for an e-WR to be regarded as a right in *rem*, it has to be established that there is an e-WR in existence before determining the person authorised to access it.

Notwithstanding the above, assuming there are some difficulties regarding the transfer of the rights attached to an e-WR after the *res* has been proven, especially in a case of insolvency, novation could cure this problem.<sup>695</sup> Novation occurs when the rights and obligations in an agreement are transferred to a third party in a new contract.<sup>696</sup> Thus, a fresh contract between the same or different parties substitutes the old one, and all parties to the agreement must consent to the said transfer of rights and obligations. This consent could be express or implied by the conduct of the parties.<sup>697</sup>

Prima facie novation mostly applies to contractor-engineer or architectural contracts and may not be appropriate for electronic document transactions.<sup>698</sup> However, no rule limits novation from applying to transactions involving e-WRs.<sup>699</sup> An illustration of how novation could be employed in e-WR transactions is where the grantor who uses an e-WR as collateral transfers his rights over the e-WR to the creditor through a contract in the case of default in repayment of the loan sum. This would enable the creditor to sell or dispose of the e-WR and the goods it covers to recover their money. In other words, the original contract the depositor, that is, the grantor, had with the warehouse operator is replaced with a new contract, which enables the creditor to assume ownership of the goods in the warehouse to sell them and recover the loan sum. In this circumstance, all the parties to the e-WR transaction, that is, the depositor/grantor, the warehouse operator, and the creditor, will consent to this contract of transfer.

As much as novation deals with the transfer of rights, it is not to be confused with Assignment. In an assignment, the assignor does not require the consent of the assignee or any third party

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<sup>693</sup> Peter Birks, *An Introduction to the Law of Restitution* (Clarendon 1989) 49; see also Peter Birks, *Unjust Enrichment* (2<sup>nd</sup> edn, OUP 2005) 28.

<sup>694</sup> *ibid.*

<sup>695</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 632.

<sup>696</sup> Hugh Beale, *Chitty on Contracts* (35<sup>th</sup> edn, Sweet & Maxwell 2023).

<sup>697</sup> *ibid.*

<sup>698</sup> *Energy Works (Hull) Ltd v MW High Tech Projects UK Ltd* [2020] EWHC 2537 (TCC); see also *Galliford Try Infrastructure Ltd v Mott MacDonald Ltd* [2008] EWHC 1570 (TCC); (2008) 120 Con. L.R. 1.

<sup>699</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 633.

to transfer the rights to the property.<sup>700</sup> In contrast, novation requires the consent of all the parties to transfer the rights and liabilities associated with the transaction.<sup>701</sup> Also, it is possible to anticipate a novation in the future; thus, consent for any future novation can be validly given in the original contracts creating e-WR transactions.<sup>702</sup> This implies that contracts are necessary in e-WR secured transactions. This will be discussed in the next chapter.

Although novation could be expressly written, oral, or even implied, it will be beneficial to have the agreement written to clear any doubts and encourage creditors to lend to farmers, especially smallholders whose businesses could be unregistered. While this can aid the transferability of the document, it will also help transparency as all the parties to the transaction will be clearly aware of the terms and conditions of the transaction.<sup>703</sup> Furthermore, novation replaces the original contract with a new one, whereas the original contract remains in place where the assignor transfers its rights to the assignee.<sup>704</sup>

Based on the analysis in this section, creditors will be sure that the contractual rights covering their e-WR transactions will give rise to proprietary protections because the rights and liabilities relating to e-WRs can easily be transferred from one party to another. Hence, their proprietary rights will not be an issue when determining whether e-WRs can be adequately used as collateral.

Having indicated that e-WRs are property, the next section will explore whether they can be used as collateral in Nigeria.

### **3.4. The Status of Electronic Warehouse Receipts in Terms of Property that Can be Used as Collateral?**

Section 2.2.1 of this thesis, which dealt with the nature of WRs, indicated that the status of WRs in a jurisdiction would determine how they are used. This amounts to whether they are recognised as documents of title or as mere evidence of deposit. This yardstick for measuring how WRs can be dealt with applies to both paper WRs and e-WRs. However, this study will focus on e-WRs.

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<sup>700</sup> Hugh Beale, *Chitty on Contracts* (35<sup>th</sup> edn, Sweet and Maxwell 2023) [23-091, 93].

<sup>701</sup> *ibid.*

<sup>702</sup> *ibid.*

<sup>703</sup> Hugh Beale, *Chitty on Contracts* (35<sup>th</sup> edn, Sweet and Maxwell 2023) [40-063].

<sup>704</sup> Hugh Beale, *Chitty on Contracts* (35<sup>th</sup> edn, Sweet and Maxwell 2023) [23-092].

In the context of this research, and as indicated in sections 2.2.1 and 2.6.3 of this study, a document of title is a legal document which covers goods that are subject to a commercial transaction.<sup>705</sup> It serves as evidence that the person legitimately in possession of it is eligible to receive, hold and dispose of the document, including the goods it covers.<sup>706</sup> In other words, documents of title sufficiently represent the goods they cover, which means that dealing with them is equivalent to dealing with the goods they represent.<sup>707</sup> In section 2.6.3 of this thesis, documents of title were indicated to mean the same thing as transferable documents.<sup>708</sup> This implies that where e-WRs are recognised as documents of title in a jurisdiction, they can be transferred from one party to another. This means they can be transferred to another party for sale, as collateral, or as a gift.<sup>709</sup>

The Uniform Commercial Code (UCC), which applies in countries like the United States, recognises WRs as documents of title regardless of whether they are in paper or electronic form.<sup>710</sup> This means that e-WRs are transferable documents which can be used as collateral in countries like the United States. From the definition of property adopted in this research as contained in section 3.2 of this thesis, an e-WR can be recognised as property where a legal relationship can be created on it and where a person can have control of it and exclude others from it within the limits of the law.<sup>711</sup> Because e-WRs can create legal relations in the United States, such as security interests, and the person in control of the e-WR can exclude others from the e-WR, it can be deduced that e-WRs are recognised as property in the United States.<sup>712</sup> It is also inferred from this argument that e-WRs can be used as collateral in the United States. The position in some jurisdictions, such as England and Wales, is different.<sup>713</sup>

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<sup>705</sup> Henry D Gabriel, 'The UNCITRAL Model Law on Electronic Transferable Records' (2019) 24 Unif L Rev 261, 262; see also Eli Goldston and Paul J McKenzie, 'Documents of Title-Article 7 of the Uniform Commercial Code' (1962) 23 Ohio St J 280; The Uniform Commercial Code 2001 § 1—201(16).

<sup>706</sup> *ibid.*

<sup>707</sup> *ibid.*

<sup>708</sup> Henry D Gabriel, 'The UNCITRAL Model Law on Electronic Transferable Records' (2019) 24 Unif L Rev 261, 262.

<sup>709</sup> *ibid.*

<sup>710</sup> The Uniform Commercial Code 2001 § 1—201(16); see also The Uniform Commercial Code 2003, § 7-201-210.

<sup>711</sup> Kevin Gray, 'Property in Thin Air' (1991) 50(2) Cambridge LJ 252, 296; see also Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1913) 23(1) Yale LJ 16, 23-24; Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 485-96; David J Seipp, 'The Concept of Property in the Early Common Law' (1994) 12(1) L Hist Rev 29, 80; John Cowell, *The Interpreter* (1<sup>st</sup> edn, Scolar 1607).

<sup>712</sup> The Uniform Commercial Code 2001 § 1—201(16); see also The Uniform Commercial Code 2003, § 7-201-210.

<sup>713</sup> *Natixis SA v Marex Financial & Anor* [2019] EWHC 2549 (Comm).

Although English law recognises the usage of e-WRs under their Electronic Trade Documents Act 2023, the status of e-WRs remains the same as paper WRs.<sup>714</sup> For example, in the case of *Natixis SA v Marex Financial & Anor*, a bank claimed damages against Marex, a commodities broker, and another defendant, a warehouse provider, over a breach of purchase contracts due to a forged WR.<sup>715</sup> This breach subsequently led to a failure to deliver and give the bank a good title in the WR. Therefore, in this case, one of the issues for determination was whether WRs are documents of title under English law.<sup>716</sup>

It was held that under English law, WRs are not considered documents of title.<sup>717</sup> Thus, a bailment is the only legal relationship between the warehouse operator and any person with possessory right over the goods, including the depositor.<sup>718</sup> A bailment is the relationship between a bailor, who can transfer possessory rights concerning goods to another party, the bailee, who keeps the goods safe or for any other stipulated purpose.<sup>719</sup>

Following the inference made from the definition of property in section 3.2 of this thesis, e-WRs could be recognised as property in English law since a bailment relationship is created; and a bailor, that is, the depositor of the goods in the warehouse, has the right to exclude others from the e-WR and the goods it covers. Nevertheless, this has to be expressly recognised by the laws in England and Wales.

Based on the judgment in the *Natixis SA* case, e-WRs in English law merely serve as evidence of goods deposited in the warehouse, meaning they cannot be used as collateral. The principle in the *Natixis SA* case is more relevant today than that of the *Niru Battery Manufacturing Co v Milestone Trading Ltd* case, which indicated that some English courts recognised WRs as documents of title.<sup>720</sup> In other words, the *Natixis SA* case remains the most relevant case in English law regarding the significance of WRs, including e-WRs. Therefore, in countries like England and Wales, WRs, whether paper WRs or e-WRs can be defined as documents that a warehouse keeper issues as proof that the goods in the warehouse are kept under the name

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<sup>714</sup> English Law in here refers to the laws of England and Wales; see also Electronic Trade Documents Act 2023, ss 1; 2; 3(2).

<sup>715</sup> *Natixis SA v Marex Financial & Anor* [2019] EWHC 2549 (Comm).

<sup>716</sup> *ibid.*

<sup>717</sup> *ibid* 227-49; see also *Impala Warehousing and Logistics (Shanghai) Co. Ltd v Wanxiang Resources (Singapore) Pte. Ltd* [2015] EWHC 811 (Comm).

<sup>718</sup> *Natixis SA v Marex Financial & Anor* [2019] EWHC 2549 (Comm) 227-249.

<sup>719</sup> Norman Palmer, 'The Role of Bailment in Cultural Property Claims' (2014) 19 (3) *Art Antiq L* 197, 198; see also Borrie Gordon and Aubrey L Diamond, *The Consumer, Society and the Law* (Penguin 1973).

<sup>720</sup> *Niru Battery Manufacturing Co v Milestone Trading Ltd* [2003] EWCA Civ 1446, [2004] QB 985.

and disposal of the person whose name is written on the WR.<sup>721</sup> The warehouse operator holds the goods as a bailee while the depositor is the bailor.<sup>722</sup>

Apart from the ability to transfer e-WRs from person to person and use them as collateral, the advantage of countries that recognise e-WRs as documents of title is that they can also use them as evidence of deposit.<sup>723</sup> In contrast, jurisdictions that do not consider e-WRs as documents of title can only use e-WRs as evidence of deposit and nothing more.<sup>724</sup> Since the implication of e-WRs as documents of title has been exemplified in countries like the United States, while the import of e-WRs as simple evidence of deposit has been demonstrated in England and Wales, the next section will evaluate the significance of e-WRs in Nigeria.

### 3.4.1. The Significance of Electronic Warehouse Receipts in Nigerian Law

It was indicated in section 3.2 of this chapter that English Law hugely influences the Nigerian legal system.<sup>725</sup> Therefore, it would be easy to assume that the status of e-WRs in Nigeria would be the same as in English law. However, this is not the case. Unlike English law, the position of WR in Nigeria, whether paper WRs or e-WRs, has not been established by law. Nonetheless, this could be deduced from the WR Bill.<sup>726</sup> The interpretation section of the Bill defined a WR as a document of title that specifies the quality and quantity of goods stored in the warehouse, and such receipt could be negotiable or non-negotiable.<sup>727</sup> It is uncertain whether WRs, as used in the Bill, represent paper WRs, e-WRs or both. Nevertheless, it is inferred from the WR Bill that if Nigeria adopts e-WRs, they would be documents of title.<sup>728</sup>

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<sup>721</sup> Geoffrey Wynne and Simon Cook, 'Warehouse Receipts Past, Present and Future: Part 1' (1998) 17(1) *Intl Bank Financ L* 8, 9; see also Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 3.41.

<sup>722</sup> Geoffrey Wynne and Simon Cook, 'Warehouse Receipts Past, Present and Future: Part 1' (1998) 17(1) *Intl Bank Financ L* 8, 9.

<sup>723</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 3; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) xii.

<sup>724</sup> *Natixis SA v Marex Financial & Anor* [2019] EWHC 2549 (Comm); see also *Impala Warehousing and Logistics (Shanghai) Co. Ltd v Wanxiang Resources (Singapore) Pte. Ltd* [2015] EWHC 811 (Comm).

<sup>725</sup> Wisdom Okereke Anyim, 'Research Under Nigerian Legal System: Understanding the Sources of Law for Effective Research Activities in Law Libraries' (2019) LPP <<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=5939&context=libphilprac>> accessed 20 January 2024.

<sup>726</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022.

<sup>727</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 104.

<sup>728</sup> *ibid*.



Negotiability of documents of title serves as a legal substitute for the deposited goods.<sup>729</sup> Hence, the documents can be legally utilised in commercial transactions as though they were the goods themselves.<sup>730</sup> The fact that WRs were reflected in the WR Bill regarding negotiability supports the argument that e-WRs could be considered documents of title when the Bill is passed, and Nigeria adopts e-WRs.<sup>731</sup>

Like the United States, as indicated in section 3.4 of this chapter, since e-WRs could be recognised as documents of title, it means that a legal relationship can be created over WRs in Nigeria, and a person can have control of the e-WRs with the right to exclude others from the e-WRs.<sup>732</sup> This means that where Nigeria adopts e-WRs, they can be recognised as property. Also, since they are documents of title, they are transferrable, and security interests can be created over them.<sup>733</sup> Thus, e-WRs can be recognised as property and can be used as collateral in Nigeria. This answers the second research question.<sup>734</sup>

The similarity Nigerian law would have with English law regarding the status of e-WRs is the relationship between the depositor and the warehouse operator, which is a bailment. Just as in the documents of title, this is inferred from the description of a depositor and a warehouse operator in the Bill.<sup>735</sup> According to the WR Bill, the warehouse operator receives goods for safekeeping from a depositor who is the owner or a legal holder of the goods.<sup>736</sup> Furthermore, the WR Bill indicates that the warehouse operator only has possessory rights over the goods transferred to them by the depositor. It demonstrated this by providing that the warehouse operator shall deliver the stored goods upon demand made by the holder of the WR or the

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<sup>729</sup> James Brook, *Examples and Explanations: Sales and Leases* (7<sup>th</sup> edn, Wolters Kluwer 2015).

<sup>730</sup> *ibid.*

<sup>731</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 104.

<sup>732</sup> See the definition of property this thesis adopts in the last paragraph of section 3.2 of this Chapter; see also Kevin Gray, 'Property in Thin Air' (1991) 50(2) Cambridge LJ 252, 296; Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1913) 23(1) Yale LJ 16, 23-24; Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 485-96; David J Seipp, 'The Concept of Property in the Early Common Law' (1994) 12(1) L Hist Rev 29, 80; John Cowell, *The Interpreter* (1<sup>st</sup> edn, Scolar 1607).

<sup>733</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 104.

<sup>734</sup> The second research question of this thesis is, 'Can the Form(s) of Warehouse Receipts Identified as Suitable for Nigeria be Considered Property in Nigeria, and Can Security Interests be Created over Them?'

<sup>735</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 104

<sup>736</sup> *ibid.*; see also Norman Palmer, 'The Role of Bailment in Cultural Property Claims' (2014) 19 (3) Art Antiq L 197, 198.

depositor of the goods where they meet certain conditions, like the payment of storage charges, among others.<sup>737</sup>

### 3.5. Conclusion

This chapter identified various definitions of property, such as the highest rights definition, bundle of rights, exclusionist, and social constructivist description of property. At the end of the evaluations, this research adopted a combination of the social constructivist and bundle of rights definition of property, which avers that property exists in correlation with its rights, which are described by the laws of a country.<sup>738</sup> In addition, this study adopted a modified version of the highest rights and exclusionist definitions of property, which affirms that a person's right to exclusive control over property is subject to restrictions or exceptions, such as governmental interventions.

Furthermore, this chapter categorised property into public and private property, as well as real and personal property. In terms of public and private property, it was concluded that although e-WRs can fit in better as private property than public, it is better to avoid using this property classification for e-WRs since it is difficult to differentiate which property is public or private. That is, their features overlap. Concerning real and personal property, this thesis concentrated on personal property because real property deals with immovable assets like land, which is not within the scope of this research.

In addition, this chapter sub-categorised personal property into tangible and intangible property. It was indicated that WRs are documentary intangibles because of what they represent rather than their appearance; hence, they can be possessed.<sup>739</sup> Following this reasoning, it was submitted that e-WRs are equally documentary intangibles which can be possessed. However, since some jurisdictions do not recognise that intangible documents can be possessed, this research proposed that countries like Nigeria should consider adopting modern trends in commercial law by recognising the possession of electronic trade documents such as e-WRs, just as the United Kingdom has done to make commercial transactions better for them.<sup>740</sup>

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<sup>737</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 38 (1).

<sup>738</sup> *United States v Craft* [2002] 535 US 274.

<sup>739</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 626.

<sup>740</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 179; see also Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 31.

In line with the above proposal, the standards set by the Law Commission of England and Wales in their report and Bill on possession of electronic trade documents was analysed to ascertain whether the possession of e-WRs is possible in Nigeria. It was found that Nigeria has what it takes to recognise the possession of electronic trade documents such as e-WRs. It was also discovered that e-WRs possess qualities like reliability and divestibility, among others, which will enable them to be possessed just as their paper counterpart.

This chapter also evaluated the proprietary rights associated with e-WRs to inquire how they would affect third parties where Nigeria decides to adopt e-WRs. It was argued that the position which regards e-WRs as right in *personam* because of the problem of transferability is rebuttable. It was submitted that apart from the fact that a proposal has been made for Nigeria to recognise the possession of e-WRs, which will make transferability of e-WRs easier in Nigeria, the proprietary rights on e-WRs can be regarded as rights in *rem* since the right attaches to the *res* rather than the person.<sup>741</sup> It was also concluded that even where e-WRs are regarded as rights in *personam*, novation can remedy the problem of transferability of e-WRs to make transactions such as obtaining credit using e-WRs as collateral easier.

Finally, this chapter evaluated the status of e-WRs as property and one that can be used as collateral. The United States served as an example of a country utilising the UCC, which recognises e-WRs as documents of title. It was indicated that the implication of recognising e-WRs as documents of title is that legal relations can be created on them, and one can have exclusive control over them within the ambit of the law, which fits the definition of property according to this chapter. Also, e-WRs are transferable, which implies they can be used as collateral.

English law was an example of where e-WRs are not considered documents of title but mere evidence of deposit, which suggests that while they could be property according to the definition of property in this research, they can neither be transferred nor used as collateral. Having reflected on these two examples, this chapter then considered the status of e-WRs in Nigeria. It was submitted that the status of e-WRs when Nigeria adopts them as the WR Bill is passed would be like the United States, where e-WRs are recognised as documents of title. Thus, e-WRs could be recognised as property in Nigeria and security interests could be created on them.

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<sup>741</sup> Peter Birks, *An Introduction to the Law of Restitution* (Clarendon 1989) 49; see also Peter Birks, *Unjust Enrichment* (2<sup>nd</sup> edn, OUP 2005) 28.

Since using e-WRs as collateral in Nigeria is possible, the next chapter will examine how security interests can be created on e-WRs in Nigeria to enhance farmers' access to finance.

## **CHAPTER FOUR: ELECTRONIC WAREHOUSE RECEIPTS AS COLLATERAL FOR OBTAINING CREDIT BY FARMERS IN NIGERIA**

### **4.1. Introduction**

The preceding chapter proffered a direct answer to the second research question, that is, if Nigeria adopts e-WRs, they can be considered property that security interests can be created on. This was inferred from the Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022 (WR Bill). While Chapter Three expounded on e-WRs as property, it only identified that e-WRs can be used as collateral. However, it did not amplify how this can be done, to conclude the second research question extensively. Thus, this chapter will continue to expound on the second research question by evaluating how security interests can be created over e-WRs to facilitate farmers' access to finance and enhance Nigeria's economy.<sup>742</sup> This will involve examining security and security interests to identify the kind of security interests that can be created over the potential e-WRs in Nigeria. It will also evaluate subjects associated with security interests, such as priority and perfection, to determine how they fit into Nigeria's prospective use of e-WRs.

Furthermore, e-WRs can only function effectively as security in Nigeria if they consider the regulatory mechanism within which they will function. Consequently, this chapter begins the analysis of the third research question.<sup>743</sup> Since e-WRs are the preferred form of WR suggested for Nigeria to consider, and e-WRs are relatively new in commercial law, this chapter will commence a feasibility study on how e-WRs will be managed in an e-WR system to facilitate access to finance for farmers in Nigeria.<sup>744</sup> Therefore, this chapter will examine the regulatory models available in an e-WR system and recommend the model that is considered the most suitable for Nigeria.

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<sup>742</sup> The second research question in this thesis is, 'Can the Form(s) of Warehouse Receipts Identified as Suitable for Nigeria be Considered Property in Nigeria, and Can Security Interests be Created over Them?'

<sup>743</sup> The third research question is, 'Is There a Potential for Successfully Operating the Warehouse Receipt System in Nigeria with the Form(s) of Warehouse Receipt Selected, and How Can it be Managed to Facilitate Access to Finance for Farmers while Improving Nigeria's Economy?'

<sup>744</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) xi.

## 4.2. Security Interests and Classification of Security Interests in Movable Property in Nigeria

It is necessary to determine what 'security' connotes before exploring the nature of security interest. Security can be used in many contexts, like national safety regarding human rights, climate change concerning the environment, and investment securities such as shares.<sup>745</sup> The context of security employed in this research concerns credit.

Credit represents a situation where a benefit is advanced to a party in terms of cash, goods, or services wherein the party is obliged to pay back later, usually with interest and, most times, in monetary form.<sup>746</sup> An example of credit is a loan.<sup>747</sup> This is the form of credit referred to in this thesis concerning access to finance. A loan is a facility, which can be money granted by a creditor to a debtor or a third party nominated by the debtor, in which the debtor is required to repay the sum advanced in due time accompanied by an agreed interest.<sup>748</sup> Loans can be granted to debtors where the debtors provide collateral that will serve as security for the creditors.<sup>749</sup>

Security is a right created on a valuable property, the collateral, provided by a party to a primary transaction, like a loan transaction with the clause that where there is a default in the repayment of the loan, the receiver of the property of value, that is, the creditor, will have recourse to the property to recover the loss they suffered in the transaction.<sup>750</sup> This right conferred on the creditor by the debtor over the property used as security is known as a security interest.<sup>751</sup> In other words, the creditor is entitled to the debt sum and can have recourse on the property securing the debt.<sup>752</sup> In some cases, the creditor is entitled to full or partial debt repayment.<sup>753</sup>

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<sup>745</sup> David A Baldwin, 'The Concept of Security' (1997) 23 Rev Intl Stud 5; see also Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 1.

<sup>746</sup> Roy Goode and Ewan McKendrick, *Goode and McKendrick on Commercial Law* (6th edn, Penguin 2020) 652.

<sup>747</sup> *ibid.*

<sup>748</sup> *ibid.*

<sup>749</sup> Annelise Riles, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets* (UCP 2011) 38.

<sup>750</sup> *ibid.*

<sup>751</sup> Mike A A Ozehome, *Personal Property Law in Nigeria* (PULP 2019) 55.

<sup>752</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 269.

<sup>753</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 1.

The essence of initiating a requirement for security before any money is advanced to the debtor by the creditor is to ensure repayment of the debt, as the secured property is sometimes of more value than the debt or on par with it.<sup>754</sup> Nevertheless, secured transactions is essential to debtors and creditors. Debtors obtain finance while still having some rights over the property used as collateral with the hope of recovering the property upon the repayment of the debt.<sup>755</sup> This is better than permanently disposing of the property used as collateral. Regarding creditors, security minimises the risks involved in lending and sometimes gives the secured creditor priority over other creditors where the debtor is bankrupt or liquidated.<sup>756</sup> Thus, reducing the risks associated with lending encourages creditors to lend more.<sup>757</sup>

#### **4.2.1. Classification of Security Interests Under a Reformed and Unreformed Secured Transactions System**

Ordinarily, since Nigeria has a history of reforming its laws with English law, it is easy to imagine that the classification of security interests in Nigeria would be like English law.<sup>758</sup> Indeed, secured transactions in Nigeria used to mirror English law.<sup>759</sup> However, in 2017, Nigeria deviated from the English law pattern of secured transactions by enacting the Secured Transactions in Movable Assets Act (STMAA).<sup>760</sup> This was because the English personal property law is complex.<sup>761</sup> It remains classified into several categories and is still contained in different common law principles and statutes.<sup>762</sup> Thus, the English personal property law has not been reformed to be a unitary system like the Uniform Commercial Code (UCC) or made to align with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Secured Transactions (MLST).<sup>763</sup>

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<sup>754</sup> *ibid.*

<sup>755</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 75.

<sup>756</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 1.

<sup>757</sup> John L Simpson and Jan-Hendrik M Rover, 'General Principles of a Modern Secured Transactions Law' (1997) 3(2) *L Bus Rev Am* 73.

<sup>758</sup> Wisdom Okereke Anyim, 'Research Under Nigerian Legal System: Understanding the Sources of Law for Effective Research Activities in Law Libraries' (2019) *LPP* <<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=5939&context=libphilprac>> accessed 20 January 2024.

<sup>759</sup> Michael G Bridge and others, 'Formalism, Functionalism, and Understanding the Law of Secured Transactions' (1999) 44(3) *McGill LJ* 567, 572; see also Jacob S Ziegel, 'The New Provisional Chattel Security Law Regimes' (1991) 70 *Can Bar Rev* 682, 685; Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 40;53; 55.

<sup>760</sup> Secured Transactions in Movable Assets Act 2017.

<sup>761</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) xxiii.

<sup>762</sup> *ibid.*

<sup>763</sup> *ibid.*; see also The Uniform Commercial Code 2010, § 9; UNCITRAL Model Law on Secured Transactions (1 July 2016) UNCITRAL Doc V.19-08779(V.16-04667); see also UNCITRAL Legislative Guide on Secured Transaction (20 July 2017) UNCITRAL Doc V.17-07549; UNCITRAL Practice Guide to the Model Law on Secured Transactions (2019) V.19-10910, s 4.

In a unitary system, all forms of security interests are treated in the same manner and are provided for under a single law.<sup>764</sup> This makes transactions more straightforward for all the parties involved in a secured transactions system, unlike the complex system where security interests are in compartments, treated differently, and contained in different statutes.<sup>765</sup> It will be difficult to comprehend the full extent of why a unitary system is said to be a better system of secured transactions unless the complex system is analysed. As mentioned in the first paragraph of this section, the English law secured transactions is an example of an unreformed or complex secured transactions system, and this will be examined below.

#### **4.2.1.1. The English Secured Transactions System: An Unreformed System of Secured Transactions**

Under English law, security interests can be created on property through different security devices. These devices can be categorised as real and personal security, tangible and intangible security, possessory and non-possessory security, fixed and floating security, and legal and equitable security.<sup>766</sup> These security device classifications overlap, which will be demonstrated in this section.

Unlike real and personal property, where real property connotes land and personal property is movable property, real security generally means security in the tangible or intangible property of the debtor or a third party.<sup>767</sup> In contrast, personal security is a personal undertaking given to a creditor to reinforce a debtor's security.<sup>768</sup> In other words, it is an undertaking by a third party to re-emphasise that the debtor will abide by its primary undertaking to repay the debt or perform a duty. An example of personal security is a surety.

Regarding tangible and intangible security, which are classes of real security, their tangible or intangible nature depends on their mode of creation. For instance, when security interest is created on personal property like furniture and crops, among others, they will take the form of

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<sup>764</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 40.

<sup>765</sup> UNCITRAL Practice Guide to the Model Law on Secured Transactions (2019) V.19-10910, s 4.

<sup>766</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 5-9.

<sup>767</sup> *ibid* 5; see also Peter Sparkes, 'Drafting, (and Redrafting) Comparative Property Questionnaires' (2017) 13(3) *Utrecht L Rev* 142; Andreas Rahmatian, 'A Comparison of German Movable Property Law with English Personal Property Law' (2010) 3(1) *J Comp L* 197.

<sup>768</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 6.



a pledge or lien.<sup>769</sup> Also, documentary intangibles like paper WRs are treated as tangible security, where there is a need to utilise them as collateral because they can be possessed.<sup>770</sup> Hence, the security will either take the form of a pledge or contractual lien.<sup>771</sup>

Although the United Kingdom (UK), through its Electronic Trade Documents Act 2023, recognises the possession of electronic trade documents, like e-WRs, in terms of creating a security interest, it is only Scotland that treats electronic trade documents as corporeal personal property which can be created in the form of a pledge.<sup>772</sup> Therefore, regarding creating security interests in England, Wales and Northern Ireland, electronic trade documents are treated as non-corporeal personal property, which cannot be possessed. Therefore, it is submitted that the creation of security interests on intangible assets in English law is not as straightforward as it is with tangible property.

Possessory and non-possessory forms of security devices deal with whether or not the secured creditor can possess the asset or a third party on behalf of the secured creditor.<sup>773</sup> It also affects whether possession or non-possession of the property is required to achieve perfection.<sup>774</sup> Therefore, under English Law, four major forms of security devices exist.<sup>775</sup> That is, a lien and a pledge or pawn, which are both possessory, and the non-possessory form of a mortgage, and a charge.<sup>776</sup> The charge can either be fixed or floating.<sup>777</sup>

While the above classification of security devices can apply to tangible assets, there is no legal consensus on its application to intangible assets, and this reinforces the fact that the creation of security interests on intangible property in English law is complicated.<sup>778</sup> Ordinarily, one would believe that creating security interests on intangible property will be done through a mortgage or an equitable charge because these security devices are non-possessory.<sup>779</sup> However, as a general rule, although most intangible assets cannot be possessed, a

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<sup>769</sup> *ibid*; see also Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 626.

<sup>770</sup> *ibid*.

<sup>771</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 6.

<sup>772</sup> Electronic Trade Documents Act 2023, s 3(4); s 8(1). (The United Kingdom).

<sup>773</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 6.

<sup>774</sup> *ibid*.

<sup>775</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 269.

<sup>776</sup> *ibid*.

<sup>777</sup> *ibid*.

<sup>778</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 6.

<sup>779</sup> *ibid*.

mortgage, which is non-possessory, cannot be created on them.<sup>780</sup> This is enshrined in section 4 of the Bill of Sale Act.<sup>781</sup>

Nevertheless, there are exceptions to this rule.<sup>782</sup> The Law of Property Act allows the creation of a mortgage on choses in action, that is, intangible assets.<sup>783</sup> Furthermore, a mortgage can be created on intellectual property.<sup>784</sup> Following these exceptions, it is submitted in this research that a mortgage can be created on intangible assets in English law. Also, the Companies Act allows for the creation of charges by a company on their intangible property, like shares, among others.<sup>785</sup>

Furthermore, in English law, different rules apply to diverse security devices like the lien, pledge, mortgage, and charge.<sup>786</sup> These security devices are analysed below to describe the extent of their difference, which will further bolster the argument that the English law secured transactions, an example of an unreformed secured transactions system, is complex.

#### **4.2.1.1.1. Lien**

A lien is a security device where a party (a lienee) possesses a passive right to withhold or retain personal property belonging to another (a lienor) until an action is performed, usually until a debt is paid.<sup>787</sup> Both parties do not traditionally agree upon a lien, as the lienor does not expressly confer the right to possess the property on the lienee.<sup>788</sup> This right is granted by operation of law.<sup>789</sup> To articulate how this would have played out if Nigeria continued to adopt the English system of secured transactions, an illustration will be given based on e-WRs.

In an e-WR system, ordinarily, a warehouse operator does not own the goods deposited in the warehouse.<sup>790</sup> The warehouse operator only possesses the goods as in a bailment and is

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<sup>780</sup> Eric Baskind, Greg Osborne and Lee Roach, *Commercial Law* (3<sup>rd</sup> edn, OUP 2019) 708; please recall that electronic trade documents in English law can be possessed, even though they are intangible. However, for the purpose of secured transactions, they are treated like intangible assets which cannot be possessed, except in Scotland. See Electronic Documents Act 2023, s 3(4); s 8(1).

<sup>781</sup> Bill of Sale (1878) Amendment Act 1882, s 4.

<sup>782</sup> Eric Baskind, Greg Osborne and Lee Roach, *Commercial Law* (3<sup>rd</sup> edn, OUP 2019) 708.

<sup>783</sup> Law of Property Act 1925, s 136.

<sup>784</sup> Patents Act 1977, s 30(6); see also Copyright Designs and Patents Act 1988, s 90(3); Trademarks Act 1994, s 24(4).

<sup>785</sup> Companies Act 2006, s 670; s 859; s 860.

<sup>786</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) xxiii.

<sup>787</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 270.

<sup>788</sup> *ibid* 271.

<sup>789</sup> *ibid*.

<sup>790</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 23.

bound to return the goods to the depositor upon demand.<sup>791</sup> Thus, the warehouse operator only has physical possession of the goods, while the person in control of the e-WR has constructive possession.<sup>792</sup> This rule applies even when the warehouse becomes bankrupt.<sup>793</sup> However, the warehouse operator can withhold the goods on lien for unpaid fees by the depositor.<sup>794</sup> In this case, there is an exclusive possessory relationship between the lienholder, that is, the warehouse operator and the property.<sup>795</sup> There could also be a situation where the lienholder may not have full possession of the property but will have the right to prevent the party in full possession, such as a third-party creditor, from exercising their full right of possession.<sup>796</sup> In this case, the lienholder acquires constructive possession of the property.<sup>797</sup>

Furthermore, a lien has some limitations.<sup>798</sup> The right to take a lien on property is not a transferrable right.<sup>799</sup> Also, where the property in possession of the bailee who has the right to lien is surrendered, the bailee loses the right to hold the property as a lien.<sup>800</sup> In other words, in an e-WR system, where the goods held by the warehouse operator are surrendered to the depositor, the warehouse operator loses the right to take a lien over those goods. However, it is generally not as straightforward as this in WR transactions.

Since other creditors or third-party creditors in WR transactions can have constructive possessory rights over the goods, they can decide to move the goods to another location, like in some cases in field warehousing.<sup>801</sup> Therefore, where the goods used as collateral are moved out of the warehouse temporarily without the warehouse operator claiming unpaid fees from the depositor, the warehouse operator loses the right to lien because the lien property

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<sup>791</sup> *ibid.*

<sup>792</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 58, see also Gail Pearson, 'Constructive Possession and Constructive Delivery in Transfer of Title to Goods' (2003) 26 U New South Wales LJ 159.

<sup>793</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 23.

<sup>794</sup> *ibid.*

<sup>795</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 58; see also Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 271.

<sup>796</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 272; see also Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 58; see also World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 23; the phrase 'a third party creditor' is used here because the lienholder is equally a creditor, since the depositor owes the lienholder some charges, which brought about the lien.

<sup>797</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 58.

<sup>798</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 273.

<sup>799</sup> *Legg v Evans* [1840] 6 M&W 36.

<sup>800</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 273.

<sup>801</sup> Tibor Taiji, 'The Resurrection of Field Warehousing' (2014) 55(3) *Acta Juridica Hungarica* 191.

has been surrendered.<sup>802</sup> Nonetheless, the exception to this rule is where there is a contract between the bailor and the bailee, that is, the depositor and the warehouse operator at the beginning of the WR transaction.<sup>803</sup> This agreement has to provide that the warehouse operator can hold a lien on the goods even if they have been temporarily transferred out of the warehouse.<sup>804</sup> This demonstrates that storage contracts are necessary for any jurisdiction where WRs, whether paper WR or e-WRs, are utilised to provide for the rights and liabilities of parties.

Another limitation of a lien under English law is that a lienholder does not possess the power to sell the goods withheld.<sup>805</sup> A lienholder may be liable to the tort of conversion where they unlawfully sell the goods withheld.<sup>806</sup> However, in some cases, the courts have allowed the lienholder to sell the goods, for instance, where perishable items are involved.<sup>807</sup> Another situation where a lienholder can sell the goods subject to a lien is where they have been empowered by a statute to sell.<sup>808</sup> For instance, in a sale of goods transaction, where the buyer has not paid for goods, the seller may retain and subsequently sell the goods to another buyer, especially where the goods have not passed to the buyer.<sup>809</sup> A lienholder may also have the power to sell goods subject to a lien where the storage contract allows it.<sup>810</sup>

The above analysis indicates that apart from the rules of a lien contained in an agreement between the lienor and the lienholder, all other rules of a lien are set out by common law, statutes, or courts. This solidifies the argument that English law secured transactions is not harmonised, and security devices, even those in the same class, are treated differently, as will be highlighted while examining the pledge below.

#### 4.2.1.1.2. Pledge

A pledge is a form of bailment where a debtor, known as the pledgor, transfers property to a creditor, that is, the pledgee, in exchange for a loan.<sup>811</sup> A pledge differs from a lien in various

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<sup>802</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 273.

<sup>803</sup> *ibid*; see also *Albemarle Supply Co v Hind* [1928] 1KB 307 (CA).

<sup>804</sup> *ibid*.

<sup>805</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 273; see also Andrew Pickin, 'The Registrability of Liens as Security Interests' (1998) 11(8) *Insolv Intl* 60.

<sup>806</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 273.

<sup>807</sup> Andrew Pickin, 'The Registrability of Liens as Security Interests' (1998) 11(8) *Insolv Intl* 60, 61.

<sup>808</sup> *Innkeepers Act 1878*; see also *Sale of Goods Act 1979*, s 48; *Civil Aviation Act 1982*, s 88.

<sup>809</sup> *Sale of Goods Act 1979*, s 48.

<sup>810</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 273.

<sup>811</sup> *ibid* 277; see also Md Abdul Jalil and Md Nannu Mian, 'The Nature, Concept and Epistemological Development of the Law of Bailment: A Prolegomenon' in Mohamad Naqib Ishan Jan (ed), *Law and Commerce: The Malaysian Perspective* (1st edn, IIUM Press 2012).

ways. First, while the lienor and the lienee do not agree upon a lien, a pledgor intentionally transfers their property to the pledgee to hold as collateral.<sup>812</sup> Thus, the pledgee can transfer their interest in the property to another party, unlike the common law provision for a lien.<sup>813</sup>

In addition, common law empowers the pledgee to sell the property where there is a default in the credit repayment within a certain period.<sup>814</sup> However, where the sale is made to recover the loan sum, and there is extra money arising from the sale, the pledgee is bound to return the excess to the pledgor; otherwise, the pledgor can sue for the excess with interest.<sup>815</sup> This is an equitable right vested in the pledgor.<sup>816</sup>

Also, when the pledgor pays back the debt, the pledgor has the right to claim the property used as security in the pledge transaction.<sup>817</sup> Nevertheless, this power is not absolute as a contract between the parties may prevent the pledgor from exercising this right.<sup>818</sup> Like in a lien, the rules that apply in pledges are set out by contract, common law and statute like the Customer Credit Act 1974.<sup>819</sup>

#### **4.2.1.1.3. Chattel Mortgage**

While a lien and pledge emphasise the possession of the security by the lienee and pledgee, the mortgagee does not usually take possession of the collateral.<sup>820</sup> However, there are circumstances where the mortgagee retains possession until the mortgagor pays the debt or an action is performed.<sup>821</sup> However, as a general rule, the mortgagor retains possession of the property used as security.<sup>822</sup>

A chattel mortgage is a type of security device where a mortgagor, that is, the debtor, assigns or conveys its legal title to property, in this case, personal property, to a mortgagee, the creditor, as security for the repayment of a loan.<sup>823</sup> Assignment in this context is a statutory

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<sup>812</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 277.

<sup>813</sup> *Donald v Suckling* [1866] LR 1 QB 585.

<sup>814</sup> *Ex p Hubbard* [1886] 17 QBD 699 (CA).

<sup>815</sup> *Halliday v Holgate* [1868] LR 3 Ex 299; see also Customer Credit Act 1974, s 121(3); *Matthew v TM Sutton Ltd* [1994] 1WLR 1455.

<sup>816</sup> *Matthew v TM Sutton Ltd* [1994] 1WLR 1455.

<sup>817</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 278.

<sup>818</sup> *ibid.*

<sup>819</sup> Customer Credit Act 1974, s 114 – 122.

<sup>820</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 281.

<sup>821</sup> *ibid.*

<sup>822</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 10.

<sup>823</sup> *ibid.*; see also Bill of Sale (1878) Amendment Act 1882, s 4.

assignment by way of security, commonly used to create security interests over intangible property.<sup>824</sup> The title to the property is reconveyed to the mortgagor once the debt has been paid or an action has been performed.<sup>825</sup> Although a mortgage is a term typically used in real property, this thesis focuses on the personal property aspect of a mortgage.

Unlike in a lien or pledge, where the terms of a contract can change the rules of the transaction, in a mortgage, the terms of a contract cannot prevent a mortgagor from regaining the title to the property used as security once the debt has been fully paid.<sup>826</sup> This right is known as the equity of redemption.<sup>827</sup> This does not imply that contracts cannot commence a mortgage.<sup>828</sup>

Another divergence between a pledge and a mortgage is in dealing with the security upon default of the debtor. Recall that in a pledge, where the pledgee sells the property used as security, they are bound to give an account of it to the pledgor, thereby remitting the excess after taking the loan sum.<sup>829</sup> Whereas in a mortgage, in addition to having the right to foreclosure, that is, taking over the ownership of the security, the mortgagee also has the right to sell and retain the excess of the proceeds from the sale of the security without accounting to anyone.<sup>830</sup> This section again proves that security devices under English law are treated differently.

#### **4.2.1.1.4. Charge**

A charge is another non-possessory security device. The chargor, that is, the secured borrower (grantor), retains possession of the property utilised as collateral even though a loan has been advanced to the chargor by the chargee, the creditor.<sup>831</sup> Unlike a mortgage, which can be a legal or equitable interest, a charge is an equitable interest *ab initio*.<sup>832</sup> Therefore, it is known as an equitable charge.

Also, in a chattel mortgage, the title to the property is conveyed or assigned by the mortgagor to the mortgagee.<sup>833</sup> In contrast, there is no conveyance or assignment of property in an

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<sup>824</sup> Law of Property Act 1925, s 136; see also Rhiannon Singleton, 'Statutory Assignments by Way of Security: A Paradox?' (2016) 1 JIBFL 12.

<sup>825</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 10.

<sup>826</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 281.

<sup>827</sup> *ibid.*

<sup>828</sup> *ibid.*

<sup>829</sup> *Halliday v Holgate* [1868] LR 3 Ex 299; see also Customer Credit Act 1974, s 121(3); *Matthew v TM Sutton Ltd* [1994] 1WLR 1455.

<sup>830</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 279.

<sup>831</sup> *ibid* 284.

<sup>832</sup> Duncan Sheehan, *The Principles of Personal Property Law* (Bloomsbury 2017).

<sup>833</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 284.

equitable charge.<sup>834</sup> However, the chargee assumes the rights of the chargor over the security until the debt is repaid.<sup>835</sup> Therefore, a charge is an encumbrance that gives the chargee the right over the charged asset but does not transfer ownership.<sup>836</sup> Furthermore, unlike a pledge, the chargee does not possess the right to sell the charged asset upon default in the repayment of the debt except when empowered by the court to do so.<sup>837</sup>

Equitable charges are treated in two forms under English law. It can be a fixed charge or a floating charge. A fixed or specific security is created over an ascertainable asset, and it attaches immediately the charge is created or at the point where the debtor obtains rights over the asset to be charged.<sup>838</sup> Conversely, the floating security is not attached on a specific asset.<sup>839</sup> It attaches on future assets of the debtor and can also move from one asset to another within a distinct group of assets belonging to the debtor.<sup>840</sup> Floating charges are created mainly by companies.<sup>841</sup>

#### 4.2.1.1.5. Legal and Equitable Security Interest

As observed from the classification of security devices above, English law distinguishes between a legal and equitable security interest.<sup>842</sup> For instance, a mortgage can give rise to a legal or equitable interest.<sup>843</sup> One of the differences between a legal and equitable security interest is whom it binds or is enforceable against. A legal security interest is an in rem right and, thus, does not just bind the parties to the security, that is, the creditor and the debtor.<sup>844</sup> It binds all third parties.<sup>845</sup> In other words, it binds the whole world.<sup>846</sup> Whereas equitable security interest is enforceable only on third parties who are not bona fide purchasers for value of the security without notice.<sup>847</sup>

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<sup>834</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 663.

<sup>835</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 284, see also Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 663.

<sup>836</sup> *Re Bond Worth Ltd* [1980] Ch 228, 250; see also Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 663.

<sup>837</sup> Grant Slevin, 'Bankruptcy, Trustees, and Subrogation' (2014) 20(8) *Trust & Trustee* 840, 849.

<sup>838</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 675.

<sup>839</sup> *ibid.*

<sup>840</sup> *ibid.*

<sup>841</sup> Duncan Sheehan, *The Principles of Personal Property Law* (Bloomsbury 2017) 411.

<sup>842</sup> Mike A A Ozehome, *Personal Property Law in Nigeria* (PULP 2019) 38.

<sup>843</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 269.

<sup>844</sup> Gerard McCormack, *Secured Credit under English and American Law* (CUP 2004) 39-40.

<sup>845</sup> *ibid.*

<sup>846</sup> *ibid.*

<sup>847</sup> *ibid.*

Also, in legal security, the debtor transfers the legal title of the collateral to the creditor, which is usually done following statutory tenets.<sup>848</sup> In contrast, equitable security interest does not transfer the legal title of the collateral to the creditor.<sup>849</sup> Instead, it transfers enough beneficial rights to empower the creditor to deal with the security and recover the debt upon default of the debtor.<sup>850</sup> Additionally, it does not necessarily comply with statutory provisions stipulated for the transfer of security interests.<sup>851</sup> Thus, equitable security interests are more flexible than their legal counterparts.

Also, equitable interest in security can arise where the transaction is only recognised in equity. For instance, in a mortgage, an equitable security interest can arise from the conveyance of the property of a beneficiary in trust.<sup>852</sup> Nevertheless, legal security interests usually take priority over equitable security interests, whether they were created first or not.<sup>853</sup> However, for the new legal security to override the existing equitable security interest, the legal interest holder must act in good faith, must not have notice of the existing equitable interest, and must give value for its interest.<sup>854</sup>

Notwithstanding the above, there is an exception to this priority rule. That is, a legal security interest will not take priority over an equitable security interest, where it would be unjust for this to happen.<sup>855</sup> For instance, where the legal interest holder was grossly negligent, where the transaction is fraudulent, among others.<sup>856</sup> Therefore, the exception to the rule of precedence of legal security interest over equitable security interest is that the equities must be equal.<sup>857</sup> Even though this is a doctrine of equity, it still applies as an exception to priority in terms of legal securities.

All the above evaluations accentuate how compartmentalised and complex security interests are in English law, which is why it is argued that an unreformed secured transactions system, like the English law approach, could complicate the creation of security interests over e-WRs. As mentioned in the first paragraph of section 4.2.1 of this thesis, the Nigerian secured

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<sup>848</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 8.

<sup>849</sup> *ibid.*

<sup>850</sup> *ibid.*

<sup>851</sup> *Ibid.*; see also Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 283.

<sup>852</sup> Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 283.

<sup>853</sup> Erica Johansson, *Property Rights in Investment Securities and the Doctrine of Specificity* (Springer 2009) 74.

<sup>854</sup> *ibid.*

<sup>855</sup> *Hudston v Viney* [1921] 1 Ch 98.

<sup>856</sup> *ibid.*

<sup>857</sup> *ibid.*



transactions system used to be like that of English law until STMAA was enacted. The reformed Nigerian secured transactions system will be examined below to highlight how it differs from English law and to evaluate how this can affect the creation of security interests on e-WRs.

#### **4.2.1.2. The Nigerian Secured Transaction System (A Reformed System of Secured Transactions): Is the Secured Transactions in Movable Assets Act (STMAA) 2017 Sufficient to Support Electronic Warehouse Receipts?**

It is trite that English law secured transactions are contained in different common law principles and statutes.<sup>858</sup> In contrast, Nigeria has a primary secured transactions statute, STMAA, although it recognises the creation of charges by companies, including its registration under the Companies and Allied Matters Act (CAMA) 2020.<sup>859</sup> This is one of the flaws of STMAA, as the ideal practice, according to the Guide to Enactment of the MLST, is to have a single electronic collateral registry that registers all kinds of security interests in personal property.<sup>860</sup> Notwithstanding this flaw, STMAA links other collateral registries that deal with security interests in personal property, like the Corporate Affairs Commission (CAC) created by CAMA, to the National Collateral Registry, which is the central registry founded by STMAA.<sup>861</sup> Therefore, STMAA transformed the secured transactions in personal property practices in Nigeria because it replicates many modern principles of secured transactions like those provided in UCC.<sup>862</sup>

Before STMAA was enacted, security interests were broadly classified as possessory and non-possessory security.<sup>863</sup> Like in English law, the lien and pledge were treated as possessory security interests, whereas mortgage and charges were non-possessory.<sup>864</sup> The non-possessory security devices were perfected by registration.<sup>865</sup> For instance, the old CAMA

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<sup>858</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) xxiii.

<sup>859</sup> Secured Transactions in Movable Assets Act 2017, s 2(3); see also Companies and Allied Matters Act 2020, s 191 and 203. (Nigeria).

<sup>860</sup> UNCITRAL Model Law on Secured Transactions (1 July 2016) UNCITRAL Doc V.19-08779(V.16-04667), art 145.

<sup>861</sup> Secured Transactions in Movable Assets Act 2017, s 2(1)(c).

<sup>862</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) ii; see also The Uniform Commercial Code 2010, § 9; Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (Bloomsbury 2021) 151.

<sup>863</sup> Central Bank of Nigeria Registration of Security Interests in Movable Property by Banks and Other Financial Institutions (Regulations No 1, 2015) (CBNR), art 23(2); see also Iyare Otabor-Olubor, 'Reforming the Law of Secured Transactions: Bridging the Gap between the Company Charge and CBN Regulations Security Interests' (2017) 17(1) J Corp L Stud 39.

<sup>864</sup> *ibid.*

<sup>865</sup> *ibid.*

(1990) provided that charges are perfected by registration.<sup>866</sup> Although registration was a requirement for this kind of security interest, the challenge was that registration was cumbersome as there was no central collateral registry, and registration was not performed electronically.<sup>867</sup> The introduction of STMAA created a National Collateral Registry, which presented an avenue for the registration of personal property to be carried out electronically.<sup>868</sup> By virtue of the possessory security devices classification that existed before STMAA, it was possible for a secured creditor to possess the asset utilised as collateral before credit was granted.<sup>869</sup> Without a doubt, this looks like a pledge under English law.<sup>870</sup> This is because a pledge creates security interest upon the delivery of the possession of an asset to the secured party in exchange for a loan or the performance of another obligation.<sup>871</sup> Hence, this complies with a significant attribute of a pledge transaction: the pledgee's ability to take possession of the asset and retain the power to exclude the pledgor and others from possessing the asset.<sup>872</sup> The purpose was to protect the creditors' interest and ensure the repayment of the loan or enforce the security when the debtors default in the repayment of the credit.<sup>873</sup> Therefore, before the enactment of STMAA, it was the norm for the creditor to possess the collateral before advancing credit as this was a form of perfection of the security interest.<sup>874</sup>

In secured transactions, perfection relates to priority, as it puts the entire world on notice that the secured creditor claims a security interest over the collateral against competing third parties.<sup>875</sup> Thus, from the above, the person in possession of the asset takes priority over any

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<sup>866</sup> Companies and Allied Matters Act 1990, s 197.

<sup>867</sup> Williams C Iheme and Standford U Mba, 'Towards Reforming Nigeria's Secured Transactions Law: The Central Bank of Nigeris's Attempt Through the Back Door' (2017) 61(1) J Afr L 131.

<sup>868</sup> Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (Bloomsbury 2021) 157; see also Secured Transactions in Movable Assets Act 2017, s 1(f).

<sup>869</sup> Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (Bloomsbury 2021) 55.

<sup>870</sup> Betha Igbinosun, 'Security Interests in Personal Property and the Nigerian Secured Transactions in Movable Assets Act 2017: An Appraisal' (2020) 64(3) J Afr L 357, 360.

<sup>871</sup> Gregory Esangbedo, 'Secured Transactions in Movable Assets Act, Company Charges and Funding Micro, Small and Medium Enterprises Under Nigerian Law' (2020) 64(1) J Afr L 81, 85; see also Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 277.

<sup>872</sup> Hugh Beale and others, *The Law of Security and Title-based Financing* (2<sup>nd</sup> edn, OUP 2012) 563; see also Betha Igbinosun, 'Security Interests in Personal Property and the Nigerian Secured Transactions in Movable Assets Act 2017: An Appraisal' (2020) 64(3) J Afr L 357, 360; *Ihunwo v Ihunwo and Others* [2013] 8 NWLR (pt 1357) 150; *Udemba v Nwabueze* [2016] LPELR- 41314 (CA).

<sup>873</sup> Betha Igbinosun, 'Security Interests in Personal Property and the Nigerian Secured Transactions in Movable Assets Act 2017: An Appraisal' (2020) 64(3) J Afr L 357, 360; see also *Donald v Suckling* (1866) LR 1 QB 585.

<sup>874</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 109; see also Betha Igbinosun, 'Security Interests in Personal Property and the Nigerian Secured Transactions in Movable Assets Act 2017: An Appraisal' (2020) 64(3) J Afr L 357, 360.

<sup>875</sup> Roy Goode and Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (7th edn, Sweet & Maxwell 2023) 725.

third party even though the third party may not be aware of an existing security interest.<sup>876</sup> Although it is still possible for a secured creditor to possess the asset utilised as collateral before credit is granted, the requirement is no longer compulsory under STMAA.<sup>877</sup> This is because STMAA treats all security interests the same, regardless of whether it is a pledge, lien, charge, or mortgage.<sup>878</sup> This contrasts with English law secured transactions where the security devices are treated differently.

The problem with creditors' possession of personal property used as security was that the debtor was denied the use of such property. This implies that property used, for example, for production, could not be utilised for further production by the debtor until the property is returned to the debtor after the debt has been repaid. Therefore, STMAA made secured transactions easier in that, although the creditor has the right to possess the collateral, they also retain the right to allow the debtor to retain the collateral by creating a better form of perfection than possession.<sup>879</sup> However, in any of these circumstances, whether the creditor has possession of the security or not, the creditor retains the right to deal with the security upon a default in the repayment of the debt.<sup>880</sup>

Furthermore, it appears that STMAA still allows the power to possess the collateral by the creditor before a loan is advanced, just as it was before the inception of STMAA, because Nigeria is not yet as legally advanced as some jurisdictions like the United States where a creditor stands a higher chance of obtaining justice for an absconding debtor or one who refused to repay the debt.<sup>881</sup> Thus, possession of the collateral by the creditor remains an assurance for the repayment of the loan. However, it is neither mandatory nor a general form of perfection of the security interest under STMAA.<sup>882</sup>

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<sup>876</sup> Betha Igbinosun, 'Security Interests in Personal Property and the Nigerian Secured Transactions in Movable Assets Act 2017: An Appraisal' (2020) 64(3) J Afr L 357, 360.

<sup>877</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 109; see also Secured Transactions in Movable Assets Act 2017, s 8(2).

<sup>878</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 109.

<sup>879</sup> Secured Transactions in Movable Assets Act 2017, s 8; see also Betha Igbinosun, 'Security Interests in Personal Property and the Nigerian Secured Transactions in Movable Assets Act 2017: An Appraisal' (2020) 64(3) J Afr L 357, 360; Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 56.

<sup>880</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 56.

<sup>881</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 37 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

<sup>882</sup> Secured Transactions in Movable Assets Act 2017, s 8(2).

The significance of the difference between the secured transactions practice in English law, which is classed, and that of Nigeria, which treats all security interests the same, is that it will be easier to use e-WRs as collateral in Nigeria.<sup>883</sup> This is because there is no requirement to determine whether security interests would be taken on e-WRs in the form of possessory or non-possessory security devices.<sup>884</sup> Therefore, the secured creditors can decide to take control of the security, that is, e-WRs, before credit can be granted to the farmers intending to utilise them as collateral while the goods are stored in the warehouse. This implies that the probability of possession of the security interest does not negate the unitary/functional approach adopted by STMAA since there is no distinction in how security devices are treated.<sup>885</sup> That is, a charge, mortgage, pledge, lien or any other security device is treated in the same manner as long as the security interest emanates from a grantor's personal property.<sup>886</sup>

Although it is argued that the compartmentalised system is complex and should be simplified to make secured transactions swifter and less complicated by adopting the unitary/functional approach, the compartmentalised system works in England and Wales because they have a more advanced legal and banking system than Nigeria, which is a Low- and Middle-income country.<sup>887</sup> Hence, Nigeria under STMAA rightly adopted the unitary/functional approach.

The unitary/functional approach supports substance over the form of security devices, and this emanates from the idea that all security interests perform similar functions; therefore, they should be dealt with in the same way in a single legal framework.<sup>888</sup> Consequently, security interest is defined as an interest in personal property created by agreement and secures the payment or performance of an obligation.<sup>889</sup> This implies the unitary/functional approach

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<sup>883</sup> Michael G Bridge and others, 'Formalism, Functionalism, and Understanding the Law of Secured Transactions' (1999) 44(3) McGill LJ 567, 572; see also Jacob S Ziegel, 'The New Provisional Chattel Security Law Regimes' (1991) 70 Can Bar Rev 682, 685; Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 40;53; 55.

<sup>884</sup> *ibid.*

<sup>885</sup> *ibid.*

<sup>886</sup> *ibid.*

<sup>887</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 38; see also Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 37 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

<sup>888</sup> Michael G Bridge and others, 'Formalism, Functionalism, and Understanding the Law of Secured Transactions' (1999) 44(3) McGill LJ 567, 572; see also Jacob S Ziegel, 'The New Provisional Chattel Security Law Regimes' (1991) 70 Can Bar Rev 682, 685.

<sup>889</sup> Secured Transactions in Movable Assets Act 2017, s 63; see also Michael G Bridge and others, 'Formalism, Functionalism, and Understanding the Law of Secured Transactions' (1999) 44(3) McGill LJ 567, 572; The Uniform Commercial Code 2001 § 1-201(37).

replaces this distinction in security devices by commencing security interests with security agreements.<sup>890</sup> Thus, when e-WRs are utilised in Nigeria, security interests in e-WRs will be commenced with security agreements between the secured creditor and the grantor.<sup>891</sup>

Although all security devices are treated the same under STMAA, for Nigeria to fully practise the unitary/functional approach, all matters relating to security interests must be treated under a single framework: STMAA.<sup>892</sup> As indicated in the first paragraph of this chapter section, section 2(3) of STMAA recognises security interests created under CAMA.<sup>893</sup> This diminishes Nigeria's claim of practising a unitary/functional system, as all its security interests are not treated under a single law.<sup>894</sup> However, following the scope of STMAA enshrined in its sections 2(1) and (2), it governs all forms of security interests in personal property except aircraft and ships. Thus, STMAA can accommodate the creation of security interests in personal property in other laws like CAMA. Consequently, section 2(3) of STMAA should be revised. All the sections that provide for security interests in CAMA should be revised to ensure that all security interests by companies or corporate entities are done according to STMAA.

So far, the analysis carried out in this chapter demonstrates that English law secured transactions practice, which was similar to what secured transactions used to be in Nigeria, is complex, and this could make the use of e-WRs as collateral complicated. In comparison, the unitary/functional system that Nigeria now adopts through STMAA, which treats all security devices the same by commencing security interests with security agreements, is better for using e-WRs as collateral.

The following sections will examine STMAA to clarify how a security interest can be created on e-WRs. They will also evaluate other elements of secured transactions, such as priority and perfection. This will equally determine whether there is a lacuna in STMAA, which could impact the use of e-WRs as collateral in Nigeria.

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<sup>890</sup> Jacob S Ziegel, 'The New Provisional Chattel Security Law Regimes' (1991) 70 Can Bar Rev 682, 685-86; see also Secured Transactions in Movable Assets Act 2017, s 3(1).

<sup>891</sup> *ibid.*

<sup>892</sup> Michael G Bridge and others, 'Formalism, Functionalism, and Understanding the Law of Secured Transactions' (1999) 44(3) McGill LJ 567, 572; see also Jacob S Ziegel, 'The New Provisional Chattel Security Law Regimes' (1991) 70 Can Bar Rev 682, 685.

<sup>893</sup> Secured Transactions in Movable Assets Act 2017, s 2(3); see also Companies and Allied Matters Act 2020, s 191 and 203.

<sup>894</sup> Michael G Bridge and others, 'Formalism, Functionalism, and Understanding the Law of Secured Transactions' (1999) 44(3) McGill LJ 567, 572; see also Jacob S Ziegel, 'The New Provisional Chattel Security Law Regimes' (1991) 70 Can Bar Rev 682, 685.

#### 4.2.1.2.1. Creation of Security Interests

Usually, the foundation of a thing determines the outcome of its performance. This principle also applies to security interests in Nigeria. Ordinarily, the creation of security interests can also be referred to as an attachment.<sup>895</sup> However, STMAA does not use this terminology.<sup>896</sup> Therefore, the term 'creation' will be employed going forward. The creation of security interest shapes the effectiveness of the remainder of the transaction. That is, the mode of creation determines whether the transaction is valid or enforceable against the grantor or third parties at the point of perfection.<sup>897</sup>

The creation of security interests is enshrined under section 3 of STMAA. It provides that the creation of security interest commences with a security agreement between the grantor and the creditor.<sup>898</sup> However, a grantor can only create a security interest to the extent of the rights they have on the property.<sup>899</sup>

STMAA adopts the terms grantor and creditor, respectively.<sup>900</sup> That is, the security interest has to be created between the grantor and the creditor.<sup>901</sup> It defines a grantor as the person who has rights over the collateral.<sup>902</sup> This differs from the term borrower. STMAA defines a borrower as a person that credit has been granted to, with an obligation to repay the sum under a security agreement.<sup>903</sup> This definition does not mention the use of collateral by the borrower, which means that a borrower could be a debtor with or without collateral. In contrast, a grantor is a debtor who obtains credit using collateral.

It is inferred that STMAA adopted the term grantor from the MLST.<sup>904</sup> The model law defined a grantor as a person who creates a security right to secure their obligation or that of another person.<sup>905</sup> It went further to include as a grantor, a buyer or other transferee of an encumbered asset who acquires a right subject to a security right; and a transferor under an outright transfer

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<sup>895</sup> Mike A A Ozehome, *Personal Property Law in Nigeria* (PULP 2019) 58.

<sup>896</sup> Secured Transactions in Movable Assets Act 2017, s 63.

<sup>897</sup> Mike A A Ozehome, *Personal Property Law in Nigeria* (PULP 2019) 58.

<sup>898</sup> Secured Transactions in Movable Assets Act 2017, s 3(1).

<sup>899</sup> *ibid* s 4(1).

<sup>900</sup> *ibid*; see also Secured Transactions in Movable Assets Act 2017, s 63.

<sup>901</sup> *ibid* s 3(1).

<sup>902</sup> *ibid* s 63.

<sup>903</sup> *ibid*.

<sup>904</sup> UNCITRAL Model Law on Secured Transactions (1 July 2016) UNCITRAL Doc V.19-08779(V.16-04667) art 2(o); see also UNCITRAL Model Law on Secured Transactions Guide to Enactment (2017) UNCITRAL Doc V.17-07549 art-by-art Comm no 47.

<sup>905</sup> UNCITRAL Model Law on Secured Transactions (1 July 2016) UNCITRAL Doc V.19-08779(V.16-04667) art 2(o), art 2(o) (i).

of a receivable by agreement.<sup>906</sup> This also demonstrates that a grantor deals with security rights; that is, they create a security interest on a property to secure an obligation, which could be the repayment of a loan.

Therefore, this research adopts the term 'grantor' instead of borrower since the debtor will use e-WR as collateral. This research also utilises the term 'creditor' for the lender. STMAA defines a creditor as a person who grants a facility by virtue of a security interest created under the Act.<sup>907</sup>

The following will explore the requirements for successfully creating a security interest under STMAA.

#### **4.2.1.2.1.1. Requirements for a Valid Security Agreement**

The requirements for a valid security agreement apply to all personal property except aeroplanes and vessels.<sup>908</sup> This is because STMAA deals with all personal property except aircraft and ships.<sup>909</sup> This indicates that the requirements for a valid security agreement will apply to e-WRs in Nigeria. For a security agreement to be valid under STMAA, it has to expressly include the intention of the grantor and the creditor to create a security interest.<sup>910</sup> This clause should not be implied, to enable enforceability where needed.

Although the Nigerian secured transactions law essentially adopts the American system, its contractual aspect retains some tenets of English law, like the consensus ad idem requirement in contract law.<sup>911</sup> This term summarises the communication between the parties or their agents to determine whether a contract is intended. This also prevents uneven bargaining power between parties, especially the creditors, who seemingly possess more power than grantors, who may be small businesses.<sup>912</sup> This mitigates the problem of information asymmetry that could hinder access to finance using e-WRs. In general, it minimises unreasonable or unconscionable contracts.<sup>913</sup> Thus, this provision of STMAA protects parties

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<sup>906</sup> Ibid art 2(o) (ii), (iii).

<sup>907</sup> Secured Transactions in Movable Assets Act 2017, s 63.

<sup>908</sup> Ibid s 2(1-2).

<sup>909</sup> Ibid.

<sup>910</sup> Ibid s 5(a).

<sup>911</sup> Marcus Smith, 'Rectification of Contracts for Common Mistake, Joscelyne v Nissen, and Subjective States of Mind' (2007) 123(Jan) LQ Rev 116.

<sup>912</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 84.

<sup>913</sup> Charles Y C Chew, 'The Varying Shades of Unequal Bargaining Power in Agreements with Financial Institutions: Some Comparative Perspectives' (2020) 31(2) Intl Company & Com L Rev 55.

against elements that can vitiate a contract, such as misrepresentation, mistake, and duress.<sup>914</sup>

Nonetheless, it should be noted that contract law, both in Nigerian and English law, possesses its fair share of complexity.<sup>915</sup> For instance, in rectifying mistakes in contracts, a challenge exists in determining the common continuing intentions of parties in the contract.<sup>916</sup> Therefore, judicial precedence is hugely relied on to measure the intentions of parties to a contract where it is in issue.

Like every regular contract in Nigeria, the security agreement must state the parties, that is, the grantor and the creditor, for identification.<sup>917</sup> This is necessary to appropriately stipulate the rights and obligations of the parties in the agreement.<sup>918</sup> Section 14 of STMAA provided an acceptable means for identifying parties, although this was done in the context of a financing statement. A financing statement under STMAA is the approved form of furnishing information for the registration of security interest.<sup>919</sup> However, this is the only section of STMAA that describes the mode of identification for parties in a secured transaction.<sup>920</sup>

According to section 14 of STMAA, where the creditor and the grantor are natural persons, they must provide their unique identification number generated from an approved biometric-based identification to confirm their identity.<sup>921</sup> This number will identify their names, addresses, telephone numbers, and dates of birth, among other information.<sup>922</sup> In Nigeria, this form of biometric-based identification is the National Identification Number (NIN), provided under the Mandatory Use of the National Identification Number Regulations 2015. This is a regulation under the National Identity Management Commission Act 2007. There is also the Bank Verification Number (BVN), which can only be linked to a single individual to curb crimes like identity theft and fraud.<sup>923</sup> Although the BVN is affiliated with banks, it has become an acceptable and one of the most secure means of identification in other sectors in Nigeria.<sup>924</sup>

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<sup>914</sup> Secured Transactions in Movable Assets Act 2017, s 5(a).

<sup>915</sup> Adam Shaw-Mellows, 'Rectifying Rectification: The Subjective Approach to Rectification of Common Mistake' (2020) 5 J Bus L 368.

<sup>916</sup> *ibid.*

<sup>917</sup> Secured Transactions in Movable Assets Act 2017, s 5(b).

<sup>918</sup> *ibid* s 5(c).

<sup>919</sup> *ibid* s 63.

<sup>920</sup> *ibid* s14(2).

<sup>921</sup> *ibid* s 14(1)(c).

<sup>922</sup> *ibid.*

<sup>923</sup> Robert Azu Nnachi and others, 'Effect of Bank Verification Number on Fraud Management of Selected Commercial Banks in Ebonyi State Nigeria' (2020) 13 Intl J Engr Res Tech 1165.

<sup>924</sup> *ibid.*



Furthermore, where the parties are artificial persons, they have to provide the registered name of their business, including their unique registration number as contained in CAC.<sup>925</sup> It is true that STMAA provided that only the registered name and unique registered number of the business or the company has to be provided.<sup>926</sup> However, it has been argued that since there is a need to assure the creditors that the debt would be repaid and to avoid any doubt or fraudulent activities using the businesses, the creditors may require more information where the grantor is a corporate body.<sup>927</sup> Therefore, there could be an additional requirement for the provision of information, such as the particulars of the company's directors, the proprietor of the business in the case of a Business Name or the trustees in the case of an incorporated trustee.<sup>928</sup>

Prima facie, this argument seems compelling; after all, a company is a separate legal entity from its members, and in some circumstances, the corporate veil is lifted to reach its members or see the true form of the company.<sup>929</sup> Besides, this study aims to eliminate any hindrances to access to finance using e-WR for farmers in Nigeria. However, this research contends that the need to gain further information from the members of the company is unnecessary. This is because it goes against the modern principles for the registration of security interests, especially as the section of STMAA that describes the identification of parties also deals with financing statements, which is the approved form of furnishing information for the registration of security interests.<sup>930</sup>

The modern approach for dealing with registration, as provided by the MLST and the Cape Town Academic Project Guide on Best Practices for Electronic Collateral Registries, is to make registration as simple as possible by registering notices.<sup>931</sup> This eliminates the need to register the actual detailed document with the names of the company's members or business proprietors. Accordingly, the adequate information required for the identification of parties in a

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<sup>925</sup> Secured Transactions in Movable Assets Act 2017, s 14(1)(b).

<sup>926</sup> *ibid.*

<sup>927</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 87.

<sup>928</sup> *ibid.*

<sup>929</sup> *Salomon v Salomon & Co Ltd* [1897] AC 22; see also Judith R Priya and others, 'A Descriptive Study of the Doctrine of Lifting the Corporate Veil' (2018) 3(3) *Intl J Adv Res Dev* 6.

<sup>930</sup> Secured Transactions in Movable Assets Act 2017, s 14; s 63 see also UNCITRAL Model Law on Secured Transactions (1 July 2016) UNCITRAL Doc V.19-08779(V.16-04667) art 28; see also Cape Town Convention Academic Project, *Guide on Best Practices for Electronic Collateral Registries* (CTCAP 2021) 2

<sup>931</sup> UNCITRAL Legislative Guide on Secured Transaction (20 July 2017) UNCITRAL Doc V.17-07549, s 145; see also Cape Town Convention Academic Project, *Guide on Best Practices for Electronic Collateral Registries* (CTCAP 2021) 12.

security agreement is their names and unique identification number for natural persons, or the names of the companies and their registered number in CAC.<sup>932</sup>

Security agreements, including those related to e-WRs, should equally set out the maximum amount for which the security interest is enforceable.<sup>933</sup> This is similar to the Canadian Personal Property Security Act which provides that security interest is created when value is given.<sup>934</sup> Declaring the value or maximum amount for enforceability of security interests aids transparency in the transaction because the creditors will not be able to inflate the amount in the future as they please.<sup>935</sup> This protects the grantors.<sup>936</sup>

The security agreement must substantially describe the collateral, including how long the property will be utilised as security and the tenure of the loan.<sup>937</sup> It is impressive that STMAA did not leave the description of the collateral ambiguous by using such phrases as substantial, adequate or reasonable. It provided for what constitutes a sufficient description of collateral.<sup>938</sup> That is, the agreement has to provide the personal property type, kind (the make or category, including the brands where necessary), and the year of manufacture.<sup>939</sup>

It also provided for items like e-WRs, which do not have a make or manufacture date.<sup>940</sup> In this case, it is sufficient to include any other description unique to the property to aid the collateral identification.<sup>941</sup> For instance, where e-WRs are utilised as security, the security agreements should consist of the unique identification number of the e-WRs.<sup>942</sup> It also has to provide the negotiability status of the e-WRs; for example, it can provide that the e-WR is negotiable.<sup>943</sup> It should also give the date of issue and other requirements necessary to describe e-WRs.<sup>944</sup>

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<sup>932</sup> Secured Transactions in Movable Assets Act 2017, s 5 (b); see also s 14 (1) (a-d).

<sup>933</sup> *ibid.*

<sup>934</sup> Canadian Personal Property Security Act (PPSA) [RSBC] c 359, s 12(1)(a).

<sup>935</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 58.

<sup>936</sup> *ibid.*

<sup>937</sup> Secured Transactions in Movable Assets Act 2017, s 5(d); (e).

<sup>938</sup> *ibid* s 6(1)(a).

<sup>939</sup> *ibid.*

<sup>940</sup> *ibid.*

<sup>941</sup> *ibid.*

<sup>942</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(j) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>943</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>944</sup> *ibid.*

Another essential aspect of security agreements is that they must provide for an arbitration clause as the first route for dispute resolution in the transaction before litigation.<sup>945</sup> This will also be the case when e-WRs are involved. Including Alternative Dispute Resolution (ADR) is a positive initiative to preserve the parties' relationship, even though disagreements could arise between them.<sup>946</sup> This is because ADR is less toxic than litigation.<sup>947</sup> It is equally more flexible, cheaper, faster and more confidential than litigation.<sup>948</sup>

In some contracts, the arbitration clause is optional, but STMAA has made it mandatory in a security agreement.<sup>949</sup> Thus, a security agreement without an arbitration clause is considered invalid. Exhausting ADR first before initiating litigation goes down to the jurisdiction of the court during a dispute.<sup>950</sup> In a dispute arising from a security agreement, if a party pursues litigation first, the other party can successfully apply to the court to stay the matter until arbitration is fulfilled.<sup>951</sup> Therefore, the court lacks jurisdiction to hear the matter until the arbitration condition is satisfied.<sup>952</sup>

Security agreements must state the insurance coverage of the goods.<sup>953</sup> This factor is necessary to eliminate any chance of dispute that could arise where the goods utilised as security are destroyed. In this situation, the question of who bears liability for the goods will arise, how much damage will be covered and if there are any exemptions from the cover, among others.<sup>954</sup> To reduce the chance of not maximising the insurance benefits, the insurers should be carefully selected, and the terms in the insurance policy should be spelt out without ambiguities.<sup>955</sup> This will increase the chance of recovering the loss. Moreover, including insurance will make access to finance easier as creditors will be more confident to lend to farmers in Nigeria despite any chance of an incident occurring on the goods which the e-WR used as collateral covers. With the presence of this clause, the creditors can see whether the goods have been appropriately insured or underinsured.<sup>956</sup>

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<sup>945</sup> Secured Transactions in Movable Assets Act 2017, s 5(f).

<sup>946</sup> Andrew I Chukwuemerie, 'An Overview of Arbitration and the Alternative Dispute Resolution Methods (ADRs)' (The Inaugural Workshop of the Rivers State Multidoor Courthouse, Rivers, 27 May 2009); see also John N M Mbadugha, *Principles of Commercial Arbitration* (Unilag 2015) 1.

<sup>947</sup> *ibid.*

<sup>948</sup> *ibid.*

<sup>949</sup> Secured Transactions in Movable Assets Act 2017, s 5(f).

<sup>950</sup> *Odunukwe v Ofomata* [2010] 18 NWLR (pt 1225) 404; see also *Dakur v Dapal* [1998] 6 NWLR (pt 660) 228; *Ede v Omeke* [1992] 5 NWLR (pt 242) 428.

<sup>951</sup> *ibid.*

<sup>952</sup> Arbitration and Conciliation Act (CAP A18) LFN 2004, s 34.

<sup>953</sup> Secured Transactions in Movable Assets Act 2017, s 6(1)(c).

<sup>954</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 4.

<sup>955</sup> *ibid.*

<sup>956</sup> *ibid.*

Where all these conditions are fulfilled, security interests are deemed successfully created over e-WRs.

#### **4.2.1.2.2. Perfection and Priority of Security Interests**

Priority determines the ranking of security interest over a secured property where there are multiple interested parties or creditors.<sup>957</sup> Perfection is the step that is required to guarantee that a creditor ranks highest in the hierarchy of creditors or other third parties over a security interest.<sup>958</sup> This protects their right to enforce the security interest.<sup>959</sup> Thus, perfection determines the order of priority and gives notice to third parties that a security interest has been created on a particular property.<sup>960</sup>

According to STMAA, perfection occurs when a financing statement relating to a security interest has been registered in the National Collateral Registry.<sup>961</sup> This can be done at any time by the creditor or on their behalf, so long as the grantor consents to this in writing.<sup>962</sup> The security agreement signed between the grantor and the creditor is sufficient to serve as the grantor's consent.<sup>963</sup> Again, consent can be granted by the grantor in writing before the security agreement is concluded.<sup>964</sup>

Although perfection of security interest in personal property is optional in Nigeria, it is essential because the mere creation of security interest or the possession of the security by the creditor does not generally guarantee the priority of the creditor.<sup>965</sup> Before the enactment of STMAA, possession was sufficient perfection in some cases, and this posed a problem of priority for creditors because there were limited means of putting other parties on notice that a security interest exists on the collateral.<sup>966</sup> Thus, innocent third parties were not protected.<sup>967</sup>

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<sup>957</sup> Brian Duncan and Mahmood Bagheri, 'The Relationship between the Development of Financial Markets and Security Interest Laws' (2017) 32(4) J Intl Bank L Reg 141.

<sup>958</sup> *ibid.*

<sup>959</sup> *ibid.*

<sup>960</sup> *ibid.*

<sup>961</sup> Secured Transactions in Movable Assets Act 2017, s 8(1).

<sup>962</sup> *ibid* s 12(1); see also Secured Transactions in Movable Assets Act 2017, s13(1).

<sup>963</sup> *ibid* s 13(2).

<sup>964</sup> *ibid* s 13(3).

<sup>965</sup> *ibid* s 8(2).

<sup>966</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 56.

<sup>967</sup> *ibid* 108.

To further illustrate the above, a grantor can utilise the same property used as collateral to obtain credit from another creditor.<sup>968</sup> Where the second creditor has no knowledge of the original security interest and grants a loan to the grantor on the same collateral, another security interest is created.<sup>969</sup> The new creditor who has become a third party to the initial security interest stands a chance of losing out in enforcing their rights over the security, for instance, in debt recovery upon default of the grantor.<sup>970</sup> Thus, the first creditor takes priority over the second creditor in the enforcement of their security rights. This same pattern also applies to further third parties that have an interest in the property utilised as collateral.<sup>971</sup> These third parties include all the creditors, both secured and unsecured, and buyers of the collateral, among others.<sup>972</sup>

Nevertheless, few laws provided a means of putting third parties on notice regarding a security interest created over personal assets before the enactment of STMAA. For instance, third-party creditors arising from the creation of a charge of a company had some protection under the Central Bank of Nigeria Registration of Security Interests in Movable Property by Banks and Other Financial Institutions (Regulations No 1, 2015) (CBNR).<sup>973</sup> This regulation provided that security interests in personal property would be perfected by registration.<sup>974</sup> However, the regulation was widely criticised by scholars because it was not flexible as it applied only where banks and other financial institutions were the creditors.<sup>975</sup> It also provided that various security devices should be treated differently, just like in English law, but did not cover the treatment of charges created by companies as security.<sup>976</sup>

In the defence of CBN on the shortcomings of the CBNR, they only had limited powers given to them by the Banks and Other Financial Institutions Act (BOFIA) to make secondary

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<sup>968</sup> Iyare Otabor-Olubor, 'Stuck in a Time Warp: Security Interests in Chattel Mortgages and the Bills of Sale Legislation in Nigeria' (2015) 26 Intl Company & Com L Rev 345, 348.

<sup>969</sup> *ibid.*

<sup>970</sup> *ibid.*

<sup>971</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 109.

<sup>972</sup> Penina Mbinya Machoka, 'Toward Financial Sector Development: The Role of the UNCITRAL Guide on Secured Transactions' (2006) 21(9) J Intl Bank L Reg 529.

<sup>973</sup> Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (Bloomsbury 2021) 149; see also Iyare Otabor-Olubor, 'Reforming the Law of Secured Transactions: Bridging the Gap between the Company Charge and CBN Regulations Security Interests' (2017) 17(1) J Corp L Stud 39.

<sup>974</sup> Central Bank of Nigeria Registration of Security Interests in Movable Property by Banks and Other Financial Institutions (Regulations No 1, 2015) (CBNR), art 23(2).

<sup>975</sup> Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (Bloomsbury 2021) 150; see also Iyare Otabor-Olubor, 'Reforming the Law of Secured Transactions: Bridging the Gap between the Company Charge and CBN Regulations Security Interests' (2017) 17(1) J Corp L Stud 39; Central Bank of Nigeria Registration of Security Interests in Movable Property by Banks and Other Financial Institutions (Regulations No 1, 2015) (CBNR); Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 63.

<sup>976</sup> *ibid.*

regulations like the CBNR.<sup>977</sup> Therefore, any regulation they made could not be on a par with or override an Act of the National Assembly like CAMA (1990).<sup>978</sup> Hence, they limited their scope to matters that only promote a quality financial system and the regulation of financial institutions under BOFIA.<sup>979</sup> This implied that the scope of the CBNR could not be extended to company charges regulated by CAMA (1990).<sup>980</sup>

Moreover, the CBNR commenced when STMAA was still a Bill to acquaint Nigerians with a notice-based registration system of personal property.<sup>981</sup> This also enabled the legislators to see how vital the CBNR was to creditors even though it was limited in scope, and this motivated them to fast-track STMAA, which will accommodate a broader range of transactions.<sup>982</sup> Therefore, the CBNR was not as bad as critics portrayed it. The enactment of STMAA repealed the CBNR.<sup>983</sup>

Another law that afforded a means of putting third parties on notice about a security interest created over personal property before the enactment of STMAA was CAMA (1990).<sup>984</sup> It provided for the registration of charges in CAC, a body created by the Act to oversee the affairs of companies.<sup>985</sup> Although CAMA (1990) has been repealed and replaced by CAMA 2020, the new CAMA still provides for the registration of charges created by companies.<sup>986</sup>

Under STMAA, the creation, perfection, and priority of security interests are broader than the laws mentioned above. This is because it provides for all forms of security interests, including charges, which natural or artificial persons can create.<sup>987</sup> It also applies to all types of creditors and debtors, unlike the CAMA and CBNR, which apply to companies and banks.<sup>988</sup> Furthermore, to put the entire world on notice about the existence of the security interest, there is an additional requirement of registration of the security interest in the National Collateral

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<sup>977</sup> Banks and Other Financial Institutions Act 2020, s 56; see also Banks and Other Financial Institutions Act CAP B 3, Laws of the Federation of Nigeria 2004, s 57.

<sup>978</sup> Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (Bloomsbury 2021) 150.

<sup>979</sup> *ibid.*

<sup>980</sup> *ibid.*; see also Companies and Allied Matters Act 1990 as amended, s 197.

<sup>981</sup> Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (Bloomsbury 2021) 150.

<sup>982</sup> *ibid.*

<sup>983</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 63.

<sup>984</sup> Companies and Allied Matters Act 1990 as amended, s 197.

<sup>985</sup> *ibid.*

<sup>986</sup> Companies and Allied Matters Act 2020, s 222.

<sup>987</sup> Secured Transactions in Movable Assets Act 2017, s 2.

<sup>988</sup> Companies and Allied Matters Act 1990 as amended, long title; see also Companies and Allied Matters Act 2020, long title; Central Bank of Nigeria Registration of Security Interests in Movable Property by Banks and Other Financial Institutions (Regulations No 1, 2015) (CBNR), long title.

Registry provided for in STMAA, which CBN controls.<sup>989</sup> The following will examine the process involved in the perfection of personal property, such as e-WRs under STMAA.

#### **4.2.1.2.2.1. Perfection of Electronic Warehouse Receipts**

In the second paragraph of section 4.2.1.2.2 of this chapter, it was stated that perfection occurs when a financing statement relating to a security interest has been registered in the National Collateral Registry.<sup>990</sup> Also, in section 4.2.1.2.1.1 of this chapter, a financing statement was described as a means of providing information to enable the registration of a security interest.<sup>991</sup> Under STMAA, financing statements must reflect the grantor's exhaustive identity.<sup>992</sup> This was examined under section 4.2.1.2.1.1 of this chapter when the identity of the parties to a security agreement was discussed, but only that, in this case, it applies to the grantor.<sup>993</sup> For natural persons, their unique identification number is generated from an approved biometric-based identification or a registration number in CAC for artificial persons.<sup>994</sup>

Financing statements should equally contain the name and address of the creditor or their representative.<sup>995</sup> It is unclear why STMAA did not explicitly require the unique identification number of the creditor, just as it did for the grantor.<sup>996</sup> This could be because creditors are adversely affected when the loan is not repaid or the collateral develops a problem.<sup>997</sup> Thus, the creditor has to protect themselves to ensure that the identity of the grantor who presents the collateral is traceable.<sup>998</sup>

Another requirement for financial statements is that they must describe the collateral and provide for the tenure of the registration as well as the maximum enforcement amount of the secured obligation.<sup>999</sup> Since these have been discussed in section 4.2.1.2.1.1 of this chapter, this area of the research will focus on the description of the collateral to determine whether e-WRs can be described in a financing statement.

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<sup>989</sup> Secured Transactions in Movable Assets Act 2017, s 8(1).

<sup>990</sup> *ibid* s 8(1).

<sup>991</sup> *ibid* s 63.

<sup>992</sup> *ibid* s 14(1).

<sup>993</sup> *ibid* s 14(1)(a-c).

<sup>994</sup> *ibid* s 14(1)(b); (c).

<sup>995</sup> *ibid* s 14(1)(d).

<sup>996</sup> *ibid* s 14(1)(b); (c).

<sup>997</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 196.

<sup>998</sup> *ibid*.

<sup>999</sup> Secured Transactions in Movable Assets Act 2017, s 14(1)(b); (c).

Sections 15(1) and (2) provide the attributes necessary to describe the collateral for reasonable identification. Where the item is described by its kind or type, including any other description that reasonably identifies the collateral, the collateral is sufficiently described in the financing statement. Therefore, in a financing statement involving an e-WR, the document should depict that the collateral is an e-WR and indicate whether the e-WR is negotiable.<sup>1000</sup>

The financing statement should also describe the date of issue of the e-WR and the duration of storage of the goods affiliated with the e-WR, including some information like the unique identification number of the e-WR provided for in the International Institute for the Unification of Private Law (UNIDROIT) and UNCITRAL Model Law on Warehouse Receipts, which was in its draft stage at the time of this research (draft MLWR).<sup>1001</sup> The financing statement can also contain the serial number of the goods stored in the warehouse, which the e-WR covers.<sup>1002</sup>

The analysis above indicates that it is possible to describe e-WRs used as collateral in financing statements according to the requirements of STMAA. Therefore, it is possible to perfect security interests over e-WRs through registration. This implies that potential creditors can search the National Collateral Registry to ensure that e-WRs intended as collateral are not encumbered in any way and to ascertain the previous encumbrances on the property.<sup>1003</sup> This will help potential creditors decide whether to lend to prospective grantors.<sup>1004</sup>

Notwithstanding the above, STMAA created an exception to the general rule of perfection by registration.<sup>1005</sup> It stipulates that possession is sufficient perfection for negotiable instruments and documents of title.<sup>1006</sup> Interestingly, e-WR are documents of title.<sup>1007</sup> Therefore, only documents of title will be discussed in this section.

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<sup>1000</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(a) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1001</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(j) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1002</sup> Secured Transactions in Movable Assets Act 2017, s 15(3).

<sup>1003</sup> *ibid* s 22; see also Mike A A Ozehome, *Personal Property Law in Nigeria* (PULP 2019) 109.

<sup>1004</sup> *ibid*.

<sup>1005</sup> Secured Transactions in Movable Assets Act 2017, s 31.

<sup>1006</sup> *ibid*.

<sup>1007</sup> Chapter Three of this thesis, s 3.4.1; see also Drew L Kershen, 'Warehouse Receipts in United States Law: Summary for the Pacific-Rim' (2016) 33(1) *Ariz J Intl Comp L* 179, 186; World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 11, 20.



It is unclear why the STMAA departed from its registration standpoint regarding documents of title. After all, one of the problems of secured transactions before the enactment of STMAA was that, in some cases, possession constituted sufficient perfection, which generated problems for innocent third parties in terms of priority.<sup>1008</sup> Hence, the requirement for registration as a valid form of perfection.<sup>1009</sup> Moreover, although this research indicated in section 3.3.1.1 that Nigeria should consider ascribing the legal implications of possession to electronic trade documents like e-WRs, at the moment, the Nigeria personal property law does not recognise the possession of electronic trade documents, such as e-WRs. This suggests that section 31 of STMAA refers to documents of title in paper form, like paper WRs.

Therefore, it is submitted that registration, as provided for in sections 8(1) and section 12 of STMAA, is sufficient perfection for digital assets or electronic trade documents like e-WRs. Besides, research on the African approach to secured transactions indicated that possession as a form of perfection is unrealistic and could give rise to automatic perfection, which is considered non-transparent.<sup>1010</sup> The issue of intimidation by the creditors is also associated with possession as a form of perfection, especially as the creditors could use the police to take possession of the collateral where the grantor fails or refuses to give possession.<sup>1011</sup> Thus, registration is the preferred form of perfection suitable for Nigeria.

Although the draft MLWR supports registration as a form of perfection, it does not specify the type of WR it refers to.<sup>1012</sup> This implies that the registration can perfect security interests created on e-WRs.<sup>1013</sup> In addition, the draft MLWR stipulates control as another method of perfection for e-WRs.<sup>1014</sup> However, control is not the usual form of perfection in many parts of

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<sup>1008</sup> Betha Igbinosun, 'Security Interests in Personal Property and the Nigerian Secured Transactions in Movable Assets Act 2017: An Appraisal' (2020) 64(3) J Afr L 357, 360; see also Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 56.

<sup>1009</sup> Secured Transactions in Movable Assets Act 2017, s 8.

<sup>1010</sup> Louise Gullifer, 'The UNCITRAL Model Law and Secured Transactions Law Reform' (2022) 17 Brook J Corp Fin Com L 97, 107; see also Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (Bloomsbury 2021).

<sup>1011</sup> Louise Gullifer, 'The UNCITRAL Model Law and Secured Transactions Law Reform' (2022) 17 Brook J Corp Fin Com L 97, 105.

<sup>1012</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 19(a) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1013</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts-Guide to Enactment, 'Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIIIA – W.G.1 – Doc. 2, art 19(152) <<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>> accessed 11 December 2023.

<sup>1014</sup> *ibid*; see also UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 19(b)

Africa because it is perceived as possession.<sup>1015</sup> Therefore, registration is usually the sole form of perfection acceptable in Africa.<sup>1016</sup>

Irrespective of the fact that the draft MLWR stipulates control as one of the methods of perfection for e-WRs, Nigeria does not have to go by this provision, especially because the draft MLWR is a soft law, and Nigeria can adopt it as it suits its situation.<sup>1017</sup> The concept of soft law falls under the law reform theoretical frameworks discussed in section 1.5.1 of this study. Therefore, Nigeria should consider excluding electronic documents of title like e-WRs from perfection by possession.

From the ongoing, it is deduced that STMAA supports e-WRs as its scope accommodates the creation of any form of security interest in personal property. It is also submitted that creating a security interest in an e-WR will be easy because the requirement is to formulate a security agreement between the grantor and the creditor. Moreover, the content of security agreements indicates essential factors that will facilitate e-WRs as collateral in Nigeria. For instance, the consensus ad idem aspect of the agreement will minimise incidents like mistake; the inclusion of the maximum amount for which the security interest is enforceable will enhance transparency and mitigate the inflation of loan sums by creditors, among others. It is equally concluded that e-WRs can be described in financing statements and registered in the National Collateral Registry to perfect the security interests created on them.

In addition, this section proposed a reform to STMAA to enable Nigeria to fully practise the unitary/functional approach to secured transactions that it claims. It was recommended that section 2(3) of STMAA, which recognises security interests created in other laws, such as CAMA, should be revised. In other words, STMAA should be the only law in Nigeria that recognises secured transactions in personal property, except for aircraft and ships.

As identified in section 4.1 of this chapter, e-WRs cannot function effectively as security in Nigeria without considering the regulatory mechanism within which they will function. The next segment of this chapter will consider the modes of regulation of an e-WR system and evaluate the one that will be suitable for Nigeria.

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<<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1015</sup> Louise Gullifer, 'The UNCITRAL Model Law and Secured Transactions Law Reform' (2022) 17 Brook J Corp Fin Com L 97, 107.

<sup>1016</sup> *ibid* 109.

<sup>1017</sup> T T Arvind, 'Transplant Effect in Harmonization' (2010) 59(1) Intl Comp LQ 65.

### **4.3. Potential Regulatory Model of the Electronic Warehouse Receipt System in Nigeria**

The regulatory model of e-WR systems is the pattern a State adopts to manage their e-WR system. While examining the models, this research could refer to the WR system in general. However, this research and the application of the models are based on e-WR systems, especially the prospective e-WR system in Nigeria. Also, the models relate to access to finance; thus, they are relevant to this research.<sup>1018</sup> The models include the unregulated WR system model and the regulated WR system model.<sup>1019</sup>

#### **4.3.1. Unregulated Model**

The unregulated model consists of two models: the unregulated commercial WR model and the Nongovernmental (NGO)/ donor-funded inventory credit system model, also known as warrantage.<sup>1020</sup> They are discussed below to evaluate their suitability for Nigeria.

##### **4.3.1.1. Unregulated Commercial System**

As the name implies, the unregulated commercial model does not have a regulatory body that oversees its affairs.<sup>1021</sup> Rather, only contract law governs the rules of engagement in this type of WR system.<sup>1022</sup> Though unregulated, they are recognised as a formal system of inventory collateralisation.<sup>1023</sup> Hence, they are usually managed by large international inspection companies that draw up Collateral Management Agreements (CMAs) among the parties to e-WR transactions.<sup>1024</sup> The CMA was mentioned in section 2.4.1.2 of this thesis. It is a tripartite agreement involving a Collateral Management Company (CMC), the secured creditor, and the grantor.<sup>1025</sup> CMAs assure creditors that the goods, which e-WRs used as collateral cover, are

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<sup>1018</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351.

<sup>1019</sup> *ibid.*

<sup>1020</sup> *ibid* 354.

<sup>1021</sup> *ibid.*

<sup>1022</sup> *ibid.*

<sup>1023</sup> *ibid.*

<sup>1024</sup> *ibid.*

<sup>1025</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 721; see also Panos Varangis and Jean Saint-Geours, 'Using Commodities as Collateral for Finance (Commodity-Backed Finance)' (2017) World Bank Working Paper 117359, 2 <<https://documents1.worldbank.org/curated/en/619781498850171182/pdf/Using-commodities-as-collateral-for-finance-commodity-backed-finance.pdf>> accessed 20 August 2021; The International

safe and that the loan will be repaid when the goods are sold or disposed of by any other means.<sup>1026</sup> Irrespective of the benefits of CMAs, such as their flexibility and the provision of quality assurance to creditors, they are expensive to process.<sup>1027</sup>

Furthermore, the unregulated commercial model requires the potential grantor to show an acceptable level of financial performance in the lending financial institution, where a financial institution is a creditor.<sup>1028</sup> This model also expects potential grantors to have sufficient financial literacy and a financial track record.<sup>1029</sup> This could result in adverse selection, a form of information asymmetry, which could limit the chances of start-ups and small-scale farmers from obtaining credit.<sup>1030</sup> This is because they may not have sufficient financial track records and financial literacy to signal their ability to access finance.<sup>1031</sup> This implies that the beneficiaries of an unregulated commercial system are usually large companies that produce and deposit goods in large quantities and have an age-long financial track record, including literacy.<sup>1032</sup>

Therefore, although the unregulated system is adopted in some African countries like Uganda and Ghana, among others, it is compelling from its features that this system will not be effective in Nigeria, especially for Micro, Small and Medium Enterprises (MSMEs).<sup>1033</sup>

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Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 43.

<sup>1026</sup> Panos Varangis and Jean Saint-Geours, 'Using Commodities as Collateral for Finance (Commodity-Backed Finance)' (2017) World Bank Working Paper 117359, 2 <<https://documents1.worldbank.org/curated/en/619781498850171182/pdf/Using-commodities-as-collateral-for-finance-commodity-backed-finance.pdf>> accessed 20 August 2021.

<sup>1027</sup> Chapter Two of this thesis, s 2.4.1.2; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 2; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 719; Tibor Taiji, 'The Resurrection of Field Warehousing' (2014) 55(3) Acta Juridica Hungarica 191.

<sup>1028</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351, 354.

<sup>1029</sup> *ibid.*

<sup>1030</sup> Michael Spence, 'Job Market Signalling' (1973) 87(3) Q J Econ 355, 358; see also Elaine Tinsley and Natalia Agapitova, *Private Sector Solutions to Helping Smallholders Succeed: Social Enterprise Business Models in the Agriculture Sector* (WBG 2018) 5; Panos Varangis and Jean Saint-Geours, 'Using Commodities as Collateral for Finance (Commodity-Backed Finance)' (2017) World Bank Working Paper 117359, 1 <<https://documents1.worldbank.org/curated/en/619781498850171182/pdf/Using-commodities-as-collateral-for-finance-commodity-backed-finance.pdf>> accessed 20 August 2021; Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 19.

<sup>1031</sup> *ibid.*

<sup>1032</sup> *ibid.*; see also Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351, 355.

<sup>1033</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351, 354.

#### 4.3.1.2. Nongovernmental Organisation/Donor System

In the NGO/donor system, warehouses, mainly small warehouses, are donated by NGOs so that farmers can deposit their goods.<sup>1034</sup> These warehouses are usually located in rural areas and are commonly managed by farming groups and sometimes in conjunction with microfinance banks that provide loans.<sup>1035</sup> The NGOs subsidise the deposit fees for the farmers.<sup>1036</sup> In addition, where a CMC is engaged to manage the goods deposited in the warehouse, the NGOs subsidise the management charges the farmers incur.<sup>1037</sup> This reduces the financial burden of the farmers, especially MSMEs. Also, since the NGOs work with microfinance banks, access to finance is made easy for farmers, even though sometimes, the NGOs are required to provide additional security before loans are granted to the farmers.<sup>1038</sup>

Although farming groups manage this system, NGOs heavily supervise it to the extent that it is open to a few farmers.<sup>1039</sup> Also, because its storage capacity is usually small, large farmers are not included in the scheme.<sup>1040</sup> The NGO/donor system is also limiting as it deals with only non-negotiable WRs.<sup>1041</sup> Recall that in section 2.6.3 of this thesis, it was indicated that, while non-negotiable WRs were intended to reduce the incidents of fraudulent activities in WR transactions due to their rigorous requirements, e-WRs combat fraud better because of their technological advantage, which also makes transactions faster than non-negotiable WRs.<sup>1042</sup> Therefore, it was inferred that this could be why paper WRs are commonly associated with negotiable and non-negotiable WRs, while e-WRs are more often than paper WRs linked to negotiable WRs.<sup>1043</sup> This implies that if the NGO/donor system is only associated with non-negotiable WRs, it could affect how often farmers who deal with negotiable e-WRs are included in the regulatory scheme. Based on this, the model is not suitable for Nigeria.

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<sup>1034</sup> *ibid.*

<sup>1035</sup> *ibid* 356

<sup>1036</sup> *ibid.*

<sup>1037</sup> *ibid* 357.

<sup>1038</sup> *ibid.*

<sup>1039</sup> *ibid.*

<sup>1040</sup> *ibid.*

<sup>1041</sup> *ibid.*

<sup>1042</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 722; see also Frank Höllinger, Lamon Rutten and Krassimir Kiriakov, 'The Use of Warehouse Receipt Finance in Agriculture Transition Countries' (World Grain Forum, St Petersburg, 6-7 June 2009) 26.

<sup>1043</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(3)(a) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 722; Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 9.

### 4.3.2. Regulated System

Unlike the unregulated commercial system, which involves supervision by collateral managers, and the NGO/donor system, supervised by NGOs, the regulated model involves an independent regulator, sometimes created by legislation.<sup>1044</sup> The regulator is responsible for certifying or licensing warehouses and warehouse operators after thorough checks have been conducted to enable them to operate under the jurisdiction of the legislation that governs e-WRs.<sup>1045</sup> Some checks centre on the capacity of warehouses, insurance, capital, adequacy of staff and trained personnel, among other factors.<sup>1046</sup>

The regulated model ensures that a system is in place to guarantee that only safe receipts are issued and transactions are protected from fraud, including other assurances.<sup>1047</sup> The regulator is also responsible for the periodic inspection of the warehouses to ensure that they are still up to standard, as they were when they were licensed.<sup>1048</sup> There are two primary forms of regulated e-WR system approach.<sup>1049</sup> They are the minimalist and the maximalist models.<sup>1050</sup>

#### 4.3.2.1. The Minimalist Regulated Model

The minimalist approach is where banks, typically commercial banks, assume a supervisory role over warehouses and e-WR transactions.<sup>1051</sup> The government is not involved in this process.<sup>1052</sup> The banks regulate the e-WR system through market discipline.<sup>1053</sup> Market discipline involves regulating risks the bank could be exposed to, such as credit risks.<sup>1054</sup> In market discipline, different actors of uninsured claims, like the depositors and uninsured or

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<sup>1044</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351, 357; see also Jonathan Coulter and Gideon Onumah, 'The Role of Warehouse Receipt Systems in Enhanced Commodity Marketing and Rural Livelihood in Africa' (2002) 27 *Food Policy* 319.

<sup>1045</sup> *ibid.*

<sup>1046</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351, 357.

<sup>1047</sup> *ibid* 362.

<sup>1048</sup> *ibid* 357.

<sup>1049</sup> Vassil D Zhivkov, 'Warehouse Receipts: A Roadmap for the Harmonization of Trans-Pacific Law and Practice' (2016) 33 *Ariz J Intl Comp L* 191, 194.

<sup>1050</sup> *ibid.*

<sup>1051</sup> *ibid.*

<sup>1052</sup> *ibid.*

<sup>1053</sup> *ibid.*

<sup>1054</sup> Ayesha Afzal and Saba Fazal Firdousi, 'Does the Market Discipline Banks? Evidence from Balkan States' (2022) 23(4) *J Risk Financ* 418.

unsecured creditors of the bank, mount pressure on the banks to ensure that they take steps to manage their risks.<sup>1055</sup> Banks could hold a large capital to their manage risks and buffer future risks.<sup>1056</sup> Also, the unsecured creditors of the banks usually demand that they pay higher premiums to be insured against risks, and the result of this is that the banks end up paying a high cost for debt financing.<sup>1057</sup> Thus, there is a lower chance that the banks will be willing to lend to smaller farmers, especially start-ups, because they will be forced to lower their risks through market discipline.<sup>1058</sup>

It is argued that only banks with higher risks are required to pay a higher premium.<sup>1059</sup> However, this is not the case as there were banks known as the 'Too-Big-To-Fail' banks who crashed during the global financial crisis of 2007 to 2009, even though they were low-risk banks.<sup>1060</sup> Since this problem is possible with market discipline as a regulatory standard in the minimalist approach, banks explore other measures they believe will minimise their risks. They sometimes demand high interest to cover any loan advanced to farmers; they provide steep rules to govern the e-WR system or resort to adverse selection where only farmers with high credit ratings are considered for credit.<sup>1061</sup> This demonstrates that the minimalist approach will not boost access to finance for farmers in Nigeria, especially for MSMEs.

#### **4.3.2.2. The Maximalist Regulated Approach**

The maximalist approach involves governmental control over warehouses and the e-WR system.<sup>1062</sup> It usually commences with the government enacting a legislation to govern the activities that pertain to e-WR transactions.<sup>1063</sup> Typically, the legislation provides information, such as the regulatory authority of the e-WR system, licensing requirements, fines for default, kinds of agricultural goods that can be stored in the warehouse, and the cancellation of e-WRs, among other information.<sup>1064</sup>

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<sup>1055</sup> *ibid.*

<sup>1056</sup> *ibid* 422.

<sup>1057</sup> Jürg M Blum, 'Subordinated Debts, Market Discipline, and Banks Risk Taking' (2002) 26 J Bank Financ 1427.

<sup>1058</sup> *ibid.*

<sup>1059</sup> *ibid.*

<sup>1060</sup> Ayesha Afzal and Saba Fazal Firdousi, 'Does the Market Discipline Banks? Evidence from Balkan States' (2022) 23(4) J Risk Financ 418, 419.

<sup>1061</sup> *ibid.*

<sup>1062</sup> Vassil D Zhivkov, 'Warehouse Receipts: A Roadmap for the Harmonization of Trans-Pacific Law and Practice' (2016) 33 Ariz J Intl Comp L 191, 194.

<sup>1063</sup> *ibid.*

<sup>1064</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351, 363.

Unlike the minimalist approach that is streamlined to banks only, in the maximalist model, the government can regulate the system through their agency or appoint a private organisation to carry on the regulation.<sup>1065</sup> The government can also delegate its regulatory powers to an arms-length agency, that is, an agency that is administratively independent of the government while remaining part of the government.<sup>1066</sup> Thus, there are three regulatory options in the maximalist model.<sup>1067</sup> They include government-based regulatory agencies, private-sector-based warehouse oversight, and a delegated authority to an arms-length regulator.<sup>1068</sup>

#### **4.3.2.2.1. Government-Based Regulatory Agency**

The government creates a government-based regulatory agency, which is usually provided for in the legislation.<sup>1069</sup> The powers of the agency are also stated in the statute.<sup>1070</sup> The legislation equally provides for the members that constitute the agency, and their responsibilities.<sup>1071</sup> An example of this kind of agency is the Tanzania Warehouse Receipt Licensing Board (TWLB) set up by the Warehouse Receipts Act No. 10 of 2005.<sup>1072</sup> Also, in Nigeria, for instance, when a statute is enacted, a supervisory body is created to oversee the affairs of that law. For example, CAMA created CAC to pilot its affairs; also, the electronic collateral registry created by STMAA is managed by CBN.<sup>1073</sup>

While there is yet to be legislation on e-WRs in Nigeria, the WR Bill provides an Agency that will pilot the affairs of WR transactions in Nigeria.<sup>1074</sup> It is called the Nigerian Independent Warehouse Regulatory Agency (the Agency).<sup>1075</sup> The Agency is a body corporate which can sue or be sued in its name, with perpetual succession and a common seal.<sup>1076</sup> This Agency is required to collaborate with various Federal Ministries like the Federal Ministry of Agriculture

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<sup>1065</sup> *ibid.*

<sup>1066</sup> *ibid* 365.

<sup>1067</sup> *ibid.* 363.

<sup>1068</sup> *ibid* 363-65.

<sup>1069</sup> *ibid* 364.

<sup>1070</sup> *ibid.*

<sup>1071</sup> *ibid.*

<sup>1072</sup> Tanzania Warehouse Receipt Licensing Board, *The Warehouse Receipts System Operational Manual: Made Under Section 6 of Warehouse Receipt Act No. 10 of 2005* (Manual, Version 2, 2013) vi.

<sup>1073</sup> Companies and Allied Matters Act 2020, s 1, 2; see also Secured Transactions in Movable Assets Act 2017, s 10.

<sup>1074</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 1.

<sup>1075</sup> *ibid.*

<sup>1076</sup> *ibid* s 1(2) (a), (b).



and Rural Development, the Federal Ministry of Finance, and the Federal Ministry of Justice.<sup>1077</sup>

The collaboration is necessary for various reasons; for example, the ministries listed in the WR Bill will potentially affect the use of e-WR in Nigeria, directly or indirectly. For instance, the Federal Ministry of Agriculture and Rural Development is directly connected to WRs because WRs are more common in an agricultural setting.<sup>1078</sup> Besides, in this research, farmers, including those in rural areas, are the target group for facilitating access to finance with e-WRs. Furthermore, the Federal Ministry of Justice indirectly affects the use of WRs because the judiciary must know how WRs work to handle WR-related disputes competently.

A crucial advantage of the government-based regulatory agency is that the power of the government visibly backs it up; hence, no one is in doubt about the enforcement authority the agency possesses.<sup>1079</sup> This means that they can easily revoke a licence that was issued to a warehouse operator and can shut down their business where they believe the warehouse does not meet or has depreciated from the required standard of operation.<sup>1080</sup> Thus, it will be easy for participants of the e-WR system to respect and obey the rules laid down by the Agency.

This form of e-WR system governance also has a disadvantage. Bureaucracy is usually a problem, especially in promptly resolving issues that arise in e-WR transactions, which could be detrimental to the parties involved.<sup>1081</sup> Furthermore, excessive political interference with the actions and decisions of the agency poses another challenge.<sup>1082</sup> It undermines the e-WR system and diminishes the participants' confidence in the agency.<sup>1083</sup>

Excessive political influence and bureaucracy are prevalent in Brazil, where the government-based regulatory agency system is utilised.<sup>1084</sup> There, politicians go as far as influencing who

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<sup>1077</sup> *ibid* s 2(1-2).

<sup>1078</sup> UNIDROIT, 'Study LXXXIII: Model Law on Warehouse Receipts' (UNCITRAL/ UNIDROIT, 30 March 2021) <<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>> accessed 18 May 2023; see also Jonathan Coulter and Gideon Onumah, 'The Role of Warehouse Receipt Systems in Enhanced Commodity Marketing and Rural Livelihood in Africa' (2002) 27 Food Policy 319.

<sup>1079</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351, 364.

<sup>1080</sup> *ibid*.

<sup>1081</sup> *ibid*.

<sup>1082</sup> *ibid*.

<sup>1083</sup> *ibid*.

<sup>1084</sup> *ibid*.

gets licensed and could even determine the revocation of licences at will.<sup>1085</sup> This negatively impacted access to finance for businesses because the influence limited the government from making policies that would move WR practice forward in Brazil.<sup>1086</sup>

A viable solution to this problem is the inclusion of other stakeholders like trade organisations, insurers, and banks, among others, on the board of the agency.<sup>1087</sup> This checks the extent of political interference that could ruin the entire idea of the e-WR system.<sup>1088</sup> This mitigation attribute is present in the WR Bill.<sup>1089</sup> In other words, this is another reason why the WR Bill provides that the Agency includes different Federal Ministries, CBN, trade organisations, insurers, commercial banks, and interest groups like the Warehouse Operators Association, among others, on its board to monitor its affairs and reduce excessive political interference.<sup>1090</sup> The United States is an example of a country that adopts this system of regulation of e-WRs.

#### **4.3.2.2.2. Private-Sector-Based Regulatory System**

The private-sector-based warehouse oversight is another way to practise the maximalist approach of the e-WR system. Under this model, a private institution, such as a commodity exchange organisation, like the Africa Exchange or AFEX Commodities Exchange Limited (AFEX), can self-regulate the e-WR system.<sup>1091</sup> Although the private sector controls this system, there is still a requirement for the presence of a WR legislation to set the basic standards of engagement in e-WR activities.<sup>1092</sup>

Unlike the government-based regulatory agency system, where participants of e-WR transactions automatically fall within the regulatory jurisdiction of the government agency, in a private-sector-based system, the parties have to subscribe to be subject to the regulation of the private entity.<sup>1093</sup> The law of contract and the WR law equally govern this subscription and

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<sup>1085</sup> *ibid.*

<sup>1086</sup> United Nations Conference on Trade and Development Review of Warehouse Receipt System and Inventory Credit Initiatives in Eastern & Southern Africa (September 2009) 13.

<sup>1087</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351, 364.

<sup>1088</sup> Devajit Mahanta, 'Review of Warehouse Receipt as an Instrument for Financing in India' (2012) 1(9) *Intl J Sci Tech Res* 43.

<sup>1089</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 2(2).

<sup>1090</sup> *ibid.*

<sup>1091</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351, 364.

<sup>1092</sup> *ibid* 365.

<sup>1093</sup> *ibid.*

regulation.<sup>1094</sup> This regulation method minimises bureaucracy because private companies have to protect their image and reputation.<sup>1095</sup>

Although issues are resolved quicker under this system, it carries less government force than the government-based regulatory agency system, where the participants of the e-WR system automatically fall within the jurisdiction of the government.<sup>1096</sup> South Africa is an example of a country that employs the private-sector-based e-WR system regulation.

Furthermore, the private entity can retain the services of third parties like international standard inspection companies to conduct warehouse inspections and carry out audits.<sup>1097</sup> For example, the private company in charge of regulation of WRs in Zimbabwe, the Zimbabwe Accountability and Citizen Engagement (ZIMACE) contracts SOCOTEC UK Limited, a UK testing, inspection, and compliance company, to carry out periodic inspections of warehouses in Zimbabwe.<sup>1098</sup> However, this breeds a disadvantage in that the cost of inspection and audit, among other activities of the private entity, makes this model expensive.<sup>1099</sup> This problem of cost contributed to rendering the Zambian e-WR system ineffective.<sup>1100</sup>

#### **4.3.2.2.3. Arms-length Regulator**

This system, like the government-based regulatory agency and private-sector-based systems, requires a WR legislation.<sup>1101</sup> The legislation specifies the arms-length agency that will regulate e-WR transactions.<sup>1102</sup> The reason for utilising the arms-length agency is to avail the agency independence from the government and minimise the workload of ministries.<sup>1103</sup> However, it is difficult to achieve this as the government funds the agency and sometimes appoints directors to the agency.<sup>1104</sup> Hence, the government still retains significant control over

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<sup>1094</sup> *ibid.*

<sup>1095</sup> *ibid.*

<sup>1096</sup> *ibid.*

<sup>1097</sup> *ibid.*

<sup>1098</sup> *ibid.*

<sup>1099</sup> *ibid.*

<sup>1100</sup> *ibid.*

<sup>1101</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351, 365.

<sup>1102</sup> *ibid.*

<sup>1103</sup> Joham AM De Kruijf and Sandra Van Thiel, 'Political Control of Arm's-Length Agencies: One Standard Does Not Fit All' (2018) 21(3) *Intl Pub Manag J* 461.

<sup>1104</sup> *ibid.*

the agency.<sup>1105</sup> In addition to WR legislation, where the arms-length agency enacts a law to pilot their conduct, the law would still require government approval to come into force.<sup>1106</sup>

Following the above, it is difficult to differentiate between the government-based regulatory agency and arms-length agency methods. An example of this kind of regulatory arrangement is seen in Ethiopia.<sup>1107</sup> There, the regulatory duties of the e-WR system are delegated to an arms-length agency, the Ethiopian Commodity Exchange (ECX), which is managed and funded by the Ethiopian government and their external partners.<sup>1108</sup> The ECX is equally responsible for issuing and revoking e-WRs, which they do through a government body, the Ethiopian Grain Trading Enterprise (EGTE).<sup>1109</sup>

#### **4.3.2.2.4. The Preferred Regulatory Method of Electronic Warehouse Receipt System for Nigeria.**

This research proposes that Nigeria adopt the government-based regulatory agency approach to an e-WR system. This is because it carries government power, which would command more obedience to the WR legislation from stakeholders of the e-WR system than the private-sector-based system.<sup>1110</sup> Furthermore, although it was indicated that the private-sector-based regulation of an e-WR system minimises bureaucracy, the government-based regulatory agency approach can equally mitigate bureaucracy and political interference. For example, the WR Bill, in its section 2(2), provided some stakeholders, such as CBN, some Federal Ministries and others, that would check the activities of the Agency to reduce these problems. This would work, provided that the activities of the stakeholders that constitute the governing board are evident and not hidden in the papers of the law or merely a tick-box exercise. Moreover, it will be easy for Nigeria to adopt the government-based regulatory agency approach since it already has the Agency created by the Bill.

Additionally, the private-sector-based approach to e-WR system regulation is expensive, and Nigeria, being economically vulnerable, as shown in section 1.1.1 of this thesis, which also affects its private sector, may not be able to adopt this approach efficiently. In contrast, Nigeria can employ the government-based agency approach because it already anticipates that its

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<sup>1105</sup> *ibid.*

<sup>1106</sup> *ibid.*

<sup>1107</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351, 365.

<sup>1108</sup> *ibid.*

<sup>1109</sup> *ibid.*

<sup>1110</sup> *ibid* 364.

potential e-WR system will be government-based.<sup>1111</sup> After all, it provides for an agency to oversee the WR system in the WR Bill.<sup>1112</sup>

Although the private-sector-based regulatory e-WR system offers the advantage of inspecting and auditing warehouses, the government-based agency system can equally provide for this.<sup>1113</sup> For example, the WR Bill provides for the audit and inspection of warehouses.<sup>1114</sup> However, it is recommended that the Agency ensures good quality and frequent inspection and auditing. Based on the analysis in this section, it is submitted that Nigeria should prioritise the adoption of the government-based regulatory agency over the private-sector-based regulatory approach of an e-WR system.

If Nigeria is torn between adopting the government-based regulatory agency and the arms-length agency in its WR legislation, the government-based regulatory agency method should be prioritised. This is because it is difficult to differentiate between both approaches, and arms-length agencies are not usually independent of the government. Moreover, there is no point in expending resources to create an arms-length agency to manage the potential Nigerian e-WR system when the WR Bill already provides for an Agency that would perform the same or similar functions.<sup>1115</sup>

#### **4.4. Conclusion**

This first segment of the chapter examined the classification of security interests in Nigeria by comparing the unreformed English secured transactions practices with the Nigerian reformed secured transactions approach. The English law component was necessary in this chapter to demonstrate how complicated secured transactions would have remained in Nigeria if it continued emulating English law on secured transactions. It was then highlighted that the current system of secured transactions in Nigeria is better and will make it easy for e-WRs to be utilised as collateral since Nigeria substantially adopts the unitary/functional approach of secured transactions.

Furthermore, this chapter examined the possibility of creating security interests in e-WRs. This formed part of the second research question, which was to inquire into the prospect of creating

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<sup>1111</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 1.

<sup>1112</sup> *ibid.*

<sup>1113</sup> *ibid* s 25; s 99.

<sup>1114</sup> *ibid.*

<sup>1115</sup> *ibid* s 1(1).

security interests in e-WRs in Nigeria. This chapter demonstrated that STMAA, the secured transactions law in Nigeria, supports the creation of security interests on e-WRs since its scope covers the creation of security interests on all personal property except aircraft and ships. Thus, it was indicated that security interests could be created on e-WRs by security agreements between the grantors and creditors.

This chapter examined priority, which could arise when security interests are created over e-WRs, to further establish that STMAA supports e-WRs in Nigeria. It concluded that priority is determined by the registration of security interests in e-WRs and analysed the registration process. Thus, e-WRs can be sufficiently described in financing statements, and the registration of the financing statements in the National Collateral Registry is sufficient perfection for e-WRs.

The second segment of this chapter started to attempt a part of the third research question, which concerns the management of the e-WR system. It examined the regulatory model available in a WR system. It was submitted that Nigeria would benefit from a regulated system because the unregulated systems are unsuitable for e-WRs. Under the regulated system, this chapter identified the minimalist and maximalist models of e-WR system regulation. It was submitted that Nigeria should adopt the maximalist approach. This is because there is a high chance of adverse selection by financial institutions under the minimalist approach, which will reduce the chances of farmers, particularly MSMEs, obtaining loans using e-WRs. Among the methods that make up the maximalist approach, it was further recommended that Nigeria consider adopting the government-based regulatory agency approach. This is because it has more merits, such as being accompanied by government power, than the other methods analysed in this chapter.

Since it has been established that security interests can be created on e-WRs in Nigeria if the potential WR legislation supports it, and a system of e-WR system management has been proposed for Nigeria, the next chapter of this thesis will examine the WR Bill to determine the possibility of it supporting e-WRs and an e-WR system. It will evaluate the WR Bill against international frameworks, like the draft MLWR and the UNCITRAL Model Law on Electronic Transferable Records (MLETR), to determine whether they can influence a reform of the WR Bill where necessary before Nigeria passes the Bill into law.

## **CHAPTER FIVE: ANALYSIS OF THE NIGERIAN INDEPENDENT WAREHOUSE REGULATORY AGENCY AND OTHER RELATED MATTERS BILL 2022 AND THE FRAMEWORKS THAT CAN INFLUENCE ITS REFORM**

### **5.1. Introduction**

The previous chapter examined secured transactions in Nigeria. It confirmed that security interests can be created on electronic warehouse receipts (e-WRs), just like any other personal property, through security agreements. Chapter Four also analysed the potential regulatory mechanisms that could be employed to operate a prospective e-WR system in Nigeria. It was recommended that Nigeria consider retaining the government-based regulatory agency maximalist approach on its WR Bill because it carries the force of the government and would be less expensive than other e-WR system regulation modes. However, creating security interests in e-WRs and recognising the regulatory mechanism that could be suitable for Nigeria will only be practical if the Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022 (WR Bill) supports e-WRs and the e-WR system.

As indicated in section 1.3 of this thesis, Nigeria does not have a WR legislation but has various WR Bills.<sup>1116</sup> They provide a template to work with to critically analyse how the legislators intend for warehouse receipts (WRs) to function in Nigeria. Nonetheless, only the 2022 Bill will be explored in this research.<sup>1117</sup> This is because the Bills have similar content, and the 2022 Bill is the latest. Therefore, this chapter will attempt to answer the third research question in section 1.4.3 of this thesis, which involves a feasibility study on whether the WR Bill is sufficient to support the effective use of e-WRs and the e-WR system in Nigeria.<sup>1118</sup> This implies that there is a possibility for a potential amendment to the WR Bill.

Section 1.5.1 of this thesis identified law reform as one of the theoretical frameworks in this research. It was indicated that law reform encourages legislators to modify an aspect(s) of their law to resolve a problem.<sup>1119</sup> This can be done using law reform frameworks, which can

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<sup>1116</sup> Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2016; see also Nigerian Independent Warehouse Regulatory Agency (Establishment, Etc.) Bill 2018; Warehouse Receipts and Other Related Matters Bill 2020; Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022.

<sup>1117</sup> Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022.

<sup>1118</sup> The third research question is, 'Is There a Potential for Successfully Operating the Warehouse Receipt System in Nigeria with the Form(s) of Warehouse Receipt Selected, and How Can it be Managed to Facilitate Access to Finance for Farmers while Improving Nigeria's Economy?'

<sup>1119</sup> Martin Boodman, 'The Myth of Harmonization of Laws' (1991) 39(4) Am J Comp L 699.

be soft or hard laws.<sup>1120</sup> Therefore, the above analysis will be done alongside some international frameworks, such as the International Institute for the Unification of Private Law (UNIDROIT) and the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Warehouse Receipts (draft MLWR), which are soft laws that Nigeria can employ to reform their WR Bill, where it is found that an amendment of the WR Bill is imminent.<sup>1121</sup> Recall that section 1.5.1 of this thesis highlighted that soft laws are preferred over hard laws in this research because they are flexible, and countries can adopt them in a manner that suits their interest.<sup>1122</sup>

## **5.2. An Overview of the Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022**

As stated in section 1.2 of this thesis, the WR Bill was initiated by the National Assembly, the legislative arm of the Nigerian government, as a response to farmers' persistent problem of poor access to finance.<sup>1123</sup> Poor access to finance results in other issues, such as reduced domestic production, insufficient exports, and inadequate storage facilities.<sup>1124</sup> However, this Bill has not yet been enacted in Nigeria.

Recall that in section 1.1.1 of this thesis, it was indicated that the appropriate use of WRs is associated with the improvement of access to finance and storage, among other agricultural

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<sup>1120</sup> Chapter One of this Thesis, s 1.5.1; see also Gregory C Shaffer, Melvin C Steen and Mark A Pollack, 'How Hard and Soft Law Interact in International Regulatory Governance: Alternatives, Complements and Antagonists' (Society of International Economic Law Inaugural Conference, Geneva, 15-17 July 2008).

<sup>1121</sup> At the time of collecting and analysing data in this research, the UNCITRAL Model Law on Warehouse Receipts was a draft. It was adopted by UNCITRAL and UNIDROIT on the 26<sup>th</sup> of June 2024, after a substantial part of this research had been concluded.

<sup>1122</sup> Andrew T Guzman and Timothy L Meyer, 'International Soft Law' (2010) 2(1) J Leg Anal 171; see also Gregory C Shaffer, Melvin C Steen and Mark A Pollack, 'How Hard and Soft Law Interact in International Regulatory Governance: Alternatives, Complements and Antagonists' (Society of International Economic Law Inaugural Conference, Geneva, 15-17 July 2008) 1.

<sup>1123</sup> The Nigerian Economic Summit Group, 'National Independent Warehouse Receipt System Bill FactBook' (*Financial System Strategy*, 2020) 4 <<https://agra.org/wp-content/uploads/2019/12/Nigeria-National-Warehouse-Receipt-System-Bill-Factbook.pdf>> accessed 12 July 2022.

<sup>1124</sup> Babajide Fowowe, 'The Effects of Financial Inclusion on Agricultural Productivity in Nigeria' (2020) 22(1) J Econ Dev 61; see also The Food and Agriculture Organisation (FAO), 'Nigeria at a Glance: Nigeria Agriculture at a Glance' (FAO, 2021) <<https://www.fao.org/nigeria/fao-in-nigeria/nigeria-at-a-glance/en/>> accessed 2 December 2021; Gloria Joseph-Raji and others, *The World Bank Nigeria Development Update: Time for Business Unusual* (The World Bank Report, No 166305, 2021) 18; UNIDROIT, 'Study LXXXIII: Model Law on Warehouse Receipts' (UNCITRAL/ UNIDROIT, 30 March 2021) <<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>> accessed 18 May 2023; Jonathan Coulter and Gideon Onumah, 'The Role of Warehouse Receipt Systems in Enhanced Commodity Marketing and Rural Livelihood in Africa' (2002) 27 Food Policy 319, 323; Anthony Aboagye, 'Structuring African Warehouse Receipt Systems to Succeed' (2023) 9(4) Athens J Bus Econ 475, 477.



benefits.<sup>1125</sup> Therefore, it is inferred from Nigeria's current declining economy, inflation, poverty and extreme hunger situation, as shown in section 1.1.1 of this thesis, that Nigeria will be more persuaded to pass this Bill to help mitigate these problems.

The WR Bill is made up of 12 parts and 105 sections. The parts are numbered in Roman numerals. Parts I to III of this Bill focus on the Nigerian Independent Warehouse Regulatory Agency (the Agency), its governing board, the functions of the board, and its staff.<sup>1126</sup> As explained in section 4.3.2.2.1 of this thesis, the governing board of the Agency is made up of various interest groups and stakeholders who would not just support the Agency but also curb its excesses to mitigate bureaucracy and political interference in a government-based regulatory agency e-WR system regulatory mechanism.

Part IV of the WR Bill borders on the licensing of warehouses.<sup>1127</sup> Indeed, this Bill recognises that WRs cannot be utilised effectively without putting a system in place to measure the possibility of warehouses adequately preserving goods, which would remain in good quality before and during the period when WRs are used as collateral, or even until the depositor claims back, or sells their goods. Thus, this section consisting of the licensing procedure of warehouses, including their inspection, is necessary for a WR legislation, especially when it comes before the provisions for WRs themselves. In other words, where a warehouse fails to meet the licensing requirements, issuing and using WRs that could emanate from the warehouse would be difficult.

Part V of the WR Bill deals with WRs.<sup>1128</sup> It provides for such issues as the content of WRs, issuance of WRs, altered WRs, and form of WRs, among others. This part of the WR Bill is expected to describe the form of WR utilised in Nigeria, how WRs are issued, deal with the problem of missing WRs, alteration or mistakes on the WRs, and identify whether WRs can be negotiable or non-negotiable among other things.<sup>1129</sup>

The WR Bill provides for the rights and liabilities of warehouse operators in part VI. It is trite that the warehouse operator is not the only party to a WR transaction. However, this Bill

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<sup>1125</sup> Nathaniel N Towo and Prosper John Kimaro, 'Warehouse Receipt System: A Solution Towards Smallholder Farmers' Financial Constraints? (2014) 2(7) Intl J Econ Commerc Manag 1; see also Devajit Mahanta, 'Review of Warehouse Receipt as an Instrument for Financing in India' (2012) 1(9) Intl J Sci Tech Res 42.

<sup>1126</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 1-12.

<sup>1127</sup> *ibid* s 13-25.

<sup>1128</sup> *ibid* s 26-36.

<sup>1129</sup> *ibid*.

predominantly provides for the rights and liabilities of warehouse operators but sparingly provides for the depositor's rights. For instance, it recognises that the depositor or the holder of the WR has a right to demand the goods deposited.<sup>1130</sup> Therefore, a storage agreement may be necessary to clearly define the rights and liabilities of the parties to the WR transaction.<sup>1131</sup>

Part VII of the WR Bill deals with the negotiation and transfer of WRs. It is interesting to observe that the WR Bill did not stop at indicating that WRs can be either negotiable or non-negotiable.<sup>1132</sup> It went further to analyse how WRs can be negotiated, what happens after the negotiation of WRs, how security interests can be created on WRs and the effectiveness of the security interest on third parties.<sup>1133</sup>

Furthermore, a central registry to house all the transactions that would be carried out using WRs in Nigeria has been provided by the WR Bill and enshrined in part VIII.<sup>1134</sup> This part also provides for a registrar who would work with a team of staff and other officers.<sup>1135</sup> Their activities include the registration and certification of WRs, as well as the maintenance of the registry, and the registrar is empowered to make regulations on the registration of WR transactions.<sup>1136</sup>

Disputes tend to arise among parties to commercial transactions. Thus, the WR Bill planned for disputes that could occur in WR transactions and provided a template for resolving them in part IX.<sup>1137</sup> Apart from disputes, the WR Bill equally provides in its part X for the conduct of parties to WR transactions that would be regarded as offences and stipulated penalties for such commission or omission.<sup>1138</sup> For instance, obstructing a warehouse inspector or any other person authorised by law to carry out such duties, from inspecting a warehouse, its equipment, its books or the state of the goods stored, will attract an imprisonment of three

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<sup>1130</sup> *ibid* s 38(1).

<sup>1131</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(7). <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1132</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 104.

<sup>1133</sup> *ibid* s 59-65.

<sup>1134</sup> *ibid* s 66.

<sup>1135</sup> *ibid* s 67.

<sup>1136</sup> *ibid* s 68-71.

<sup>1137</sup> *ibid* s 72-74.

<sup>1138</sup> *ibid* s 75-85.

months with an option of a fine not exceeding 500 thousand Naira, an equivalent of approximately United States of American Dollars (USD) 301.<sup>1139</sup>

When Nigeria commences the use of e-WRs and farmers use them as collateral, the above will mitigate information asymmetry, which could arise; for instance, when a depositor connives with a warehouse operator to misrepresent to a creditor the state of the goods stored in the warehouse, which the e-WR used as collateral covers. Information asymmetry occurs when a party to a transaction has more relevant information about the transaction than the other party, which could be detrimental to such a party with less information.<sup>1140</sup> This will also minimise the chances of warehouse operators misleading potential depositors that their warehouse is licensed when it is not.<sup>1141</sup> This will attract a maximum of five-year imprisonment of the offending warehouse operator, or a fine not exceeding 2 million Naira, which is an equivalent of about USD 1206, or both imprisonment and fine.<sup>1142</sup>

Part XI of the WR Bill provides for all the Agency's financial dealings.<sup>1143</sup> This includes how the Agency generates funds, such as money made available by the National Assembly, donated funds, and borrowed funds. The essence of this part of the WR Bill is to minimise corruption and ensure that the Agency is held accountable for its expenditure so as not to misappropriate funds.

The last part of the WR Bill, part XII, borders on any other matters not provided in parts I to XI, which are incidental to WR transactions. This part is termed 'miscellaneous provisions'.<sup>1144</sup> For instance, it covers matters pertaining to warehouse insurance, deposit fees, classification of warehouses, and the definition section of the WR Bill, among others.<sup>1145</sup>

Since this section has provided a synopsis of the WR Bill, this chapter will critically analyse this Bill alongside international frameworks, such as the draft MLWR and the UNCITRAL Model Law on Electronic Transferable Records (MLETR), to inquire whether the WR Bill would support e-WRs and whether a reform is required. Nevertheless, before delving into the said

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<sup>1139</sup> *ibid* s 82.

<sup>1140</sup> Donald D Bergh and others, 'Information Asymmetry in Management Research: Past Accomplishments and Future Opportunities' (2019) 45(1) J Manag 122.

<sup>1141</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 75(2).

<sup>1142</sup> *ibid*.

<sup>1143</sup> *ibid* s 86-96.

<sup>1144</sup> *ibid* s 97-105.

<sup>1145</sup> *ibid* s 98; 100-01; 104.

critical analysis, it is necessary to briefly explain why these international frameworks were chosen for this research.

### **5.3. International Frameworks Examined Alongside the Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022 for a Potential Reform of the Bill**

#### **5.3.1. Draft Model Law on Warehouse Receipts**

The draft MLWR is a joint initiative of the UNIDROIT and UNCITRAL.<sup>1146</sup> UNIDROIT was established by the League of Nations in 1926, while UNCITRAL was established by the United Nations (UN) General Assembly in 1966.<sup>1147</sup> Both organisations are international formulating bodies tasked with the harmonisation and unification of laws on international commerce.<sup>1148</sup> In 1965, Nigeria became a member of UNIDROIT, and in 2010, it became a member of UNCITRAL.<sup>1149</sup> Although membership is not a prerequisite for adopting UNCITRAL or UNIDROIT frameworks, Nigeria's membership demonstrates its interest in participating in the reforms championed by the organisations. Thus, Nigeria can adopt the MLWR, including any other model laws or legal frameworks designed by these organisations like any other country.

Furthermore, Nigeria is a common law country, and the legal frameworks designed by UNIDROIT and UNCITRAL are compatible with the Nigerian legal system because they usually consider different jurisdictions when making their laws.<sup>1150</sup> Therefore, their

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<sup>1146</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 4 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021; see also UNIDROIT, 'Study LXXXIII: Model Law on Warehouse Receipts' (UNCITRAL/ UNIDROIT, 30 March 2021) <<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>> accessed 18 May 2023.

<sup>1147</sup> Jose Angelo Estrella Faria, 'The Relationship between Formulating Agencies in International Legal Harmonization: Competition, Cooperation, or Peaceful Coexistence - A Few Remarks on the Experience of Uncitral' (2005) 51 Loy L Rev 253; see also Henry D Gabriel, 'The UNCITRAL Model Law on Electronic Transferable Records' (2019) 24 Unif L Rev 261.

<sup>1148</sup> *ibid.*

<sup>1149</sup> Jose Angelo Estrella Faria, 'The Relationship between Formulating Agencies in International Legal Harmonization: Competition, Cooperation, or Peaceful Coexistence - A Few Remarks on the Experience of Uncitral' (2005) 51 Loy L Rev 253, 258; 260.

<sup>1150</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Background Research Paper' (2020) UNIDROIT Working Paper, First Session, Study LXXXIII – W.G.1 – Doc. 4, 6 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-04-e.pdf>> accessed 7 February 2022.

frameworks, like this draft MLWR, can be utilised to reform laws in Nigeria or any other common law jurisdiction and civil law countries.<sup>1151</sup>

The drafting of the MLWR commenced because of the recognised importance of WRs in promoting commodity markets, facilitating access to finance, and other benefits of WRs in agriculture and other industries.<sup>1152</sup> Also, many countries worldwide, like Malawi, Philippines, Bulgaria, France, the United States, the United Arab Emirates and others, already utilise WRs in paper or electronic forms, or both.<sup>1153</sup> However, according to the analysis made by various intergovernmental organisations like the European Bank of Reconstruction and Development (EBRD) and the Food and Agriculture Organisation (FAO), among others identified in section 2.5 of this thesis, it was observed that countries practice the WR system differently, some better than others.<sup>1154</sup> For example, countries like Mexico are reforming their WR system, and other countries like Nigeria can decide to reform theirs in the future.<sup>1155</sup> Therefore, the MLWR was initiated to provide a soft law, which will serve as a guide to help countries reform their WR system.<sup>1156</sup>

As discussed in section 1.5.1 of this thesis, soft laws are nonbinding on states, meaning they accept the laws voluntarily.<sup>1157</sup> Also, they are flexible, allowing adopting states to choose the parts of the soft law that address their needs rather than adopting the entire law.<sup>1158</sup> Therefore, the MLWR, which is a soft law and its guide to enactment, will help countries like Nigeria to formulate or amend their WR framework, promote harmonisation of law in the use of WR, and

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<sup>1151</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 4 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021.

<sup>1152</sup> *ibid*; see also UNIDROIT, 'Study LXXXIII: Model Law on Warehouse Receipts' (UNCITRAL/ UNIDROIT, 30 March 2021) <<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>> accessed 18 May 2023.

<sup>1153</sup> UNCITRAL Warehouse Receipt: Developing an UNCITRAL Instrument on Warehouse Receipt (2019) 3 <[https://uncitral.un.org/sites/uncitral.un.org/files/warehouse\\_receipts\\_report\\_final.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf)> accessed 10 May 2021.

<sup>1154</sup> UNCITRAL Warehouse Receipt: Developing an UNCITRAL Instrument on Warehouse Receipt (2019) 1 <[https://uncitral.un.org/sites/uncitral.un.org/files/warehouse\\_receipts\\_report\\_final.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf)> accessed 10 May 2021; see also UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Background Research Paper' (2020) UNIDROIT Working Paper, First Session, Study LXXXIII – W.G.1 – Doc. 4, 4 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-04-e.pdf>> accessed 7 February 2022.

<sup>1155</sup> UNCITRAL Warehouse Receipt: Developing an UNCITRAL Instrument on Warehouse Receipt (2019) 30 <[https://uncitral.un.org/sites/uncitral.un.org/files/warehouse\\_receipts\\_report\\_final.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf)> accessed 10 May 2021.

<sup>1156</sup> UNIDROIT, 'Study LXXXIII: Model Law on Warehouse Receipts' (UNCITRAL/ UNIDROIT, 30 March 2021) <<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>> accessed 18 May 2023.

<sup>1157</sup> Henry Deeb Gabriel, 'Advantages of Soft Law in International Commercial Law: The Role of UNIDROIT, UNCITRAL, and the Hague Conference' (2009) 34(3) *Brook J Intl L* 655, 658.

<sup>1158</sup> *ibid* 663.

encourage transnational trade.<sup>1159</sup> By virtue of this, a comparative analysis of the WR Bill and the draft MLWR will be conducted to discover and examine the portions of the model law that could benefit Nigeria and to inquire whether an amendment to the WR Bill is required.

At the time of this research, the MLWR and its guide to enactment were in draft form. UNCITRAL and UNIDROIT adopted them on 26<sup>th</sup> June 2024, after a substantial part of this research had been concluded. Thus, this analysis is based on the draft MLWR.

### 5.3.2. Model Law on Electronic Transferable Records

UNCITRAL commenced the planning and drafting of the MLETR in 2011.<sup>1160</sup> The project was concluded in 2017.<sup>1161</sup> The purpose of this law is to give legal backing to trade documents, like WRs and bills of lading, among others, which can be in electronic form.<sup>1162</sup> Thus, the MLETR allows countries to review their existing commercial practices concerning transferable records (trade documents like WRs in paper form) and introduce electronic versions of those documents.<sup>1163</sup> This enhances transnational trade.<sup>1164</sup>

This research will utilise the MLETR because of its core principle that electronic transferable records, such as e-WRs, shall not be denied legal effect or rendered invalid or unenforceable simply because they are in electronic form.<sup>1165</sup> Thus, it is relevant in this research since sections 2.6 and 2.6.4 of this study propose the use of e-WRs rather than paper WRs in Nigeria.

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<sup>1159</sup> UNIDROIT, 'Study LXXXIII: Model Law on Warehouse Receipts' (UNCITRAL/ UNIDROIT, 30 March 2021) <<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>> accessed 18 May 2023; see also UNIDROIT Working Group on Model Law on Warehouse Receipts-Guide to Enactment, 'Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIIIA – W.G.1 – Doc. 2, art 8(107) <<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>> accessed 11 December 2023.

<sup>1160</sup> Henry D Gabriel, 'The UNCITRAL Model Law on Electronic Transferable Records' (2019) 24 Unif L Rev 261.

<sup>1161</sup> *ibid.*

<sup>1162</sup> *ibid.*

<sup>1163</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, expl note no 4.

<sup>1164</sup> *ibid.*

<sup>1165</sup> Henry D Gabriel, 'The UNCITRAL Model Law on Electronic Transferable Records' (2019) 24 Unif L Rev 261; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 7(1).

#### **5.4. A Critical Analysis of the Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, Examined against the Draft Model Law on Warehouse Receipts**

##### **5.4.1. The Title, Purpose, and Scope of the Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022**

Ideally, a WR legislation should be one whose central focus is on WRs.<sup>1166</sup> This should be manifestly visible from its title down to its purpose and scope, such that without going through the pages of the law, its purpose will be apparent. An example is the draft MLWR, where anyone who sees the title will understand that the law relates to WRs, what they are, the forms of WRs, and their functions, among others.<sup>1167</sup> Therefore, the primary focus of the legislation should be WRs, even if it includes other related matters like the management of warehouses and the governing body.<sup>1168</sup> Nigeria takes a different position in its WR Bill.

The short title of the WR Bill is the Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022. This implies that the primary purpose of the law is to create an Agency that regulates warehouses and stipulates the powers of the Agency, including their duties, while every other matter in the statute, like WRs, is secondary. The short title of the 2020 Bill, which is 'Warehouse Receipts and Other Related Matters Bill', was drafted better because it is clear from its short title that the Bill relates to WRs.<sup>1169</sup>

Furthermore, the long title of the WR Bill 2022 reinforces the argument that the title of the Bill is ambiguous. Ordinarily, a summary of the purpose of a statute is found in its preamble.<sup>1170</sup> However, since some statutes do not have a preamble, the long title serves that purpose.<sup>1171</sup>

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<sup>1166</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 1(1) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1167</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, ch i-vi <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1168</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 1(1) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1169</sup> Warehouse Receipts and Other Related Matters Bill 2020.

<sup>1170</sup> Helen Xanthaki, *Thornton's Legislative Drafting* (5<sup>th</sup> edn, Bloomsbury 2013).

<sup>1171</sup> *ibid.*

The content of the long title is important because it does not just define the purpose of the statute or Bill; it also plays a valuable role in defining the scope of the law.<sup>1172</sup> Thus, it communicates the intended spirit of the law, which is the major intention of the legislature for enacting the law.<sup>1173</sup>

The long title of the WR Bill reads, 'A Bill for an Act to establish the Nigerian Warehouse Regulatory Agency and Other Related Matters'.<sup>1174</sup> This is a repetition of the short title, which suggests that adequate effort was not made to draft a proper long title that could have created a scope for the WR Bill. This is not the norm in Nigeria, as there are laws that clearly reflect the purpose of the legislation. For example, it is explicit from the short title of the Companies and Allied Matters Act 2020 (CAMA), which is, 'The Companies and Allied Matters Act 2020', that it deals with companies and other related matters like business names and incorporated trustees, among others. Its long title expands the short title to emphasise its purpose.<sup>1175</sup> For emphasis, the long title for CAMA is,

“An Act to Repeal the Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria, 2004, and Enact the Companies and Allied Matters Act, 2020 to Provide for the Incorporation of Companies, Limited Liability Partnerships, Limited Partnerships, Registration of Business Names Together with Incorporation of Trustees of Certain Communities, Bodies, Associations, and for Related Matters.”

Moreover, CAMA, like the WR Bill, created a governing agency, the Corporate Affairs Commission (CAC), but did not make the entire title about the establishment of CAC just as it is done in the WR Bill.<sup>1176</sup> Also, from the title of the Nigerian Data Protection Act 2023 (NDPA), it is unambiguous that the law provides for processing personal information and data protection, among other topics. It also created the Nigerian Data Protection Commission without making the law appear as though it is mainly about the commission.<sup>1177</sup> Even from the Secured Transactions in Movable Assets Act (STMAA) analysed in chapter four of this research, it is equally unequivocal from its short title, which is 'The Secured Transactions in Movable Assets Act 2017', that it deals with the regulation of security rights and interests in movable assets.<sup>1178</sup> Its long title elaborates on this. For emphasis, the long title reads,

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<sup>1172</sup> *ibid* 230.

<sup>1173</sup> *ibid*.

<sup>1174</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022.

<sup>1175</sup> The Companies and Allied Matters Act 2020, s 870.

<sup>1176</sup> *ibid* s 1.

<sup>1177</sup> Nigerian Data Protection Act 2023, s 4.

<sup>1178</sup> Secured Transactions in Movable Assets Act 2017, s 64.



“An Act to Provide for Secured Transactions, Registration and Regulation of Security Interests in Movable Assets, and Other Related Matters”.

Furthermore, STMAA established a National Collateral Registry controlled by the Central Bank of Nigeria (CBN) but did not make the law seem like it was designed to establish the registry.<sup>1179</sup> Therefore, it is submitted that the title and purpose of the WR Bill are misleading and should be rephrased to amplify the main subject of law, which is WRs. This way, it will be easy to understand its purpose at first glance. The draft MLWR presented a means of solving this problem by including at the beginning of the law that it applies to WRs.<sup>1180</sup> Thus, the WR Bill could provide in its first section or long title that it applies to WRs.

Furthermore, a WR legislation needs to specify the form of WR it covers.<sup>1181</sup> This will explain whether a country deals with paper WRs, e-WRs, or both.<sup>1182</sup> This will equally help determine whether there is a need to transition to e-WRs, which is a more advanced form of WR.<sup>1183</sup> The description of the form of WR practised can be expressly written in the scope of the law.<sup>1184</sup> It can also be found in the definition of WRs, in the law’s definition section, and by defining such terms as electronic records, among others.<sup>1185</sup>

The WR Bill does not specify in any of its provisions what form of WR Nigeria intends to use. It is neither within its scope nor represented in its definition section.<sup>1186</sup> From its table of contents and marginal note, section 28(1) of the WR Bill provides for forms of WRs. Prima facie, one would think that this section includes information on whether the Bill covers paper WRs, e-WRs, or both. However, this section provides that a WR shall only be printed by the

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<sup>1179</sup> *ibid* s 10.

<sup>1180</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, ‘Draft Model Law on Warehouse Receipts’ (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 1(1) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1181</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, ‘Draft Model Law on Warehouse Receipts’ (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 1(2) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1182</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, ‘Drafting Options on Electronic Warehouse Receipts for the MLWR and Guide to Enactment (2022) Study LXXXIII-WG4-Doc4, 3 <<https://www.unidroit.org/wp-content/uploads/2022/03/Study-LXXXIII-W.G.4-Doc.-4-Drafting-Options-on-EWRs-for-MLWR-and-Guide-to-Enactment.pdf>> accessed 16 November 2022.

<sup>1183</sup> *ibid* 2; see also Chapter Two of this Thesis, s 2.6.

<sup>1184</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, ‘Drafting Options on Electronic Warehouse Receipts for the MLWR and Guide to Enactment (2022) Study LXXXIII-WG4-Doc4, 3 <<https://www.unidroit.org/wp-content/uploads/2022/03/Study-LXXXIII-W.G.4-Doc.-4-Drafting-Options-on-EWRs-for-MLWR-and-Guide-to-Enactment.pdf>> accessed 16 November 2022.

<sup>1185</sup> *ibid* 4.

<sup>1186</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 104.

Agency or at its order in a form prescribed by the Agency in its regulation. This creates a complicated process of waiting for a regulation to be enacted before one can decipher the form of WR Nigeria uses, even after passing the WR Bill. This can be resolved by providing that the WR Bill covers paper WRs, e-WRs, or both in its scope or definition section.<sup>1187</sup>

To further demonstrate that the 'form of WR' provided by the WR Bill is ambiguous, the WR Bill provides that WR shall only be 'printed' when authorised by the Agency created by the Bill or shall be in the form prescribed by the Agency.<sup>1188</sup> This is because the word 'print' could suggest a paper copy, and in some cases, print can be used for electronic documents. Also, the 'form' prescribed by the Agency could be paper or electronic. This further emphasises that there is a need to specify the form of WR the WR Bill covers clearly. The absence of this will make WR transactions difficult and will affect the utilisation of WRs as collateral because the creditors will not be sure of the form of WR they are likely to consider.

Nevertheless, the WR Bill provides that WRs can be negotiable or non-negotiable.<sup>1189</sup> Again, this does not explain whether the WR Bill deals with paper WRs, e-WRs, or both. Although e-WRs are more often than not utilised as negotiable documents of title, they can also be non-negotiable, like paper WRs, and paper WRs can equally be negotiable.<sup>1190</sup> Thus, there is a need for certainty in the form of WR the WR Bill covers. Nevertheless, it was identified in section 2.3.2 of this thesis that in 2014, the Nigerian Commodity Exchange (NCX) collaborated with other agencies and private companies to establish e-WRs in Nigeria.<sup>1191</sup> However, there is no evidence that they succeeded in introducing e-WRs in Nigeria. Also, it was indicated in section 2.3.2 of this study that private entities, like the Africa Exchange or AFEX Commodities Exchange Limited (AFEX), which operates WRs in Nigeria, deal with paper WRs only.<sup>1192</sup> Therefore, it is safe to infer that e-WRs are not used in Nigeria.

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<sup>1187</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Drafting Options on Electronic Warehouse Receipts for the MLWR and Guide to Enactment (2022) Study LXXXIII-WG4-Doc4, 3-4 <<https://www.unidroit.org/wp-content/uploads/2022/03/Study-LXXXIII-W.G.4-Doc.-4-Drafting-Options-on-EWRs-for-MLWR-and-Guide-to-Enactment.pdf>> accessed 16 November 2022.

<sup>1188</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 28(1).

<sup>1189</sup> *ibid* s 30; 31.

<sup>1190</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(3)(a) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 722; Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 9.

<sup>1191</sup> *ibid*.

<sup>1192</sup> Bob Baulch and others, 'Commodity Exchange and Warehouse Receipts in Malawi: Current Status and their Implications for the Development of Structured Markets' (2018) IFPRI Malawi Working Paper

It is good that, at the time of this research, the enactment of the WR legislation in Nigeria is still in the Bill stage. This implies that there is an opportunity for the National Assembly to amend the WR Bill. Therefore, the legislators should consider adopting e-WRs because they are faster, safer, and more transparent, especially as the world advances technologically.<sup>1193</sup>

Following the above, where Nigeria decides to have well-defined legislation that provides for e-WRs, certain provisions of the WR Bill, such as the ones that point towards paper WRs, will have to be reviewed to reflect the use of e-WRs, including the terminologies. For instance, instead of using the phrase, 'the holder of a paper WR...', the law could use the expression, 'the person in control of an e-WR...'. Nevertheless, it should be noted that section 3.3.1.1 of this thesis proposes that e-WRs should have the same legal implication of possession as paper WRs.

#### **5.4.2. Content of Warehouse Receipts and Storage Agreement**

The content of WRs concerns information that appears on WRs to make them valid trade documents.<sup>1194</sup> This has been discussed in detail in section 2.6.1 of this thesis. However, this section explicitly compares the content of the WR Bill with the content of the draft MLWR.

To avoid complexity, the information and the language used in the content of WRs ought to be simple and concise.<sup>1195</sup> For instance, the draft MLWR provided twelve straightforward information that should be contained in WRs.<sup>1196</sup> They include the identification of the negotiability of the WR.<sup>1197</sup> Where negotiable, it contains the name of the person to whose

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25, 6 <<http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/132922/filename/133133.pdf>> accessed 4 June 2021.

<sup>1193</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805; see also Alan J Malter and Aric Rindfleisch, 'Transitioning to a Digital World' (2019) 16 *Rev Market Res* 1; see also UNCTAD Digital Economy Report 2019- Value Creation and Capture: Implication for Developing Countries (4 September 2019) UNCTAD Doc UNCTAD/DER/2019; Chapter Two of this Thesis, s 2.6; 2.6.4.

<sup>1194</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023

<sup>1195</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Drafting Options on Electronic Warehouse Receipts for the MLWR and Guide to Enactment (2022) Study LXXXIII-WG4-Doc4, 4 <<https://www.unidroit.org/wp-content/uploads/2022/03/Study-LXXXIII-W.G.4-Doc.-4-Drafting-Options-on-EWRs-for-MLWR-and-Guide-to-Enactment.pdf>> accessed 16 November 2022.

<sup>1196</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(a-I) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1197</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(a) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

order the receipt is issued and whether there is any clause on transferability of the receipt.<sup>1198</sup> It also contains the name of the person in whose favour the receipt is issued in the case of non-negotiable WRs, the name of the depositor, the name of the warehouse operator, as well as the types and quantity of goods to be stored.<sup>1199</sup> The Draft MLWR provides that a WR should contain the fixed duration the goods will be stored, the place of storage of the goods, a unique identification number for the WR, and the date the WR was issued.<sup>1200</sup>

Furthermore, the draft MLWR provides that a WR should contain the date of the storage agreement entered by the depositor and the warehouse operator, including a clause that a copy of the storage agreement will be presented to potential transferees of the WR at their request.<sup>1201</sup> Storage agreements are necessary to reduce the bulk of the information contained in WRs. Although Article 9 of the draft MLWR sets out the mandatory content of WRs, it also allows warehouse operators the flexibility to add more content to the WR.<sup>1202</sup> However, instead of making the WR overloaded with content, they could decide to move the additional information which can ordinarily appear on the WR, like deposit fees, insurance, rights, and obligation of parties, among others, to the storage agreement while linking the storage agreement with the WR.<sup>1203</sup> After all, according to the draft MLWR, WRs by operation of law

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[content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf](https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf)> accessed 20 June 2023.

<sup>1198</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(a-c) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1199</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(d-g) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1200</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(h-k) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1201</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(l) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1202</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 10(1) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; see also UNIDROIT Working Group on Model Law on Warehouse Receipts-Guide to Enactment, 'Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIIIA – W.G.1 – Doc. 2, art 9-10 <<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>> accessed 11 December 2023.

<sup>1203</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(7); art 8 <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

include all the terms of the storage agreement.<sup>1204</sup> Nonetheless, where there is an inconsistency between the express terms of WR and the storage agreement, the WR prevails.<sup>1205</sup>

Like the draft MLWR, the WR Bill has mandatory contents of WRs enshrined in its section 29(1) (a-n). It provides that WRs should contain the warehouse operator's name and the location of the warehouse.<sup>1206</sup> WRs should equally contain the date the WRs were issued and their unique identification numbers, which the Bill refers to as the consecutive number of the WR.<sup>1207</sup> It provides that a WR should contain a statement as to whether the goods deposited shall be delivered to the bearer of the WR or another person named in the WR or order.<sup>1208</sup> This could be the WR Bill's means of communicating that the receipt should contain whether it is negotiable.

However, unlike the draft MLWR, the mandatory content of WRs in the WR Bill is not concise. For example, in providing for the description of goods, it includes that WRs should contain quantity and measurements in terms of weights and numbers, including a description of the package containing the goods.<sup>1209</sup> Instead of leaving it at that to keep things simple, it went further to include other factors concerning the description, such as the grade or class of the commodity and its standard description following the official classification of the commodity as provided by any other law or rule in Nigeria, except where the WR specifically includes a conspicuous inscription that it is non-negotiable.<sup>1210</sup> Since a description of the goods was provided under section 29(1)(g), there was no need to make the description complex. It should have been made as simple as the draft MLWR.<sup>1211</sup>

Also, there is the provision for a statement to be made on a WR where goods are packed, substituted, processed, or transformed while in the warehouse, and a description of such

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<sup>1204</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts-Guide to Enactment, 'Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIIIA – W.G.1 – Doc. 2, art 8(107) <<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>> accessed 11 December 2023.

<sup>1205</sup> *ibid.*

<sup>1206</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 29(1) (a-b).

<sup>1207</sup> *ibid* s 29(1) (c-d).

<sup>1208</sup> *ibid* s 29(1) (e).

<sup>1209</sup> *ibid* s 29(1) (g).

<sup>1210</sup> *ibid* s 29(1) (h).

<sup>1211</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(g) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

goods, their nature, size, and quantity stated.<sup>1212</sup> It is argued in this research that this will be easier to achieve with e-WRs than paper WRs. This is because such updates can easily be made electronically when the goods are transformed in the warehouse without having to recall WRs to update them.<sup>1213</sup> Also, those in control of e-WRs can see the changes made to the goods.<sup>1214</sup> This reiterates the argument made in the second chapter of this thesis that e-WRs are more transparent, break geographical barriers, and make transactions easier than paper WRs.<sup>1215</sup>

While it is argued that some of the information contained in WRs could be better reflected in storage agreements, there is little indication that having a storage agreement is a requirement under the WR Bill. The storage agreement was mentioned only once in the entire Bill.<sup>1216</sup> It was cited regarding the obligation of a warehouse operator to hold or deliver the goods deposited following the terms of the WR or any related storage agreement.<sup>1217</sup> This implies that there could be a storage agreement if the parties, that is, the depositor and the warehouse operator, decide to create one. However, the WR Bill fails to define what a storage agreement is and what it is used for.<sup>1218</sup>

Apart from reducing the content of WRs with storage agreements, it is necessary to have a storage agreement that states the terms and conditions, including the rights and obligations of the depositor and the warehouse operator. Recall that section 5.2 of this chapter indicated that Part VI of the WR Bill provides for only the rights and liabilities of warehouse operators. In contrast, warehouse operators are not the only parties to a WR transaction. Hence, it is necessary to have a storage agreement, which would outline the rights and liabilities of all the parties to the WR transaction, whether the WRs would be used as collateral or not.<sup>1219</sup> By virtue of this, the legislators should consider amending the WR Bill to expressly provide for storage agreements. This can be done in the same manner as the draft MLWR, where it stipulates that the date of storage agreements should be contained in WRs, including a clause

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<sup>1212</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 29(1) (j).

<sup>1213</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805.

<sup>1214</sup> *ibid.*

<sup>1215</sup> *ibid.*; see also Chapter Two of this Thesis, s 2.6.4.

<sup>1216</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 60 (d).

<sup>1217</sup> *ibid.*

<sup>1218</sup> *ibid* s 104.

<sup>1219</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(7). <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

that a copy of the agreement will be provided to a potential transferee of the receipt upon request.<sup>1220</sup> This implies that the WR Bill should equally define storage agreements, which can be the same as the draft MLWR.<sup>1221</sup>

When contemplating the review of the content of WRs in the WR Bill, the legislators should consider including the most relevant content of the WR in one section of the WR Bill, just like it is under Article 9 of the draft MLWR. This is because it will make the information on WRs simple and concise. However, moving slightly away from the draft MLWR, instead of providing for a non-mandatory section like in Article 10 of the draft MLWR, the WR Bill can provide for storage agreements to contain non-mandatory information such as storage fees, insurance, and fungible goods, among others. This will allow warehouse operators to include more terms and conditions in the storage agreement, provided they do not breach the WR Bill and its prospective regulations.<sup>1222</sup>

Also, a reference to the storage agreement has to be made on a WR. Nonetheless, like the draft MLWR, WRs, by operation of law, include all the terms of the storage agreement.<sup>1223</sup> Furthermore, where storage agreements are inconsistent with the mandatory provisions of WRs, WRs prevail.<sup>1224</sup>

### 5.4.3. Security Rights in Warehouse Receipts

The draft MLWR did not expressly provide for the creation of security interest using WRs.<sup>1225</sup> However, it implied this by recognising the secured transactions law utilised in adopting

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<sup>1220</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(l) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1221</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(7) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1222</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 29(3).

<sup>1223</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts-Guide to Enactment, 'Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIIIA – W.G.1 – Doc. 2, art 8(107) <<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>> accessed 11 December 2023.

<sup>1224</sup> *ibid.*

<sup>1225</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 19 <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

countries and providing for the effectiveness of security rights in WRs against third parties.<sup>1226</sup> It stipulates that security rights in WRs can be effective on third parties by registration in a collateral registry if the secured transactions law of a country provides for registration as a form of perfection.<sup>1227</sup> Concerning e-WRs, the draft MLWR provides that control by the secured creditor is sufficient perfection, while possession is enough for paper WRs.<sup>1228</sup>

The WR Bill refers to the creation of security interest in WRs and states that once a WR is issued, a charge is created on the goods deposited in the warehouse.<sup>1229</sup> However, the Bill fails to identify in whose favour the charge will be created. It was explained in section 4.2.1.2 of this thesis that Nigeria does not distinguish security devices.<sup>1230</sup> This is because all security interests are treated in the same manner and are created by security agreements.<sup>1231</sup> Hence, using the word 'charge' in section 61(1) of the WR Bill is irrelevant.

Moreover, the issuance of a WR must not create security interest because the depositor may decide to sell the WR or keep the goods in the warehouse for storage purposes only.<sup>1232</sup> Therefore, this section of the WR Bill should be revised to suggest that the issuance of an e-WR must not create a security interest. In addition, instead of providing that a charge is created upon the issuance of an e-WR, the WR Bill could provide a section which stipulates that STMAA governs security interests in e-WRs.

The WR Bill also refers to security interests in sections 27(2) (b) and section 61(2) and (3). Section 27(2) (b) discussed security rights regarding the proof of proprietary rights in the goods stored in the warehouse.<sup>1233</sup> That is, it provides that a person acquires proprietary rights in

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<sup>1226</sup> *ibid.*

<sup>1227</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 19(a) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1228</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 19(b-c) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1229</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 61(1).

<sup>1230</sup> Michael G Bridge and others, 'Formalism, Functionalism, and Understanding the Law of Secured Transactions' (1999) 44(3) McGill LJ 567, 572; see also Jacob S Ziegel, 'The New Provisional Chattel Security Law Regimes' (1991) 70 Can Bar Rev 682, 685; Secured Transactions in Movable Assets Act 2017, s 3(1); s 63.

<sup>1231</sup> *ibid.*

<sup>1232</sup> UNIDROIT, 'International Developments Activités Internationales' (2021) 26(4) Unif L Rev 684; see also World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 3.

<sup>1233</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 27(2) (b).



goods linked to a WR where, inter alia, the person is entitled to the ownership of the goods as security to satisfy a pre-existing claim.<sup>1234</sup>

In addition, section 61(2) stipulates thus,

“A Warehouse Receipt does not confer any right in goods against a person who before the issue of the receipt had a legal interest or perfected security interest in such goods and who neither delivered nor entrusted the goods or any bill of lading, Warehouse Receipt delivery order or other document of title covering the goods to the depositor with actual or apparent authority to ship, store, pack, process, transform or sell the goods; nor acquiesced in the procurement by the depositor or his or her nominee of any Warehouse Receipt or other document of title covering the goods”.<sup>1235</sup>

Apart from the fact that this section of the WR Bill does not relate to only WRs but introduces other documents like the Bill of lading, it is submitted that its phrasing is ambiguous because it is open to different interpretations. One of the meanings it conveys is a situation where WRs can be rejected as collateral by creditors. It has already been indicated in this section that one of the purposes of issuing WRs is to create security interests in them.<sup>1236</sup> Since they are documents of title, using WRs as collateral is equivalent to utilising the goods the WRs cover as collateral. Therefore, if a prior security interest has been created and perfected over the goods stored in the warehouse, and a WR is subsequently issued over those goods, creditors may be reluctant to accept the WR as security. This is because the goods which the WR purportedly covers are encumbered, and a third party would take priority over the creditor to whom the WR has been offered as collateral, even if the creditor perfects the security interest by registration. This defeats the idea of using WRs as collateral by farmers.

Another meaning section 61(2) of the WR Bill could convey is the protection of the proprietary rights of a legitimate owner of a WR irrespective of whether the WR has been transferred to a third party by another. That is, where a possessor of goods deposits such goods in a warehouse as the owner of the goods and obtains a WR over them, the rightful owner of such goods still retains proprietary rights over the WR irrespective of whether the initial depositor who was in mere possession of the goods utilised the WR as collateral. This principle was established in the case of *Armory v Delamirie*, which was discussed in section 3.3.1 of this thesis.<sup>1237</sup>

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<sup>1234</sup> *ibid.*

<sup>1235</sup> *ibid* s 61(2).

<sup>1236</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 3; see also Henry D Gabriel, ‘The UNCITRAL Model Law on Electronic Transferable Records’ (2019) 24 Unif L Rev 261, 262.

<sup>1237</sup> *Armory v Delamirie* [1722] EWHC J94; 1 Strange 505.

In the above case, a chimney sweep's boy, who was in possession of a ring he picked, took it to a jeweller to inquire what the stone on the ring was.<sup>1238</sup> The jeweller removed the stone and returned an empty ring to the boy.<sup>1239</sup> The boy asked to get the stone back, but the jeweller refused to give it back.<sup>1240</sup> He brought an action against the jeweller and got judgment in his favour.<sup>1241</sup> The effect of the judgment was that although the boy was a mere possessor of the ring by finding it, he had such a right that allowed him to keep the ring against everyone except the rightful owner.<sup>1242</sup> This is because the boy has indirectly undertaken to keep the property safe for the property owner.<sup>1243</sup>

Relating the Armory case to the above meaning conveyed by section 61(2) of the WR Bill, a possessor of the goods who obtained a WR over such goods without the consent of the rightful owner of the goods has the right to keep the WR and the goods it covers against everyone except the rightful owner of goods.<sup>1244</sup> This interpretation of section 61(2) protects the proprietary rights of the rightful owner of the goods a WR was obtained against, irrespective of whether the WR has been transferred to another party by the possessor.

Therefore, to avoid the problem of creating different interpretations for section 61(2) of the WR Bill, legislators should revise this section to clearly reflect their intentions. However, it is suggested that the legislators should prioritise the second interpretation ascribed to section 61(2) in this research. This is because it protects the proprietary rights of legitimate owners of goods, even when another party who is in mere possession of goods uses the WR, which was issued over the goods, as security, unless the party in possession of the goods has express consent from the rightful owner to obtain a WR for collateral on such goods.

Section 61(3) of the WR Bill refers to the effectiveness of a security right against a third party. It provides that a buyer of fungible goods who buys such goods from a warehouse operator in an ordinary course of business, where the warehouse operator is ordinarily into buying and selling of fungible goods, purchases the goods free from any third party. This is known as the principle of buyer in due course, as discussed in section 2.6.3.1 of this thesis, as one of the challenges of negotiability.<sup>1245</sup>

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<sup>1238</sup> *ibid.*

<sup>1239</sup> *ibid.*

<sup>1240</sup> *ibid.*

<sup>1241</sup> *ibid.*

<sup>1242</sup> *ibid.*

<sup>1243</sup> Robin Hickey, 'Possession as a Source of Property at Common Law' in Eric Descheemaeker (ed), *The Consequences of Possession* (EUP 2017) 77, 80.

<sup>1244</sup> *Armory v Delamirie* [1722] EWHC J94; 1 Strange 505.

<sup>1245</sup> James Steven Rogers, 'Negotiability as a System of Title Recognition' (1987) 48 (1) Ohio St LJ 197, 198.

Fungible goods are defined as goods in which any unit of it is treated as an equivalent of any other unit or is interchangeable with any other unit due to its nature or by any commercial custom.<sup>1246</sup> It is possible for the principle of buyer in due course to apply to fungible goods because they can be replaced with equivalent goods. Therefore, all the parties in WR transactions, including creditors, should be aware of the impact of the fungibility of goods.<sup>1247</sup>

A buyer of fungible goods in due course or a transferee of goods in due course is any party other than the depositor of the goods who receives WR or gains control of e-WR in good faith, for a value and with no suspicion or notice that there is an existing claim over the goods or that the WR have defective title.<sup>1248</sup> Thus, such persons take the WR free from any competing claims because of their good faith, value and no suspicion of pre-existing interests.<sup>1249</sup>

Apart from section 61(3) of the WR Bill, another section of the Bill which appears to provide for the effectiveness of a security right on third parties is section 59 (1) and (2). It provides that negotiable WRs are negotiated by transferors' endorsement, delivery to transferees and the registration of the transferred interests at the central registry, provided that the non-registration of the transferred interest does not at any time give an advantage to the transferors of the interest.<sup>1250</sup> This section also provides that registering a notice in the central registry serves as a notice to the whole world of the transfer of the interest in the WR.<sup>1251</sup> The transfer not only relates to security interests but could also apply to other forms of transfer like the sale of WRs.<sup>1252</sup> Concerning security interests, giving notice to the whole world is interpreted as perfection for security interests in property.<sup>1253</sup>

Nonetheless, the problem with section 59(1) and (2) is its stipulation that the registration of the security interest in WRs should be done in the central registry created by the WR Bill.<sup>1254</sup>

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<sup>1246</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 104; see also World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 62.

<sup>1247</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 11.

<sup>1248</sup> *ibid*; see also Gregory E Maggs, 'The Holder in Due Course Doctrine as a Default Rule' (1998) 32 Ga L Rev 783; Kurt Eggert, 'Held Up in Due Course: Codification and the Victory of Form Over Intent in Negotiable Instrument Law' (2002) 35 Creighton L Rev 363.

<sup>1249</sup> *ibid*.

<sup>1250</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 59(1).

<sup>1251</sup> *ibid* s 59(2).

<sup>1252</sup> *ibid* s 59(1).

<sup>1253</sup> *ibid* s 59(2), see also Chapter Four of this Thesis, s 4.2.1.2.2; Brian Duncan and Mahmood Bagheri, 'The Relationship between the Development of Financial Markets and Security Interest Laws' (2017) 32(4) J Intl Bank L Reg 141.

<sup>1254</sup> *ibid*.

This is a problem because STMAA governs the creation and perfection of security interests in personal property, including WRs.<sup>1255</sup> Moreover, it was submitted in section 4.2.1.2 of this thesis that MLST recommends that there should be a single electronic collateral registry that registers all kinds of security interests in personal property; and Nigeria already has a National Collateral Registry.<sup>1256</sup> Hence, the registration of transferred interest in WR, which borders on security interest, should be done in the National Collateral Registry created by STMAA and not the central registry created under the WR Bill. If Nigeria adopts e-WRs, the potential mode of perfection of e-WR has been extensively discussed in section 4.2.1.2.2.1 of this thesis.

#### 5.4.4. Issuance of Warehouse Receipts

A WR serves as evidence that a specified commodity has been stored in the warehouse.<sup>1257</sup> However, WRs can only achieve this purpose of serving as evidence for stored commodities if warehouse operators issue them.<sup>1258</sup> Therefore, the issuance of WRs is an essential aspect of a WR legislation. According to the draft MLWR, the issuance of WRs over goods stored is upon the request of depositors after the warehouse operators take possession of the goods deposited.<sup>1259</sup> However, where a WR is not issued for any reason, perhaps due to a licensing problem of the warehouse, its absence should not affect the validity of the storage agreement entered by the warehouse operator and the depositor.<sup>1260</sup>

The WR Bill provides for the issuance of WRs, but only by licensed warehouses.<sup>1261</sup> However, the WR Bill does not specify whether the issuance of WRs is done upon the request of the depositors.<sup>1262</sup> This is rightly so because expressly stating that WRs must be issued in the instance of depositors after the warehouse operators have taken possession of the goods

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<sup>1255</sup> Secured Transactions in Movable Assets Act 2017, s 2(1); see also Secured Transactions in Movable Assets Act 2017, s 3(1); s 8(1); s 12.

<sup>1256</sup> UNCITRAL Model Law on Secured Transactions (1 July 2016) UNCITRAL Doc V.19-08779(V.16-04667), art 145; see also Secured Transactions in Movable Assets Act 2017, s 10 (1).

<sup>1257</sup> Gideon Onumah, 'Implementing Warehouse Receipt Systems in Africa: Potential and Challenges' (Fourth African Agricultural Markets Program Policy Symposium, Lilongwe, 6-7 September 2010) 1.

<sup>1258</sup> *ibid.*

<sup>1259</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 6(1) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1260</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 6(2) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1261</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 26.

<sup>1262</sup> *ibid.*

deposited is limiting, especially to private warehouses. This is because, in a private warehouse setting, goods are sometimes produced by the warehouse operator, erasing the need for express deposit by the farmer.<sup>1263</sup> The different types of warehouses have been discussed in section 2.4.1 of this thesis.<sup>1264</sup> Accordingly, the WR Bill does not have to conform to the draft MLWR on issuing WRs if they intend to accommodate private warehousing, as there will be no need to state that WRs will be issued upon the request of depositors. However, just as the draft MLWR, the WR Bill can specify that where a WR is not issued for any reason, the failure to issue the WR should not affect the validity of the storage agreement.<sup>1265</sup>

Furthermore, just as the WR Bill does not specify the form of WR it provides for, it also fails to indicate what form of WR will be issued, and it needs to be more specific about the process of issuing WRs.<sup>1266</sup> It merely provided that WRs shall only be printed by the Agency or by order of the Agency following the form prescribed by the potential regulation that will be enacted based on the WR Bill when it becomes an Act.<sup>1267</sup> In the absence of a regulation, it is impossible to know whether the potential form that will be provided will be effective for issuing e-WRs. Therefore, where there is no means of issuing e-WRs under the WR Bill, it will be difficult for the Bill to sufficiently support the introduction of e-WRs and their utilisation as collateral.

## 5.5. Registration of Warehouse Receipts

Registration of WRs is one of the factors that affect the issuance of WRs. In this sense, registration is not the form of registration discussed in section 4.2.1.2.2.1 of this research, which is a form of perfection.<sup>1268</sup> The kind of registration discussed in this section could

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<sup>1263</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 18; see also Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 5 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021; see also Devajit Mahanta, 'Review of Warehouse Receipt as an Instrument for Financing in India' (2012) 1(9) Intl J Sci Tech Res 42, 43; Tibor Taiji, 'The Resurrection of Field Warehousing' (2014) 55(3) Acta Juridica Hungarica 191.

<sup>1264</sup> *ibid.*

<sup>1265</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 6(2) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1266</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 26; s 28.

<sup>1267</sup> *ibid* s 28 (1).

<sup>1268</sup> Secured Transactions in Movable Assets Act 2017, s 8(1).

enhance the use of e-WRs as collateral and bailment, including its alienation.<sup>1269</sup> Registration here is similar to the form of registry maintained by CAC in Nigeria, an equivalent of Companies House in the UK, where certificates of incorporation and other information like particulars of proprietors, directors, and shareholders are recorded.<sup>1270</sup>

The primary purpose of the form of registration discussed in this section is to facilitate the issuance and transfer of e-WRs.<sup>1271</sup> Transfer of e-WRs is simply the change of control.<sup>1272</sup> That is, the change in the persons controlling the e-WRs. Registration protects the rights of those in control of e-WRs by preventing the destruction of the e-WRs, unauthorised access, and other factors that can affect the rights of control.<sup>1273</sup> The registry amplifies the reasons why it is submitted in this study that e-WRs are better than paper WRs. This is because it uses the aid of digital technology to make available a reliable means of enhancing the transparency of e-WRs and providing ways to guarantee the integrity of the information contained in e-WRs, the time of issue, and the date of transfer, among others.<sup>1274</sup>

Registration of WRs and licensing of warehouses do not form part of the matters treated by the draft MLWR, although the Working Group 1 of its drafters in UNIDROIT discussed them in their Issue Paper.<sup>1275</sup> This is because the draft MLWR focuses on the private law aspect of WRs, that is, the area of law that concerns the relations between individuals or organisations.<sup>1276</sup> It does not centre on the regulatory or administrative aspects of WR

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<sup>1269</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 20-21 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021.

<sup>1270</sup> *ibid*; see also Companies and Allied Matters Act 2020 s 8(1).

<sup>1271</sup> *ibid*; see also Chapter Two of this thesis, s 2.6.

<sup>1272</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 15(2) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.

<sup>1273</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 21 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021.

<sup>1274</sup> *ibid*.

<sup>1275</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 20 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021.

<sup>1276</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Background Research Paper' (2020) UNIDROIT Working Paper, First Session, Study LXXXIII – W.G.1 – Doc. 4, 6 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-04-e.pdf>> accessed 7 February 2022; see also UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 20 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021; Ernest J Weinrib, *The Idea of Private Law* (1<sup>st</sup> edn, OUP 2012).

systems, like the WR registry.<sup>1277</sup> Therefore, countries can choose what works for them regarding the administrative aspects of their WR system.<sup>1278</sup>

The WR Bill provides for a central registry for the registration of WRs.<sup>1279</sup> It stipulates that the central registry will be operated by the Agency created under the Bill, and the location of the registry will be Abuja, the Federal Capital Territory of Nigeria.<sup>1280</sup> Thus, only one registry exists and shall be operated in one place by one government Agency.<sup>1281</sup> The WR Bill also appointed the Secretary of the Agency as the Registrar of the central registry.<sup>1282</sup> It provides that the Registrar is responsible for registering WRs or any transactions emanating from WRs issued under the WR Bill, that is, WRs issued by licensed warehouse operators.<sup>1283</sup> This implies that the Registrar is also required to register security transactions emanating from WRs. In other words, the Bill requires creditors to register their security interest over WRs in the central registry, even though the registration of the notice of such transaction might have been registered in the National Collateral Registry created by STMAA.<sup>1284</sup>

This study has overemphasised, particularly in section 4.2.1.2, that the registration of security interests in personal property in multiple registries is not the ideal registration standard according to the MLST.<sup>1285</sup> STMAA has already been criticised for allowing security interests in movable assets created by companies to be registered in CAC and for allowing multiple security registries.<sup>1286</sup> Therefore, the WR Bill should avoid creating further problems in Nigeria's secured transactions law. This means that the provision of the WR Bill requiring the Registrar to register all forms of transactions emanating from WR transactions is broad and should be narrowed down to specific transactions. Alternatively, it could be stated that the Registrar can register all transactions emanating from WR transactions except the registration of security interests created over WR, which will be done according to STMAA.

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<sup>1277</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 20 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021.

<sup>1278</sup> *ibid.*

<sup>1279</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 66.

<sup>1280</sup> *ibid.*

<sup>1281</sup> *ibid.*

<sup>1282</sup> *ibid* s 67.

<sup>1283</sup> *ibid* s 68; 26.

<sup>1284</sup> Secured Transactions in Movable Assets Act 2017, s 8(1).

<sup>1285</sup> UNCITRAL Model Law on Secured Transactions (1 July 2016) UNCITRAL Doc V.19-08779(V.16-04667), art 145.

<sup>1286</sup> Williams C Iheme, 'The Defects of Nigeria's Secured Transactions in Movable Assets Act 2017 and their Potential Repercussion to Access to Credit: A Comparative Analysis and Lessons from the Anglo-American Law' (2021) 27 Comp L Rev 9.

The Registrar is also responsible for registering cancellation and modification of WRs, including their endorsement.<sup>1287</sup> It would be easier to notify the Registrar about a modification and cancellation of e-WRs than if paper WRs were involved.<sup>1288</sup> This is because e-WRs are in digital form, which can be designed to link their information with the central registry to notify them of any changes made to the e-WRs automatically.<sup>1289</sup> In contrast, this is not possible with paper WRs, which could be done manually, and it is possible to forget that the information on a paper WR has not been updated in the registry as cancelled or modified. This reiterates the point that e-WRs are better than paper WRs in terms of speed.

Concerning the registration of the endorsements on WRs, although negotiable WRs are not often endorsed, and endorsement is usually a requirement for non-negotiable WRs, nothing excludes negotiable WRs from being endorsed.<sup>1290</sup> Therefore, the central registry appears to provide for negotiable and non-negotiable WRs. Nonetheless, it is uncertain whether the central registry offers the registration of e-WRs because the WR Bill did not specify what form of WR it covers. This would pose a challenge in using e-WRs in Nigeria, especially since the draft MLWR, which is used as the basis of the analysis in this chapter, is silent on registration. Thus, it will be difficult for farmers in Nigeria to employ e-WRs as collateral without the amendment of the WR Bill. Hence, Nigeria could lose out on the benefits associated with utilising e-WRs instead of paper WRs.

## **5.6. Digital System of Electronic Warehouse Receipts**

This research urges Nigeria to adopt e-WRs because of their numerous benefits, especially in facilitating farmers' access to finance. Therefore, it is expedient to examine the potential digital technologies required to manage the e-WR system.

By virtue of the MLETR, Nigeria can choose the digital system it deems fit.<sup>1291</sup> This was emphasised in the article-by-article commentary of the MLETR.<sup>1292</sup> This approach is referred to as the technological neutrality approach, which allows an array of digital models/systems,

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<sup>1287</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 68(1).

<sup>1288</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif 716, 725.

<sup>1289</sup> *ibid.*

<sup>1290</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 15.

<sup>1291</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 18.

<sup>1292</sup> *ibid.*



whether ledger-based like blockchain, cloud system, or token-based, among other technologies, to be employed in the operation of e-WR systems.<sup>1293</sup> This flexibility endorsed by the MLETR is advantageous as Nigeria can weigh the cost of creating an e-WR system, including its suitability to the Nigerian environment, before concluding on the technology to use.

### **5.7. Conversion from Paper Warehouse Receipts to Electronic Warehouse Receipts**

As section 2.3.2 of this thesis indicates, AFEX runs paper WRs in Nigeria.<sup>1294</sup> This raises the question of whether there will be a means available to transform existing paper WRs to e-WRs to be compatible with the potential e-WR system in Nigeria. This provision is absent in the WR Bill. This could be because the WR Bill did not specify the form(s) of WRs it covers. Thus, this indicates that the WR Bill, as it is currently, does not adequately support e-WRs.

The draft MLWR, its draft guide to enactment and the MLETR provided the procedure for transforming from paper WR to e-WR.<sup>1295</sup> However, the MLETR is more detailed in this regard than the draft MLWR, and it provides a commentary that explains the rationale behind each process of change.<sup>1296</sup>

The purpose of Article 17 of the MLETR, which provides for the replacement of paper WRs with e-WRs, is to prevent the circulation of two documents with the same content in different formats, thereby duplicating the rights and obligations that should have been in one document.<sup>1297</sup> Another purpose of Article 17 of the MLETR is to ensure that valuable

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<sup>1293</sup> *ibid.*

<sup>1294</sup> Bob Baulch and others, 'Commodity Exchange and Warehouse Receipts in Malawi: Current Status and their Implications for the Development of Structured Markets' (2018) IFPRI Malawi Working Paper 25, 6 <<http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/132922/filename/133133.pdf>> accessed 4 June 2021.

<sup>1295</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 14 <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; see also UNIDROIT Working Group on Model Law on Warehouse Receipts-Guide to Enactment, 'Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIIIA – W.G.1 – Doc. 2, art 14(129) <<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>> accessed 11 December 2023; UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 17; Henry D Gabriel, 'The UNCITRAL Model Law on Electronic Transferable Records' (2019) 24 *Unif L Rev* 261, 267.

<sup>1296</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 17; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm.

<sup>1297</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 163-68.

information contained in paper WRs is not lost during conversion to e-WRs.<sup>1298</sup> This way, the rights and obligations of parties involved in paper WR transactions will be preserved after the conversion into e-WRs.<sup>1299</sup>

The first process of converting from paper WRs to e-WRs involves using a reliable method.<sup>1300</sup> The standard for achieving a reliable method for conversion is enshrined in Article 12 of the MLETR.<sup>1301</sup> This reliability requirement has already been discussed in section 3.3.1.1 of this thesis, and it is the same standard as ensuring the reliability of e-WRs, which boils down to the integrity of e-WRs.<sup>1302</sup> This research segment will summarise reliability and relate it to the conversion of paper WRs to e-WRs.

One of the prerequisites to prove reliability in the conversion of paper WRs to e-WRs is the availability of ‘any’ operational rules to assess reliability.<sup>1303</sup> Article 12(a)(i) provides thus,

“For the purposes of articles 9, 10, 11, 13, 16, 17 and 18, the method referred to shall be:

As reliable as appropriate for the fulfilment of the function for which the method is being used, in the light of all relevant circumstances, which may include:

(i) Any operational rules relevant to the assessment of reliability...”

Following how Article 12(a)(i) was phrased, the WR legislation does not have to present the operational rules. Thus, the Agency created by the WR Bill, that is the Nigerian Independent Warehouse Regulatory Agency (the Agency), can provide the operational rules, or they can delegate this responsibility to a third party. The operational rules can equally be provided for in a separate legislation like the NDPA.<sup>1304</sup> Any entity with this responsibility has to maintain software that will be utilised to authenticate and measure the authenticity of WRs.<sup>1305</sup>

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<sup>1298</sup> *ibid*; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 164.

<sup>1299</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 164.

<sup>1300</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 17(1).

<sup>1301</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12; see also Henry D Gabriel, ‘The UNCITRAL Model Law on Electronic Transferable Records’ (2019) 24 Unif L Rev 261, 265; UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 167.

<sup>1302</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 10(1)(b).

<sup>1303</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(i).

<sup>1304</sup> Nigerian Data Protection Act 2023, s 1.

<sup>1305</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 122.

Where the Agency delegates this responsibility to a third party, the Agency is obligated to carry out regular and accurate audits on the third party's activities as evidence of validity that a reliable method was employed.<sup>1306</sup> Where the Agency is responsible for providing the operational rules, or another legislation provides it, an independent body will be in charge of the audit.<sup>1307</sup> This also ensures the quality and trustworthiness of the software and hardware utilised by the entity providing the operational rules for reliability, and prevents unauthorised access when converting from paper WRs to e-WRs.<sup>1308</sup>

Where the Agency or the independent body, as the case may be, is satisfied with the operational method for measuring reliability employed, they will make a declaration of this.<sup>1309</sup> This could entail that the third party or the Agency or the Commission created by the NDPA, the Nigeria Data Protection Commission, is required to publish the declaration, including the last audit date, on their website or business page for any interested party to see.<sup>1310</sup> This declaration is a means of ensuring that the entity providing operational rules takes data integrity seriously in the process of converting paper WRs to e-WRs in Nigeria.<sup>1311</sup> Therefore, where the above conditions are met, it can be safely concluded that a reliable method for the change of medium of WRs is utilised.<sup>1312</sup>

Conversion from paper WRs to e-WRs differs from transitioning from WR legislation that supports paper WRs to one that solely supports e-WRs. Since Nigeria does not yet have a WR legislation, a specific transition period is not required to move from a legislation that adopts paper WRs to one that solely supports e-WRs. It is trite that specific transition periods in certain situations are not new to Nigeria.<sup>1313</sup> For instance, STMAA provides that a security transaction created and registered under the Central Bank of Nigeria Registration of Security Interests in Movable Property by Banks and Other Financial Institutions (Regulations No 1, 2015) (CBNR)

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<sup>1306</sup> *ibid*; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 132; UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(v).

<sup>1307</sup> *ibid*.

<sup>1308</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(iii); (iv); see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 130; 131.

<sup>1309</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(vi).

<sup>1310</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 133.

<sup>1311</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(ii); see also Shmmon Ahmed, Ashok Kumar and Abdul Hafeez, 'The Importance of Data Integrity and its Regulation in Pharmaceutical Industry' (2019) 8(1) J Pharm Innov 306.

<sup>1312</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 17(1).

<sup>1313</sup> Secured Transactions in Movable Assets Act 2017, s 62.

shall remain valid for 180 days unless the transaction is re-registered under STMAA in accordance with STMAA.<sup>1314</sup> This is possible because there were old frameworks like CBNR and CAMA, among others, that supported the creation and registration of personal property in Nigeria before a new framework, STMAA, was enacted.<sup>1315</sup>

Conversely, in the case of e-WRs, there has never been any WR legislation in Nigeria.<sup>1316</sup> Thus, there is no need for a specific transition time. Instead, it will take a gradual process for Nigeria to thoroughly learn how e-WRs are used, especially their utilisation as collateral. That is, a gradual transition period that involves training and creating awareness about the proposed new WR legislation for stakeholders of e-WRs, like farmers and warehouse operators, is required in Nigeria.<sup>1317</sup> Therefore, while a gradual process is necessary for Nigerians to gain a better knowledge of e-WRs when a WR legislation that solely supports e-WRs is enacted, the conversion process from paper WRs to e-WRs is quicker since a few persons utilise paper WRs in Nigeria, and the process will be done digitally.<sup>1318</sup>

Furthermore, while the issuance of e-WRs differs from the conversion from paper WRs to e-WRs, the reliability standard for both processes is the same.<sup>1319</sup> The differentiating factor between a newly issued e-WR and an e-WR converted from a paper WR is that the converted e-WR contain a statement indicating a change of medium.<sup>1320</sup> This conversion statement is so important that an infringement of it invalidates the conversion, and this affects the validity of the e-WR.<sup>1321</sup>

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<sup>1314</sup> Secured Transactions in Movable Assets Act 2017, s 62(3).

<sup>1315</sup> Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (Bloomsbury 2021) 149; see also Iyare Otabor-Olubor, 'Reforming the Law of Secured Transactions: Bridging the Gap between the Company Charge and CBN Regulations Security Interests' (2017) 17(1) J Corp L Stud 39.

<sup>1316</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022.

<sup>1317</sup> Terrence Morrison, *Actionable Learning: A Handbook for Capacity Building Through Case Based Learning* (Asia Dev Bank Inst 2001); see also Sonja Klinsky and Ambuj D Sagar, 'The Why, What and How of Capacity Building: Some Explorations' (2022) 22(5) Clim Pol 549.

<sup>1318</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 168; see also Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 19; Bob Baulch and others, 'Commodity Exchange and Warehouse Receipts in Malawi: Current Status and their Implications for the Development of Structured Markets' (2018) IFPRI Malawi Working Paper 25, 6  
<<http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/132922/filename/133133.pdf>> accessed 4 June 2021; Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801, 805.

<sup>1319</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 168; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(i); art 17(1).

<sup>1320</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 17(2).

<sup>1321</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 169.

Where the above conditions are met, including the reliable method condition, the paper WR will cease to exist; thus, only the e-WR will remain valid.<sup>1322</sup> This will avoid the confusion of having two documents with the same information in operation, which could lead to multiple performance claims.<sup>1323</sup> Additionally, the parties need to be aware that the change from a paper WR to an e-WR will not affect the rights and duties of the parties in the transaction.<sup>1324</sup> This emphasises that the conversion from paper WRs to e-WRs differs from the re-issuance of e-WRs.<sup>1325</sup>

## **5.8. Conclusion**

The analysis of the WR Bill in this chapter suggests that the WR Bill, as it is currently, is not sufficient to support e-WRs in Nigeria. This implies that farmers in Nigeria cannot adequately carry out e-WR transactions. However, it is possible to successfully use e-WRs in Nigeria if the government pays attention to the reform of the WR Bill using external frameworks like the draft MLWR and the MLETR.

Furthermore, this chapter demonstrated that Nigeria could benefit from the draft MLWR regarding the title, scope, purpose, and content of WRs. The chapter also discussed the importance of storage agreements. This chapter emphasised the importance of having a definite scope and a better purpose for WR legislation to create certainty while erasing ambiguity.

In terms of scope, the analysis made in this chapter indicates that the long title of the WR Bill, which ordinarily should have presented its scope in the absence of a preamble, is vague and did not also describe the purpose of the Bill. It was also found that the WR Bill failed to specify the form of WR it covers, which is fundamental in WR transactions. This equally affects the section of the WR Bill that deals with the registration of WRs. That is, due to its lack of specification, the type of WR the Bill refers to concerning registration is undefined. This implies that the WR Bill does not expressly support the registration of e-WRs, and this will contribute to the difficulty of farmers utilising e-WRs as collateral in Nigeria.

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<sup>1322</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 17(3).

<sup>1323</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 170.

<sup>1324</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 17(4).

<sup>1325</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 168.

Therefore, following the draft MLWR, it was recommended that the WR Bill should properly define its purpose and scope by stating that it deals with e-WRs in an e-WR system. Regarding the content of e-WRs, it was submitted that it should be simple and concise. Thus, the non-mandatory content of the e-WRs, as discussed in this chapter, should be reflected on a storage agreement, provided that the storage agreement is linked to the e-WR.

While it was recommended that the WR Bill conforms to some areas of the draft MLWR, like scope and purpose, among others mentioned above, the analysis made in this chapter emphasised that security interests should be done according to STMAA; and the request for the issuance of WRs must not emanate from a depositor. Thus, the WR Bill does not have to correspond with the draft MLWR concerning security rights in WRs and the issuance of WRs. This is because Nigeria can adopt the draft MLWR in a way that suits its needs since it is a soft law.

Regarding the technological model to operate e-WRs in Nigeria, this chapter demonstrated that the MLETR allows adopting countries the freedom to design the technological model that is most suitable to their budget and population of users, among others. Furthermore, this chapter examined the possibility and procedure of converting paper WRs to e-WRs. Although this was provided for by the draft MLWR, this research adopted the process specified by the MLETR because it has a more detailed analysis of the issue. It was concluded that paper WRs can be transformed into e-WRs without any complications as far as a reliable method is utilised; and the newly converted e-WR indicates in a statement that a change has occurred, although such change will not affect the rights, duties, and liability of parties.

In summary, this chapter shows that although the WR Bill is insufficient to support e-WRs in Nigeria, there are ways in which Nigeria can benefit from the provisions of external frameworks like the draft MLWR, among others to amend the Bill to support the use of e-WRs before it is passed into law. Therefore, this chapter provides part of the answer to the third research question in section 1.4.3 of this thesis, which involves a feasibility study on whether the WR Bill is sufficient to support the effective use of e-WRs and the e-WR system in Nigeria.<sup>1326</sup>

The next chapter of this thesis will discuss the potential legal problems e-WRs could face when introduced in Nigeria.

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<sup>1326</sup> The third research question is, 'Is There a Potential for Successfully Operating the Warehouse Receipt System in Nigeria with the Form(s) of Warehouse Receipt Selected, and How Can it be Managed to Facilitate Access to Finance for Farmers while Improving Nigeria's Economy?'

## **CHAPTER SIX: POTENTIAL LEGAL CHALLENGES OF USING ELECTRONIC WAREHOUSE RECEIPTS AS COLLATERAL IN NIGERIA AND POSSIBLE REMEDIES**

### **6.1. Introduction**

The preceding chapter critically examined the Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022 (WR Bill). It indicated that if the present WR Bill were to be passed into law, it would not support the use of e-WRs in Nigeria. Therefore, the chapter proposed a reform to the WR Bill using the International Institute for the Unification of Private Law (UNIDROIT) and the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Warehouse Receipts (draft MLWR), as well as the UNCITRAL Model Law on Electronic Transferrable Records (MLETR) as benchmarks.

Apart from the fact that e-WRs are relatively new in commercial law, they have not been implemented in many African countries.<sup>1327</sup> Therefore, some challenges will typically be associated with their use in Nigeria. Also, the analysis done in the previous chapter of this thesis made some of the potential problems arising from e-WRs apparent. For example, there is the problem of the lack of a mechanism for issuing e-WRs in Nigeria, as stated in section 5.4.4 of this thesis.

In addition, since the draft MLWR and the MLETR are recommended to Nigeria as benchmarks for the reform of the WR Bill to allow farmers to use e-WRs, it will be relevant to analyse some legal problems, such as legal transplant. It will equally be necessary to understand the scope of creditors allowed in the Secured Transactions in Movable Assets Act 2017 (STMAA) to inquire how this statute can affect the use of e-WRs in Nigeria in terms of creditors, among other legal problems.

The type of challenge above is classified under legal problems. Legal problems occur and can be resolved by law or through legal principles.<sup>1328</sup> For instance, legal issues can commence because of disputes arising from contracts; they could also border around the interpretation of the constitution and application of international law, among others.<sup>1329</sup> Thus, like chapter five of this thesis, this chapter will continue to attempt the third research question in section 1.4.3. That is, whether it is possible to operate the e-WR system in Nigeria successfully and find how

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<sup>1327</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) xi.

<sup>1328</sup> Maureen F Fitzgerald and Susan Barker, *Legal Problem Solving: Reasoning, Research and Writing* (8<sup>th</sup> edn, LexisNexis 2019).

<sup>1329</sup> *ibid.*

it can be managed to facilitate access to finance for farmers while contributing to the development of Nigeria's economy.<sup>1330</sup>

Since an e-WR system cannot function without e-WRs, this chapter will identify some legal problems that could affect the initiation and use of e-WRs in Nigeria and offer some remedies to those problems.

## **6.2. Potential Legal Problems Electronic Warehouse Receipts Could Encounter in Nigeria and Possible Solutions**

### **6.2.1. Issuance, Registration and Licensing of Electronic Warehouse Receipts**

Section 5.4.4 of this thesis identified that the WR Bill did not specify the form of WR it was referring to in terms of the issuance of WRs.<sup>1331</sup> It only discussed who can issue WRs, but not the form of WR that can be issued or how the WRs can be issued.<sup>1332</sup> This would pose a problem to the use of e-WRs in Nigeria.

Also, while the WR Bill provides for a central registry operated by the Nigerian Independent Warehouse Regulatory Agency (the Agency), as stated in section 5.2 of this thesis, there is no evidence to prove that the central registry covers the registration of e-WRs.<sup>1333</sup> Recall that the registration discussed here is not related to a mode of perfection of security interests; instead, it refers to a process that will facilitate the issuance and transfer of e-WRs.<sup>1334</sup> Thus, it will be difficult to effectively utilise e-WRs in Nigeria because there is no way to appropriately issue or transfer control of e-WRs, even if Nigeria adopts them. Consequently, it will be impossible for farmers to use e-WRs as collateral in Nigeria unless a system is set up to resolve this problem.

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<sup>1330</sup> The third research question is, 'Is There a Potential for Successfully Operating the Warehouse Receipt System in Nigeria with the Form(s) of Warehouse Receipt Selected, and How Can it be Managed to Facilitate Access to Finance for Farmers while Improving Nigeria's Economy?'

<sup>1331</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 26.

<sup>1332</sup> *ibid*; The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 28.

<sup>1333</sup> *ibid* s 66.

<sup>1334</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 20-1 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021.



Since the scope of the draft MLWR does not cover the registration of WRs, among the countries that practise an e-WR system, such as Serbia, Zambia, Kenya, and others, this section of the research reviews examples from two countries, the United States of America (the United States) and South Africa.<sup>1335</sup> The United States was chosen for this research because e-WRs originated there.<sup>1336</sup> Moreover, it has one of the most advanced e-WR systems in the world.<sup>1337</sup> South Africa was also selected for this analysis because it has been reckoned with success in using e-WRs, and it is also in Africa, like Nigeria.<sup>1338</sup> It is important to point out that e-WRs in some jurisdictions like South Africa are known as Electronic Silo Certificates (e-silo certificates).<sup>1339</sup>

#### **6.2.1.1. The United States Mode of Issuance and Registration of Electronic Warehouse Receipts**

The United States does not have one registry that registers e-WR transactions.<sup>1340</sup> The United States Department of Agriculture (USDA) licenses several service providers who are privately owned tech companies to maintain an electronic system that facilitates the issuance and

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<sup>1335</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801.

<sup>1336</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 2 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 804.

<sup>1337</sup> Nurten Gün and Emine Tahsin, 'Role of Electronic Warehouse Receipt System in Development of Commodity Exchange: An Assessment for Turkey' (2019) 5(1) *Temel Eğitim Araştırmaları Dergisi* 9.

<sup>1338</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 3 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 29.

<sup>1339</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 1 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022.

<sup>1340</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 804; see also Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) *Ariz J Intl Comp L* 205, 209.

registration of e-WRs.<sup>1341</sup> These companies do not issue e-WRs themselves to the depositors of goods; instead, they have contracts with warehouse operators and empower them to create and issue e-WRs to depositors or an interested party, depending on the type of warehouse.<sup>1342</sup> In other words, the warehouse operators have to register with any of the service providers to enable them to create and issue e-WRs, subject to the type of goods the warehouse operator receives for deposition or deals in.<sup>1343</sup> For instance, the Plain Cotton Cooperative Association is one of the service providers in the United States e-WR system.<sup>1344</sup> However, its major focus is on cotton.<sup>1345</sup> Some others, like EWR Inc., eGrain, and others, focus on cotton and other agricultural goods like rice, peanuts, cocoa, and orange juice, among other agricultural produce.<sup>1346</sup>

Furthermore, service providers, through their digital platform/software, track the issuance and transfer of e-WRs, making e-WR transactions easy and transparent.<sup>1347</sup> This equally encourages access to finance, as creditors can search the registry of the service providers to verify the validity of e-WRs tendered as collateral.<sup>1348</sup> Therefore, the United States uses a third-party system to issue and register e-WRs, even though the USDA supervises the service providers.<sup>1349</sup>

#### **6.2.1.2. South African Mode of Issuance and Registration of Electronic Warehouse Receipt**

The issuance pattern of e-WRs, that is, e-silo certificates in South Africa, differs from that of the United States. Among the warehouse operators, that is, silo operators as they are known in South Africa, the two most prominent ones who oversaw the storage of over 60 per cent of the grains produced in the country, developed a software company to create a system for e-

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<sup>1341</sup> *ibid.*

<sup>1342</sup> *ibid.*

<sup>1343</sup> *ibid.*

<sup>1344</sup> United States Department of Agriculture: Agricultural Marketing Service, 'FSA Approved Electronic Warehouse Receipt Providers' <<https://www.ams.usda.gov/rules-regulations/uswa/agreements-approved-providers>> accessed 3 June 2023; see also Warehouse and Commodity Management Division, 'United States Warehouse Act 2020 Annual Report' (United States Department of Agriculture: Agricultural Marketing Service 2020).

<sup>1345</sup> *ibid.*

<sup>1346</sup> *ibid.*

<sup>1347</sup> Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) *Ariz J Intl Comp L* 205, 209.

<sup>1348</sup> *ibid.*

<sup>1349</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 804; see also Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) *Ariz J Intl Comp L* 205, 209.

silo certificates.<sup>1350</sup> The software company, which is now known as Electronic Silo Certificates (Pty) Ltd (ESC), is the service provider for e-silo certificates in South Africa.<sup>1351</sup>

Since stakeholders of the e-silo certificate were apprehensive that their confidentiality might not be kept, the ESC resolved to manage their system server through a neutral party, who is independent of the company players.<sup>1352</sup> Initially, the Exordia Division of the PricewaterhouseCoopers managed the servers.<sup>1353</sup> Currently, the ESC's system server is managed by Ascent Technologies, a private company independent of other participants of the e-silo certificate system.<sup>1354</sup>

Like the United States, silo operators register with the ESC and are empowered to issue e-silo certificates.<sup>1355</sup> The issued e-silo certificates are automatically recorded on the Johannesburg-based server of the ESC.<sup>1356</sup> In other words, the ESC has a registry for e-silo certificates.<sup>1357</sup>

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<sup>1350</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 1 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQ\\_FnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQ_FnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 30.

<sup>1351</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 30; AFGRI Agri Services (Pty) Limited, 'Grain Management Operational Review – 2020/2021 Silo Services' (AFGRI Group Holdings) <[https://www.afgri.co.za/wp-content/uploads/sites/4/2020/04/AFGRI\\_Grain\\_Management\\_Silo\\_Services\\_Northwest\\_English.pdf](https://www.afgri.co.za/wp-content/uploads/sites/4/2020/04/AFGRI_Grain_Management_Silo_Services_Northwest_English.pdf)> accessed 6 June 2023; AFGRI Agri Services (Pty) Limited, 'Grain Management Operational Review – 2023/2024' (AFGRI Group Holdings) <[https://www.afgri.co.za/wp-content/uploads/2023/05/2023\\_05\\_AFGRI\\_Grain\\_Management-tarif-English.pdf](https://www.afgri.co.za/wp-content/uploads/2023/05/2023_05_AFGRI_Grain_Management-tarif-English.pdf)> accessed 4 August 2024.

<sup>1352</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 30.

<sup>1353</sup> *ibid.*

<sup>1354</sup> Electronic Silo Certificate, 'About: Confidentiality Assured' (ESC) <<https://www.silocerts.co.za/about.html>> accessed 4 August 2024.

<sup>1355</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 1 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQ\\_FnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQ_FnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 29.

<sup>1356</sup> *ibid.*

<sup>1357</sup> *ibid.*

The interesting feature of the South African ESC software is that it operates like Internet banking or electronic banking (e-Banking), available in many banks and financial institutions worldwide, including Nigeria.<sup>1358</sup> It gives the depositor, or the individual in control of the e-silo certificate, access to manage their e-silo certificate.<sup>1359</sup> From the software, they can transfer the e-silo certificate to another party or even use the certificate as collateral for a loan.<sup>1360</sup> The system also enables the advertisement of goods covered by the e-silo certificate to registered users.<sup>1361</sup> This way, the depositor can sell the goods to a buyer; the buyer then pays the creditor to offset the loan, while the creditor transfers the excess from the proceeds of the sale back to the depositor.<sup>1362</sup>

The South African System of e-silo certificates allows brokers to act on behalf of depositors or the people in control of the certificate, especially where they do not possess a phone or computer or do not know how to operate one.<sup>1363</sup> The brokers are private entities and can be contracted by the person controlling the e-silo certificate.<sup>1364</sup> The brokers are also utilised for the transfer of e-silo certificates.<sup>1365</sup> In addition to brokers, the ESC also provides a telephonic

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<sup>1358</sup> Babatunde Ololade and Sunday Ogbeide, 'E-Banking in Nigeria: Issues and Challenges' (2017) 8(6) Res J Financ Account 16; see also Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801, 805; Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 12 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQ\\_FnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQ_FnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; Electronic Silo Certificates, 'About' <<http://www.silocerts.co.za/about.html>> accessed 5 June 2023.

<sup>1359</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 2 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQ\\_FnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQ_FnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801, 805.

<sup>1360</sup> *ibid.*

<sup>1361</sup> *ibid.*

<sup>1362</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 29; see also World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 21.

<sup>1363</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 2 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQ\\_FnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQ_FnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also Electronic Silo Certificates, 'About' <<http://www.silocerts.co.za/about.html>> accessed 5 June 2023.

<sup>1364</sup> *ibid.*

<sup>1365</sup> *ibid.*; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 30.

trading centre for farmers who need to be more conversant with Information Technology (IT) to walk in and have a call with one of the ESC operatives to carry out e-silo transactions.<sup>1366</sup>

The electronic system registers these activities in the central server of the ESC.<sup>1367</sup> This allows the company to track the transactions carried out on the certificates.<sup>1368</sup> The resultant effect is that creditors can record on the software to indicate when an e-silo certificate has been accepted as collateral.<sup>1369</sup> Thus, this electronic system registers security interest created on e-silo certificates. In Nigeria, this will be different because the STMAA provides for the registration of security interests in personal property in the National Collateral Registry.<sup>1370</sup>

The ESC registry is connected to the South African Futures Exchange (SAFEX), a subsidiary of the Johannesburg Stock Exchange, which is responsible for the commodity exchange in South Africa.<sup>1371</sup> Thus, the electronic system for e-silo certificates makes commodity exchange and access to finance for farmers easy in South Africa.<sup>1372</sup>

Unlike in the United States, where the USDA regulates service providers, the ESC is not regulated by the Ministry of Agriculture in South Africa or any government body.<sup>1373</sup> This could

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<sup>1366</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 30.

<sup>1367</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 1 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 29.

<sup>1368</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 2 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 29.

<sup>1369</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805.

<sup>1370</sup> Secured Transactions in Movable Assets Act 2017, s 8(1).

<sup>1371</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 2 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022.

<sup>1372</sup> *ibid.*

<sup>1373</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351, 358; see also Stephen Meltzer and others, 'Sale and Storage of Goods in South

be because the United States operates a government-based regulatory agency model of the e-WR system, as discussed in section 4.3.2.2.1 of this thesis.<sup>1374</sup> That is, they adopt a system where the government regulates the e-WR system, has a legislation to set out the operation of the e-WR system, and all participants in the e-WR system automatically fall under the jurisdiction of the government agency.<sup>1375</sup> In contrast, South Africa adopts the private-sector-based regulatory model of the e-WR system discussed in section 4.3.2.2.2 of this research.<sup>1376</sup> That is, although they do not have a statute to regulate the e-WR system, the South African government encourages the privatisation of activities that deal with grains, including silo certificates.<sup>1377</sup> Nevertheless, the system providers are bound to provide information about the e-silo certificate system to the government when required.<sup>1378</sup>

Section 4.3.2.2.4 of this thesis recommended that Nigeria adopt the government-based regulatory agency e-WR system. This implies that Nigeria can adopt the United States' mode of issuing and registering e-WRs. However, although South Africa operates a private-sector-based e-WR system regulation, this research will modify the South African mode of issuing and registering e-WRs to prospectively suit Nigeria since the recommendation is for Nigeria to operate a government-based regulatory e-WR system. This would offer legislators flexibility in choosing from either mode based on the available resources in Nigeria at the time of adoption. Therefore, two options are developed for Nigeria in this research based on the countries' analysis above. They are set out below.

### **6.2.1.3. First Option for Nigeria Regarding the Issuance and Registration of Electronic Warehouse Receipts**

The first option is adapted from the South African model of issuing and registering e-WRs, but it is modified in this research for Nigeria. It entails upgrading the central registry created by

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Africa: Overview' (2021) Pract L Count Q&A: South Afr 1, 13; Vassil D Zhivkov, 'Warehouse Receipts: A Roadmap for the Harmonization of Trans-Pacific Law and Practice' (2016) 33 Ariz J Intl Comp L 191, 194.

<sup>1374</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351, 364.

<sup>1375</sup> *ibid* 363.

<sup>1376</sup> *ibid* 364.

<sup>1377</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 1 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKewiX153a\\_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKewiX153a_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351, 358.

<sup>1378</sup> *ibid*.

the WR Bill to accommodate e-WRs.<sup>1379</sup> The central registry could function in some ways like the ESC (Pty) Ltd in South Africa, where the proposed Nigerian Independent Warehouse Regulatory Agency (the Agency), which would operate the registry, would develop a digital system that would enable warehouses to use its software to issue e-WRs.<sup>1380</sup>

In this first option, any issued e-WR would automatically be recorded in the central registry.<sup>1381</sup> Hence, the central registry can track the issuance and transfer of e-WRs.<sup>1382</sup> Furthermore, every licensed warehouse, that is, a warehouse authorised to issue WRs, in this case, e-WRs would automatically fall under the jurisdiction of the central registry, and a contract between the warehouse and the Agency may not be required.<sup>1383</sup>

An example of how this first option could work is, when the control of an e-WR is transferred to the creditor to create a security interest; the Agency would record in the central registry that the e-WR has been transferred to the creditor in question. However, following the UNCITRAL Model Law on Secured Transactions (MLST), the central registry would not register the financing statement, which signifies the perfection of the security interest created on the e-WR.<sup>1384</sup> Rather, the National Collateral Registry designed for this purpose under STMAA will serve as the registry for the perfection of the security interest created on e-WRs.<sup>1385</sup>

Like the South African model, the e-WR software adopted by the Agency can be operated like internet banking in Nigeria, where the persons in control of e-WRs can manage their e-WR transactions.<sup>1386</sup> To make the e-WR system more accessible to all categories of farmers,

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<sup>1379</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 66.

<sup>1380</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 1 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQ\\_FnoECBMQAQ&usg=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQ_FnoECBMQAQ&usg=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022.

<sup>1381</sup> *ibid.*

<sup>1382</sup> *ibid.* 2.

<sup>1383</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 26; s7(1)(a);(b); (e).

<sup>1384</sup> Secured Transactions in Movable Assets Act 2017, s 8(1).

<sup>1385</sup> Secured Transactions in Movable Assets Act 2017, s 10(1); see also Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (Bloomsbury 2021) 157.

<sup>1386</sup> Babatunde Ololade and Sunday Ogbeide, 'E-Banking in Nigeria: Issues and Challenges' (2017) 8(6) Res J Financ Account 16; see also Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801, 805; Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 12 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQ\\_FnoECBMQAQ&usg=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQ_FnoECBMQAQ&usg=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; Electronic

including those with limited access to electronics, brokers can act on their behalf.<sup>1387</sup> Also, like the South African model, apart from brokers, the Agency that operates the central registry should provide a telephonic trading centre or an alternative IT kiosk for farmers who need to be more knowledgeable in IT, where the operatives of the central registry can help them with their e-WR transactions.<sup>1388</sup>

The difference between the central registry in Nigeria and the ESC would be that the central registry is a government-owned facility overseen by the Agency created by WR Bill.<sup>1389</sup> In contrast, the ESC is a private company that the government of South Africa does not license to run the e-silo certificate system.<sup>1390</sup> Therefore, in this option of issuing and registering e-WRs, a government agency, that is, the Nigerian Independent Warehouse Regulatory Agency, would operate the issuance and transfer of e-WRs.<sup>1391</sup>

It is recommended that Nigeria connect the central registry to a commodity market platform, just as South Africa connected the ESC to the South African Futures Exchange (SAFEX), to facilitate commodity exchange after the e-WRs are issued. Unfortunately, the Nigerian Commodity Exchange (NCX), the government-owned commodity exchange platform in Nigeria, is moribund.<sup>1392</sup> Therefore, Nigeria should work towards reviving the NCX or

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Silo Certificates, 'About' <<http://www.silocerts.co.za/about.html>> accessed 5 June 2023; see also Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 2 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digit al/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQ FnoECBMQAQ&usg=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digit al/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQ FnoECBMQAQ&usg=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805.

<sup>1387</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 2 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digit al/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQ FnoECBMQAQ&usg=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digit al/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQ FnoECBMQAQ&usg=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also Electronic Silo Certificates, 'About' <<http://www.silocerts.co.za/about.html>> accessed 5 June 2023.

<sup>1388</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 30.

<sup>1389</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 66.

<sup>1390</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351, 358; see also Stephen Meltzer and others, 'Sale and Storage of Goods in South Africa: Overview' (2021) *Pract L Count Q&A: South Afr* 1, 13.

<sup>1391</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 67(1).

<sup>1392</sup> The Technical Committee on Commodities Trading Ecosystem, *The Report on Commodities Trading Ecosystem in Nigeria* (The Securities and Exchange Commission Nig Doc, 2018) 62; see also Kingsley Obi Omeihe, Ibiyemi Omeihe and Bla Josee Charlotte Eba, *Price Volatility and the Nigerian*



collaborate with other commodity exchange platforms, such as the Africa Exchange or AFEX Commodities Exchange Limited (AFEX), which are privately owned, to make commodity exchange using e-WRs easy after issuance.

#### **6.2.1.4. Second Option for Nigeria Regarding the Issuance and Registration of Electronic Warehouse Receipts**

The second option this research proposes for Nigeria regarding the issuance of e-WRs, registration, and licensing is the United States pattern. Here, the proposed Nigerian Independent Warehouse Regulatory Agency (the Agency) created by the WR Bill can license several private companies, such as AFEX, as service providers to each create an electronic system to facilitate the issuance and registration of e-WRs.<sup>1393</sup> This could mitigate the cost of developing a central registry that would be digitally efficient to serve as the sole service provider for the e-WR system, as alluded to in the first option above.<sup>1394</sup> The Agency will then assume a supervisory role over the service providers, just like the USDA in the United States.<sup>1395</sup>

Under this system, interested warehouse operators will register and maintain a contract with the service provider of their choice, who will provide them with the software that will enable them to issue e-WRs.<sup>1396</sup> Although this pattern is adapted from the United States, it will be better for persons in control of e-WRs to participate in the e-WR system in the same manner as the electronic banking system, just as it is in the South African model will be better.<sup>1397</sup> Also,

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*Commodity Exchange (NCX)* (African Development Policy and Practice Insights Policy Paper 3/3, 2023).

<sup>1393</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 804; see also Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) *Ariz J Intl Comp L* 205, 209.

<sup>1394</sup> UNCITRAL Warehouse Receipt: Developing an UNCITRAL Instrument on Warehouse Receipt (2019) 57 <[https://uncitral.un.org/sites/uncitral.un.org/files/warehouse\\_receipts\\_report\\_final.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf)> accessed 10 May 2021.

<sup>1395</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 804; see also Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) *Ariz J Intl Comp L* 205, 209.

<sup>1396</sup> *ibid.*

<sup>1397</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 2 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805.

the operation of brokers and facilities like the telephonic centres that will help people in control of e-WRs manage their transactions should be considered.<sup>1398</sup>

The service providers can choose the kind of agricultural goods their services will cover, just as they do in the United States.<sup>1399</sup> Additionally, in this option, the service providers licensed by the Agency will then be responsible for tracking the issuance and monitoring the transfer of e-WRs.<sup>1400</sup> Therefore, an interested party can search a service provider's registry to authenticate the validity of an e-WR, especially before a contract is entered over the e-WR.<sup>1401</sup>

Although the Agency will supervise the service providers, the Agency is equally tasked with the supervision of warehouses to ensure the warehouses meet the prescribed standards by law.<sup>1402</sup> Thus, there could be a need for the licensing of warehouses. This requirement is equally present in the United States Warehouse Act 1916 (USWA).<sup>1403</sup>

Like in the USDA, the Agency can have a service provider licensing agreement with the service providers, which will allow the service providers to outline how they intend to manage the issuance and registration of e-WRs, including stating the type of technology they will employ for this job.<sup>1404</sup> Again, the agreement should contain issues such as the financial reporting of the service providers and the insurance they take out to indemnify users in case of problems such as the loss of data, among others.<sup>1405</sup> It should also contain matters

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<sup>1398</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 2 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQ\\_FnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQ_FnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 30.

<sup>1399</sup> United States Department of Agriculture: Agricultural Marketing Service, 'FSA Approved Electronic Warehouse Receipt Providers' <<https://www.ams.usda.gov/rules-regulations/uswa/agreements-approved-providers>> accessed 3 June 2023.

<sup>1400</sup> Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) *Ariz J Intl Comp L* 205, 209.

<sup>1401</sup> *ibid.*

<sup>1402</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, 7(1)(k).

<sup>1403</sup> United States Warehouse Act 1916, § 3(1) [7 United States Code 242].

<sup>1404</sup> Agricultural Marketing Service, 'The United States Warehouse Act: Licensing and Provider Agreements' (2018-2020) United States Department of Agriculture (USDA) <<https://www.ams.usda.gov/rules-regulations/uswa/agreements>> accessed 7 February 2024.

<sup>1405</sup> *ibid*; see also United States Department of Agriculture, 'Agricultural Marketing Service Provider Agreement to Electronically File and Maintain Warehouse Receipts and United States Warehouse Act Documents' (2018) USDA <<https://www.ams.usda.gov/sites/default/files/media/WA460FormandInstructions.pdf>> accessed 7 February 2024.

concerning security, service provider's fees, electronic data processing audit, and disaster recovery preparation, among other subjects that are incidental to the smooth running of the system by service providers.<sup>1406</sup>

Furthermore, part of the service provider licensing procedure can involve the Agency conducting a due diligence inquiry on the service providers to ensure that they are companies duly registered in Nigeria, the object of their business is the provision of technological services and whether their object can accommodate agricultural technology.<sup>1407</sup> The Agency can also inquire to ensure that they have no criminal record and are up to date with their legal requirements, such as the filing of annual returns to check their financial status, including other information that will guarantee that the service providers are not fraudulent, and will be able to execute the purpose of the licence.<sup>1408</sup>

#### **6.2.1.5. Licensing of Warehouses as a Prerequisite for Both Options**

Since the WR Bill requires the Agency to monitor warehouses to ensure that they meet the prescribed standard of law while adopting any of the options above, warehouses need to be licensed.<sup>1409</sup> It was identified in section 5.2 of this thesis that Part VI of the WR Bill provides for the licensing of warehouses. However, this section did not explain this. Nevertheless, it is reassuring that the WR Bill provides that only licenced warehouses can issue WR.<sup>1410</sup>

Section 13 of the WR Bill stipulates the basic procedure for licensing warehouses. The process commences with an application by the warehouse operator to the Agency.<sup>1411</sup> Also, the warehouse operator will agree to abide by the provisions of the regulation made pursuant to the WR Bill.<sup>1412</sup> This is because the regulation will extensively provide for the procedure and rules for implementing the WR Bill.<sup>1413</sup> Additionally, the Agency will assess the storage capacity and facility of the warehouse through an inspection.<sup>1414</sup> The inspection and

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<sup>1406</sup> *ibid.*

<sup>1407</sup> *ibid.*

<sup>1408</sup> *ibid.*

<sup>1409</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, 7(1)(k).

<sup>1410</sup> *ibid* s 26.

<sup>1411</sup> *ibid* s 13(2).

<sup>1412</sup> *Ibid* s 13(3)(c).

<sup>1413</sup> Nir Kosti, David Levi-Faur and Guy Mor, 'Legislation and Regulation: Three Analytical Distinctions' (2019) 7(3) *Theory Prac Legis* 169.

<sup>1414</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 13(3)(a); see also The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 15(2)(a).

assessment of warehouses before licensing are equally reflected in the USWA.<sup>1415</sup> However, the regulations created by the USWA, went further to provide for a licensing agreement between the USDA through its department, the Farm Service Agency (FSA) and the warehouse operator.<sup>1416</sup> This agreement states the terms and conditions for which a warehouse is licensed, including declaring the duties of a warehouse operator.<sup>1417</sup>

While the WR Bill does not provide for licensing agreements, it indicates the possibility of having a regulation that will guide the execution of its provisions when it is passed into law.<sup>1418</sup> Although this is a possibility because of the phrase ‘may’ utilised in the Bill, a regulation is desirable to comprehensively prescribe the procedure for carrying out certain activities under the WR Bill.<sup>1419</sup> For instance, it is necessary for prescribing the warehouse licensing procedure, dispute resolution procedure, and the procedure for keeping depositors’ goods, among others<sup>1420</sup> Therefore, the potential regulation could require the creation of licensing agreements between the Agency and the warehouse operator just like the regulation created by the USWA.<sup>1421</sup>

Furthermore, before a licence is issued after the warehouse meets the standard of the Agency, the Agency shall publish the application in two national daily newspapers to allow the public an opportunity to enter an objection, if any, stating why the Agency should not consider the application.<sup>1422</sup> However, the WR Bill failed to specify the timeframe within which the application will be advertised in the national dailies. This is necessary to avoid an unending advertisement and the waste of the applicant’s time.

The provision of a specific time for the publication of applications in newspapers to allow people an opportunity to object to the approval of the application is not new in Nigeria. For example, the Companies and Allied Matters Act 2020 (CAMA) provides that the application to register an Incorporated Trustee shall be published in two national daily newspapers to allow any caveat to be entered against the application within 28 days of the publication.<sup>1423</sup> Thus, after 28 days of publication and no objection is entered, evidence of the publication will be

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<sup>1415</sup> United States Warehouse Act 1916, § 3 [7 United States Code 242].

<sup>1416</sup> Regulations for the United States Warehouse Act 2019, § 735.1(b); 735.3.

<sup>1417</sup> Regulations for the United States Warehouse Act 2019, § 735.3.

<sup>1418</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 103.

<sup>1419</sup> *ibid* s 103(1).

<sup>1420</sup> *ibid* s 103(1)(i); (l); (d).

<sup>1421</sup> Regulations for the United States Warehouse Act 2019, § 735.1(b); 735.3.

<sup>1422</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 15(2) (b).

<sup>1423</sup> Companies and Allied Matters Act 2020, s 828.

sent to the Corporate Affairs Commission (CAC) to show that a publication was made and no objection was entered.<sup>1424</sup>

Nevertheless, it has been argued that the requirement for publication is unnecessary.<sup>1425</sup> This is because, in practice, these Agencies do not publish the application in the newspapers themselves; they require the applicant to publish it and bear the cost.<sup>1426</sup> Also, it has been alleged that most government organisations requesting this publication do not bother to check whether an objection has been entered.<sup>1427</sup> Moreover, an applicant can easily purchase newspaper spaces from national newspapers not widely known by the public to make a publication, attach evidence of publication, and send them to the government body.<sup>1428</sup>

Besides, publication in two national daily newspapers will unnecessarily elongate the period to start an application and obtain a licence. Therefore, the legislators should consider an amendment of section 15(2)(b) of the WR Bill to reflect the number of days within which an objection can be brought after a publication in two national newspapers; or remove the provision entirely. This should also be considered when making the regulation for the WR Bill.<sup>1429</sup>

The WR Bill also provides for a period not exceeding two years to allow warehouses that existed before the enactment of the legislation to transition into licensed warehouses by presenting an application to the Agency in the prescribed form in the law.<sup>1430</sup> However, transitioning into a licensed warehouse is not compulsory.<sup>1431</sup> The unlicensed warehouse that continues to store goods without a licence for six months after the expiration of the two years allowed by the law to transition must display a notice in a conspicuous area at the warehouse entrance stating that it is not licensed.<sup>1432</sup>

Following the above, it is necessary to ascertain whether unlicensed warehouses can issue e-WRs and record e-WR transactions. It is argued that licensed warehouses uphold higher accountability than unlicensed warehouses. This may be why the WR Bill provides that only

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<sup>1424</sup> Yemi H Bhadmus, *Bhadmus on Corporate Law Practice* (5<sup>th</sup> edn, Chenglo 2021); see also Samuel A Osamolu, *Corporate Law Practice in Nigeria* (LawLords 2021).

<sup>1425</sup> Ruben Abati, 'CSOs, NGOs, and Their Disconnects' *The Cable* (Lagos, 21 September 2021).

<sup>1426</sup> Samuel A Osamolu, *Corporate Law Practice in Nigeria* (LawLords 2021) 429.

<sup>1427</sup> *ibid.*

<sup>1428</sup> *ibid.*

<sup>1429</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 103.

<sup>1430</sup> *ibid* s 14(1).

<sup>1431</sup> *ibid* s 14(2).

<sup>1432</sup> *ibid.*

licensed warehouses can issue WRs.<sup>1433</sup> Besides, to facilitate a solid e-WR system, which will signal to the creditors that e-WRs are appropriately issued and tracked; and that e-WRs can be trusted as collateral, there is a need to allow only licensed warehouses/warehouse operators to issue e-WRs. Nonetheless, unlicensed warehouses can continue to store goods manufactured by them or stored by depositors.<sup>1434</sup>

Furthermore, the non-license of a warehouse should not erase their duties to abide by the legally acceptable storage standards provided by the WR Bill.<sup>1435</sup> For example, the unlicensed warehouse should maintain an insurance policy and be inspected periodically, among others.<sup>1436</sup> This means that although the warehouses are unlicensed, they are still within the regulatory jurisdiction of the Agency.<sup>1437</sup> This was reflected in the draft MLWR issue paper by the first working group when they submitted that the failure of a warehouse operator to be licensed should not affect its obligation to the depositor of the goods.<sup>1438</sup> Therefore, legislators should consider amending the sections of the WR Bill that provide standards of storage, like section 7(1)(k), to reflect warehouses instead of licensed warehouses. That way, the Agency will be expressly extending its supervisory responsibilities to unlicensed warehouses.

#### **6.2.1.6. Additional Requirement for Choosing Any of the Options for the Issuance and Registration of Electronic Warehouse Receipts**

##### **6.2.1.6.1. Internal Registry for Warehouses**

In both options designed in this research, the central registry or the service providers, as the case may be, could require warehouses to maintain an internal record/registry to ensure they comply with the WR legislation and make it easy for the Agency to inspect them.<sup>1439</sup> The main purpose of the internal registry to be maintained by the warehouse operator is to record and track deposits in the warehouse, withdrawal of goods and transfer of title to the goods.<sup>1440</sup> Since this registry would be digital because e-WRs are in digital form, it would be easier and

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<sup>1433</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 26.

<sup>1434</sup> *ibid* s 14(2).

<sup>1435</sup> *ibid* s 7(1)(k).

<sup>1436</sup> *ibid* s 21; 99.

<sup>1437</sup> *ibid* s 7(1).

<sup>1438</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 20 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021.

<sup>1439</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 21 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021.

<sup>1440</sup> *ibid*.

faster to automatically transmit the information in this record/internal registry to the Agency when necessary.<sup>1441</sup>

Although the warehouses maintain their registry, there is usually no requirement for the information in the registries to be transmitted to the central registry or the registries maintained by the service providers for public accessibility or for the search of whom e-WRs have been issued.<sup>1442</sup>

Section 6.2.1 of this chapter has identified the issuance and registration of e-WRs, including the licensing of warehouses, as some of the legal challenges that could affect the prospective use of e-WRs in Nigeria. The next section will focus on another legal problem, legal transplant, which could affect the introduction of e-WRs in Nigeria.

### 6.2.2. Legal Transplant

One of the theoretical frameworks of this research, addressed in section 1.5.3, is legal transplant, an aspect of comparative law.<sup>1443</sup> According to that section, legal transplant is likened to an organ transplant in medicine, where a body tissue is moved from one person to another.<sup>1444</sup> In the same vein, legal transplant entails the movement of law from one jurisdiction to another to develop the law or an aspect of the law of the borrowing country or region.<sup>1445</sup>

Another theoretical framework utilised in this research is law reform.<sup>1446</sup> However, the aspect of law reform concentrated on in this research is the wholesale law reform using soft laws. In section 1.5.1 of this thesis, it was explained that soft laws are nonbinding and flexible.<sup>1447</sup> This means that adopting countries can choose the areas of the soft law they wish, to address certain needs in their countries rather than adopting the entire soft law.<sup>1448</sup> It was also indicated that soft laws will be utilised in this research to complement a hard law.<sup>1449</sup> That is, the draft

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<sup>1441</sup> Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif 716, 725.

<sup>1442</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 21 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021.

<sup>1443</sup> Mathias Siems, 'The Power of Comparative Law' (2019) 67(4) Am J Comp L 861; see also Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2<sup>nd</sup> edn, UGA Press 1993).

<sup>1444</sup> Otto Kahn-Freund, 'On Uses and Misuses of Comparative Law' (1974) 37 Mod L Rev 1.

<sup>1445</sup> John W Cairns, 'Watson, Walton, and the History of Legal Transplants' (2013) 41 Ga J Intl Comp L 637.

<sup>1446</sup> Chapter One, s 1.5.1.

<sup>1447</sup> Henry Deeb Gabriel, 'Advantages of Soft Law in International Commercial Law: The Role of UNIDROIT, UNCITRAL, and the Hague Conference' (2009) 34(3) Brook J Intl L 655, 658.

<sup>1448</sup> *ibid* 663.

<sup>1449</sup> Dinah Shelton, 'Law, Non-Law and the Problem of 'Soft Law' in Dinah Shelton (ed), *Commitment and Compliance: The Role of Non-Binding Norms in International Legal System* (OUP 2000); see also

MLWR and the MLETR, which are soft laws, will serve as a reference point for the amendment of the WR Bill, which will become a hard law upon its enactment. Thus, the solutions proffered by the model laws can be transferred to Nigeria through legal transplant. Furthermore, sections 6.2.1.3 and 6.2.1.4 above proposed two options adapted from South Africa and the United States for Nigeria regarding the issuance and registration of e-WR. Nigeria can also reflect these solutions in their law through legal transplant.

As expounded in section 1.5.3 of this thesis, legal transplant is not new to Nigeria. For instance, a substantial amount of STMAA was adopted from Article 9 of UCC.<sup>1450</sup> Some parts of STMAA were also transplanted from the MLST, including its Legislative Guide.<sup>1451</sup> Therefore, it will not be strange for Nigeria to transplant the aforementioned model laws and options to Nigeria. However, the legislators have to weigh them against Nigeria's current legal and socio-economic situation and adopt them in a way that suits those situations, especially since they are soft laws.<sup>1452</sup>

Therefore, this section focuses on identifying the possible challenges that legal transplants could face in Nigeria and how these challenges can impact the introduction of e-WR, including potential solutions. Some of the challenges and their remedies are explained below.

#### **6.2.2.1. The Mechanism of Legal Transplant Suitable for Nigeria**

It is not enough to identify the instruments and options to be transplanted. It is essential to evaluate how they can be transplanted into Nigeria. An effective means through which legal transplant can be done is by emulation.<sup>1453</sup> The term emulation was designed by some political scientists in their studies concerning policy transfers and diffusion.<sup>1454</sup> Legal transplant and

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John J Kirton and Michael J Trebilcock, *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance* (1<sup>st</sup> edn, Routledge 2004); Marie von Engelhardt, 'Opportunities and Challenges of a Soft Law track to Economic and Social Rights - The Case of the Voluntary Guidelines on the Right to Food' (2009) 42(4) L Polit Afr Asia Lat Am 502, 504.

<sup>1450</sup> Roderick J Wood, 'Identifying Borrowed Sources in Secured Transactions Law Reform' (2019) 24(3) Unif L Rev 545; see also Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) ii.

<sup>1451</sup> Louise Gullifer, 'The UNCITRAL Model Law and Secured Transactions Law Reform' (2022) 17 Brook J Corp Fin Com L 97, 108.

<sup>1452</sup> Andrew T Guzman and Timothy L Meyer, 'International Soft Law' (2010) 2(1) J Leg Anal 171; see also Gregory C Shaffer, Melvin C Steen and Mark A Pollack, 'How Hard and Soft Law Interact in International Regulatory Governance: Alternatives, Complements and Antagonists' (Society of International Economic Law Inaugural Conference, Geneva, 15-17 July 2008) 1; see also Henry Deeb Gabriel, 'Advantages of Soft Law in International Commercial Law: The Role of UNIDROIT, UNCITRAL, and the Hague Conference' (2009) 34 Brook J Intl L 655, 658.

<sup>1453</sup> Jean-Frédéric Morin and Edward Richard Gold, 'An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries' (2014) 58 Intl Stud Q 781, 782.

<sup>1454</sup> Frank Dobbin, Simmons Beth, and Garrett Geoffrey, 'The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?' (2007) 33 Annu Rev Sociol 449.



policy transplant have similar principles.<sup>1455</sup> The difference is in the terminology.<sup>1456</sup> Thus, in law, it is known as legal transplant or legal diffusion, while in political science, it is called policy transplant or policy diffusion.<sup>1457</sup>

The emulation mechanism of legal transplant is also known as 'lesson drawn'.<sup>1458</sup> In this legal transplant mechanism, countries facing a challenge examine the practices outside their jurisdiction where problems similar to theirs were solved and how that country solved them. Thus, the transplanting country emulates the solution proffered in the jurisdiction that had the challenge before them.

Emulation does not end with looking at a country with similar problems and borrowing from the laws they designed to solve it. Sometimes, the country with a challenge looks at intergovernmental organisations that have developed a framework that addresses the challenge they are facing and then draws lessons from the framework that addresses their problems.<sup>1459</sup> Therefore, the model laws and any of the options suggested in sections 6.2.1.3 and 6.2.1.4 of this study can be transplanted into Nigeria to reform their potential e-WR system through the emulation mechanism.<sup>1460</sup>

An example of where the emulation mechanism was utilised in Nigeria is equipment leasing. Prior to 2015, equipment leasing principles in Nigeria were scattered in various laws, such as CAMA and guidelines made by the Central Bank of Nigeria (CBN), among others.<sup>1461</sup> They were also governed by common law and equitable principles.<sup>1462</sup> The absence of a structured legal framework specifically designed for equipment leasing made certain products, such as high-cost products like agricultural equipment, minimally available.<sup>1463</sup> Thus, there were various difficulties associated with the leasing market in Nigeria before 2015.<sup>1464</sup> To mitigate

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<sup>1455</sup> Jean-Frédéric Morin and Edward Richard Gold, 'An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries' (2014) 58 Intl Stud Q 781, 782; see also Holger Spamann, 'Contemporary Legal Transplants- Legal Families and the Diffusion of (Corporate) Law' (Discussion Paper, No 28 Harvard Law School, 2009) 5.

<sup>1456</sup> *ibid.*

<sup>1457</sup> *ibid.*

<sup>1458</sup> Richard Rose, 'What is Lesson Drawing?' (1991) 11(1) J Pub Pol 3.

<sup>1459</sup> Jean-Frédéric Morin and Edward Richard Gold, 'An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries' (2014) 58 Intl Stud Q 781, 782.

<sup>1460</sup> *ibid.*

<sup>1461</sup> Chidi E Halliday and Boma Geoffrey Tobi, 'Resolved and Unresolved Legal Issues in Equipment Leasing and Insolvency in Nigeria' (2020) 4 U Port Harcourt L Rev 122.

<sup>1462</sup> *ibid.*

<sup>1463</sup> Joseph C Ifebunandu, 'Equipping the Use of Equipment in Nigeria: Has the Equipment Leasing Act 2015 Made the Difference?' (2017) 38(3) Bus L Rev 101.

<sup>1464</sup> *ibid.*

the above problem, Nigeria emulated the UNIDROIT Model Law on Leasing 2008, which brought about the enactment of the Equipment Leasing Act 2015.<sup>1465</sup>

Another example of where the emulation mechanism was employed in Nigeria is the adoption of plea bargain.<sup>1466</sup> Before plea bargain was adopted in Nigeria, the country faced some challenges in its criminal justice system.<sup>1467</sup> This was due to the amount of time the State spent trying all criminal matters in court and the overwhelming cost of justice, which included the welfare of the vast population of individuals in the correctional facilities, among others.<sup>1468</sup> Thus, Nigeria examined the United States system, and drew a lesson of plea bargain from there by transplanting it into the Economic and Financial Crimes Commissions Act 2004 (EFCC Act).<sup>1469</sup>

While emulation makes it easy for countries to draw lessons from external examples to solve their problems, the challenge with this mechanism is that a country could transplant the law without a proper understanding of it, thus giving the law a different meaning from what it was intended in the originating jurisdiction.<sup>1470</sup> This causes an incomplete transfer of the law or principles being emulated.<sup>1471</sup> Nigeria faced this challenge with plea bargain.

Plea bargain, as utilised in the United States, is an agreement between the prosecution, that is, the State and the defendant, where the defendant pleads guilty to a lesser charge in exchange for a lenient sentence or the extinguishing of other charges against the defendant.<sup>1472</sup> By so doing, there will not be any trial of the offence since the defendant has pleaded guilty.<sup>1473</sup> In contrast, section 14(2) of the EFCC Act demonstrated that Nigeria did not understand the lessons they were taking from the United States in terms of plea bargain. This is because their interpretation of plea bargain when it was initially emulated from the United States was quite different from how it was applied in the United States. The EFCC's

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<sup>1465</sup> UNCITRAL Model Law on Leasing (13 November 2008) <<https://www.unidroit.org/instruments/leasing/model-law/>> accessed 7 August 2024.

<sup>1466</sup> Jean-Frédéric Morin and Edward Richard Gold, 'An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries' (2014) 58 Intl Stud Q 781, 782.

<sup>1467</sup> Chinwe A Mordi, 'The Use of Plea Bargain in Nigerian Criminal Law' (2018) 9 Beijing L Rev 153; see also Peter Sule Echewija, 'Plea Bargaining and the Administration of Criminal Justice in Nigeria: A Moral Critique' (2017) 3(2) J Ethic Relig Philos 35.

<sup>1468</sup> *ibid.*

<sup>1469</sup> *ibid.*; see also The Economic and Financial Crimes Act 2004, s 14(2).

<sup>1470</sup> Oliver James and Martin Lodge, 'The Limitations of 'Policy Transfer' and 'Lesson Drawing' for Public Policy Research' (2003) 1 Pol Stud Rev 179.

<sup>1471</sup> *ibid.*

<sup>1472</sup> Miko M Wilford, Annabelle Shestak and Gary L Wells, 'Plea Bargaining' in Neil Brewer and Amy Bradfield Douglass (eds), *Psychological Science and the Law* (Guilford 2019).

<sup>1473</sup> *ibid.*

understanding of plea bargain was to accept money as it deemed fit from the defendant, which should ordinarily not exceed or be equivalent to the maximum fine the defendant would have been liable for paying, assuming the defendant was convicted.<sup>1474</sup> Moreover, it was limited to financial crimes rather than applying to most criminal proceedings like in the United States.<sup>1475</sup>

Even though a transplanted law can serve a different purpose in a receiving country than what the law was designed for in the originating jurisdiction, in this case of plea bargain, the intention of Nigeria was not for the law to serve a different purpose from what it is in the United States.<sup>1476</sup> It did not have sufficient comprehension of the principle it was adopting. Moreover, it was indicated in section 1.5.3 of this thesis that the receiving country must have a good understanding of the law they intend to transplant for there to be a successful legal transplant.<sup>1477</sup> Therefore, the legislators and other organisations responsible for introducing laws in Nigeria, like the Nigerian Law Reform Commission (NLRC), should clearly understand the draft MLWR, MLETR, and the options proposed above to avoid the problem of transplanting them incorrectly.

The National Institute for Legislative Studies in Nigeria, created by the National Institute for Legislative Studies Act 2011, is responsible for training legislators and organisations affiliated with law reform in Nigeria.<sup>1478</sup> Therefore, one of the ways legislators and their associates can minimise the chances of transplanting laws incorrectly is by acquiring further training on legal transplant from the above institution.

Another solution to the above problem is that the receiving country must have a functional means of amending the transplanted law to suit its people.<sup>1479</sup> The problem of plea bargain in Nigeria reveals that the country lacks a mechanism for the quick amendment of laws, which constitutes another challenge. Plea bargain was introduced in 2004 through the EFCC Act.<sup>1480</sup> However, it took Nigeria 11 years to address the problem of plea bargain by introducing the Administration of Criminal Justice Act (ACJA) 2015.<sup>1481</sup> The implication of ACJA was that plea

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<sup>1474</sup> The Economic and Financial Crimes Act 2004, s 14 (2).

<sup>1475</sup> Peter Sule Echewija, 'Plea Bargaining and the Administration of Criminal Justice in Nigeria: A Moral Critique' (2017) 3(2) J Ethic Relig Philos 35, 41.

<sup>1476</sup> Ahmad A Alshorbagy, 'On the Failure of a Legal Transplant: The Case of Egyptian Takeover Law' (2012) 22(2) Ind Intl Comp L Rev 237, 240.

<sup>1477</sup> John O Ogbonnaya and Chioma V Iteshi, 'The Jurisprudential Issues Arising from Legal Transplant: An Appraisal' (2016) 50 J Law Pol Glob 1, 2.

<sup>1478</sup> National Institute for Legislative Studies 2011, s 2. (Nigeria)

<sup>1479</sup> Ahmad A Alshorbagy, 'On the Failure of a Legal Transplant: The Case of Egyptian Takeover Law' (2012) 22(2) Ind Intl Comp L Rev 237, 240.

<sup>1480</sup> The Economic and Financial Crimes Act 2004, s 14 (2).

<sup>1481</sup> Administration of Criminal Justice Act 2015, s 270.

bargain was no longer limited to financial crimes.<sup>1482</sup> It also reflected the original intention for the plea bargain transplant from the United States.<sup>1483</sup>

A major reason for the long duration of the above statutory problem in Nigeria before it was amended is attributed to the nature of the NLRC.<sup>1484</sup> The NLRC is a government agency created under the Nigerian Law Reform Commission Act 2022 (NLRCA).<sup>1485</sup> It is tasked with undertaking research, receiving and considering proposals to review the laws made by the National Assembly.<sup>1486</sup> It is also tasked with updating those laws to simplify and modernise them, the codification of such laws, removing anomalies in the laws, as well as repealing unnecessary and obsolete laws.<sup>1487</sup>

Although the Act provides that the Commission can independently carry on its daily activities, its independence appears to be stifled by political interference and bureaucracy.<sup>1488</sup> First, section 5(1) of the NLRCA stipulates the functions of the Commission. However, the commission cannot carry out any of these functions without referring them to the Attorney-General of the Federation (AGF) and the National Assembly.<sup>1489</sup> Thus, the Commission is not as independent as the law stipulates. This also affects the length of time required to reform a particular law in Nigeria.

Following the above, if there is a proposal to reform a law, the Commission reviews it before passing it to the AGF.<sup>1490</sup> The AGF also reviews the law and forwards it to the Federal Executive Council.<sup>1491</sup> The Federal Executive Council is a body that comprises the President of Nigeria, the Vice President, and all the Ministers of the Federation appointed by the President.<sup>1492</sup> However, the law failed to stipulate the length of time the AGF has before the law is referred to the Federal Executive Council.<sup>1493</sup> Because the constitutional duties of the

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<sup>1482</sup> *ibid* s 270(1).

<sup>1483</sup> *ibid* s 270(2).

<sup>1484</sup> Tony Clinton Jaja and Emmanuel O Anyaegbunam, 'Law Reform in Nigeria: A Historical Perspective' (2020) 1(3) *JL Leg Ref* 437.

<sup>1485</sup> The Nigerian Law Reform Commission Act 2022, s 1(1).

<sup>1486</sup> *ibid* s 5(1) and (2).

<sup>1487</sup> *ibid* s 5(1).

<sup>1488</sup> *ibid* s 5(9); see also Junaidu Bello Marshall, 'Nigerian Law Reform Commission: An Appraisal of the Statutory Powers of Principal Officers' (2022) 10(1) *Intl J Innov Leg Polit Stud* 54.

<sup>1489</sup> The Nigerian Law Reform Commission Act 2022, s 5(2) (a-d).

<sup>1490</sup> *ibid* s 5(2) (b).

<sup>1491</sup> *ibid* s 5(7).

<sup>1492</sup> Ehi Eric Esoimeme, 'A Critical Analysis of the Anti-Corruption Policy of the Federal Executive Council of Nigeria' (2019) 22(2) *J Money Laund Contrl* 176.

<sup>1493</sup> The Nigerian Law Reform Commission Act 2022, s 5(7).

AGF are numerous and do not focus only on law reform, it implies that the AGF could take some time before referring the report for the law reform to the Federal Executive Council.<sup>1494</sup>

When the AGF reviews and refers the report on the law reform to the Federal Executive Council, the Council has three months to conclude its enquiry on the law.<sup>1495</sup> After the expiration of 3 months, the Council then refers the law reform report to the National Assembly.<sup>1496</sup> Also, when the law reform report gets to the National Assembly, the NLRCA is silent about the timeframe within which the legislature will deliberate upon the reform. Even where legislators, on their volition, initiate an amendment of a statute as they have the power to do so, deliberation on the law is lengthy.<sup>1497</sup> Thus, whenever the legislators agree with the law after the first, second and third readings at the plenary session, including the committee stage the law has to pass through, it will be sent to the President for assent.<sup>1498</sup> This is also the same process when the NLRC acts on the laws of a state government.<sup>1499</sup> In this case, the report is passed to the Attorney-General of the State, who forwards it to the State House of Assembly and then to the Governor of the State.<sup>1500</sup>

The above is why law reform takes time in Nigeria, sometimes between 10 to 15 years.<sup>1501</sup> Therefore, Nigeria should consider reviewing the law reform process to make amendment of laws easy and fast, unless it intends to get all the legal transplant it attempts right in the first instance. Nevertheless, Nigeria has a history of inconsistency with legal transplant. This will be expatiated in the next section. Thus, for every legal transplant done in Nigeria, there could be a need for a minor or significant amendment to the transplanted law in the present or future, which reiterates that the process of amendment should be simplified, or its organs should strive to get legal transplant right the first time after acquiring adequate training on legal transplant.

#### **6.2.2.2. Nigeria's Inconsistency with Legal Transplants**

Following section 6.2.2.1 above, plea bargain presented an example where, in recent times, Nigeria misunderstood the law it transplanted, thereby getting the legal transplant wrong on

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<sup>1494</sup> The Constitution of the Federal Republic of Nigeria 1999, s 150; s 174.

<sup>1495</sup> The Nigerian Law Reform Commission Act 2022, s 5(7).

<sup>1496</sup> *ibid.*

<sup>1497</sup> The Constitution of the Federal Republic of Nigeria 1999, s 4.

<sup>1498</sup> Policy and Legal Advocacy Centre (PLAC), *A Guide to the Nigerian National Assembly* (PLAC/UKaid 2015).

<sup>1499</sup> The Nigerian Law Reform Commission Act 2022, s 7.

<sup>1500</sup> *ibid.*

<sup>1501</sup> Tony Clinton Jaja and Emmanuel O Anyaegbunam, 'Law Reform in Nigeria: A Historical Perspective' (2020) 1(3) JL Leg Ref 437, 443.

its first attempt before it eventually amended the law 11 years later. While Nigeria has a problem with some legal transplants, as shown above, there are also instances where, in recent times, Nigeria got the emulation legal transplant right on its first attempt. This demonstrates that there is no guarantee that Nigeria will always fail or succeed with respect to legal transplant.

The phrase 'recent times' is used here to emphasise that the discussion made in this section does not refer to the involuntary legal transplant done by Nigeria because of imperialism.<sup>1502</sup> For instance, the adoption of English Common Law into the Nigerian legal system.<sup>1503</sup> The analysis of legal transplant in this section is based on the laws transplanted into Nigeria decades after its independence in 1960.

An example of where Nigeria substantially succeeded in legal transplant is with STMAA. As discussed in section 4.2.1.2 of this thesis, before STMAA was initiated, Nigeria's secured transactions was compartmentalised like that of the English law, making it complex.<sup>1504</sup> However, Nigeria emulated the kind of secured transactions practised in the United States by transplanting some parts of the Uniform Commercial Code (UCC) Article 9.<sup>1505</sup> Nigeria equally transplanted some parts of the UNCITRAL Model Law on Secured Transactions (MLST).<sup>1506</sup> Hence, a combination of UCC Article 9 and the MLST made up STMAA.<sup>1507</sup> Although the Nigerian secured transactions system still has some shortcomings, like allowing the registration of charges in the Corporate Affairs Commission, the bottom line is that STMAA substantially reformed the Nigerian secured transactions.<sup>1508</sup>

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<sup>1502</sup> Ronald J Daniels, Michael J Trebilcock and Lindsey D Carson, 'The Legacy Empire: The Common Law Inheritance and Commitments to Legality in Formal British Colony' (2010) 59 Am J Comp L 111; see also David P Dolowitz and David Marsh, 'Learning from Abroad: The Role of Policy Transfer in Contemporary Policy Making' (2000) 13(1) Gov Intl J Policy Admin 5, 9; Jean-Frédéric Morin and Edward Richard Gold, 'An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries' (2014) 58 Intl Stud Q 781, 782.

<sup>1503</sup> *ibid.*

<sup>1504</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) xiii.

<sup>1505</sup> Roderick J Wood, 'Identifying Borrowed Sources in Secured Transactions Law Reform' (2019) 24(3) Unif L Rev 545; see also Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) ii.

<sup>1506</sup> Louise Gullifer, 'The UNCITRAL Model Law and Secured Transactions Law Reform' (2022) 17 Brook J Corp Fin Com L 97, 108.

<sup>1507</sup> *ibid.*; see also Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 40.

<sup>1508</sup> Secured Transactions in Movable Assets Act 2017, s 2 (3); see also Companies and Allied Matters Act 2020, s 191 and 203; Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (Bloomsbury 2021) 157; Louise Gullifer, 'The UNCITRAL Model Law and Secured Transactions Law Reform' (2022) 17 Brook J Corp Fin Com L 97, 108; Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) ii.

Another example of Nigeria successfully transplanting a model law is the UNCITRAL Model Law on International Commercial Arbitration 1985, with Amendments as Adopted in 2006 (Arbitration Model Law).<sup>1509</sup> From its name, the primary purpose of the Arbitration Model Law was to initiate an international benchmark for how commercial arbitration should be carried out by adopting countries.<sup>1510</sup> Although the Arbitration Model Law is a soft law which allows countries to adopt it in a manner that suits their needs, some jurisdictions like India and the Philippines, including others, totally deviated from the purpose of the Arbitration Model Law.<sup>1511</sup> An examination of India's transplant of the Arbitration Model Law will be done below to explain how Nigeria contrasts with the Indian version of international arbitration, even though they adopted the same model law.

India emphasised that litigation is preferred to arbitration as a means of dispute resolution despite adopting the Arbitration Model Law.<sup>1512</sup> Why then did they choose to transplant the model law in the first place? Conversely, in transplanting the model law, Nigeria complied with its tenets by prioritising arbitration in international contracts over litigation, thereby improving Nigeria's practice of international arbitration.<sup>1513</sup>

Furthermore, the Arbitration Model Law provides that the enforcement of an arbitral award can be refused where such enforcement or recognition will be contrary to the public policy of the state, irrespective of the country where the award was given.<sup>1514</sup> The Arbitration Model Law intends that the phrase 'public policy' will mean a gross departure from the fundamental concept of procedural justice in that country.<sup>1515</sup>

Nevertheless, the Indian court failed to refuse an arbitral award that contravened public policy according to the model law.<sup>1516</sup> The Indian Supreme Court arrived at this decision by giving a broad meaning to the phrase 'public policy', which it ironically expressed as giving a narrow meaning to the term public policy.<sup>1517</sup> The court held that an international arbitral award would be refused only where it contravenes the fundamental policy of Indian law or where the award

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<sup>1509</sup> T T Arvind, 'Transplant Effect in Harmonization' (2010) 59(1) Intl Comp LQ 65, 70.

<sup>1510</sup> UNCITRAL Model Law on International Commercial Arbitration 1985 with Amendments as Adopted in 2006 (7 July 2006) UNCITRAL Doc V.19-09955 (V.10-58515), art 1(1); see also Arvin T T Arvind, 'Transplant Effect in Harmonization' (2010) 59(1) Intl Comp LQ 65, 70.

<sup>1511</sup> T T Arvind, 'Transplant Effect in Harmonization' (2010) 59(1) Intl Comp LQ 65.

<sup>1512</sup> *Food Corporation of India v Mardestine Compania Navier* [1977] AIR 1977 Ker 108.

<sup>1513</sup> T T Arvind, 'Transplant Effect in Harmonization' (2010) 59(1) Intl Comp LQ 65, 77.

<sup>1514</sup> UNCITRAL Model Law on International Commercial Arbitration 1985 with Amendments as Adopted in 2006 (7 July 2006) UNCITRAL Doc V.19-09955 (V.10-58515), art 36(1)(b)(ii).

<sup>1515</sup> UNCITRAL Model Law on International Commercial Arbitration 1985 with Amendments as Adopted in 2006 (7 July 2006) UNCITRAL Doc V.19-09955 (V.10-58515), Explanatory Note, para 46.

<sup>1516</sup> *Renusagar v General Electric* [1994] AIR 1994 SC 860.

<sup>1517</sup> *ibid*; see also T T Arvind, 'Transplant Effect in Harmonization' (2010) 59(1) Intl Comp LQ 65, 73.

was against the country's interest, justice, or morality.<sup>1518</sup> The problem here is that morality is subjective, and determining events termed moral is broad. Hence, this deviates substantially from the purpose of the Arbitration Model Law.<sup>1519</sup>

In contrast to India, Nigeria complies with the Arbitration Model Law by refusing to enforce an arbitral award that was arrived at by the misconduct of the arbitrator.<sup>1520</sup> Here, the misconduct of an arbitrator is a grave departure from the fundamental philosophies of Nigerian procedural justice, and this aligns with the intention of the Arbitration Model Law on public policy.<sup>1521</sup>

It is true that soft laws are flexible; however, the purpose of adopting them should not mainly represent a regulatory competition mechanism of legal transplant.<sup>1522</sup> This is evident in the illustration above, where India deviates from many provisions of the Arbitration Model Law.<sup>1523</sup> Regulatory competition occurs when a country transplants a foreign law into their system, whether it needs the law or not.<sup>1524</sup> That is, it does not matter whether or not the law addresses any legal issues.<sup>1525</sup>

Regulatory competition is not necessarily a flawed mechanism to execute legal transplant.<sup>1526</sup> This is because, in some cases, the acquisition of the new law gives the country an edge economically or reputation-wise in the competitive world.<sup>1527</sup> For example, more international businesses could decide to do business with Indian companies since they have adopted the Arbitration Model Law, which should ordinarily make dispute resolution easy. However, adopting laws that are not needed in a country is generally meaningless to the people of the adopting country, making the laws remain only on paper and not implemented.<sup>1528</sup>

Therefore, using the example of attracting more businesses to India because of the arbitration law, the business relationship will most likely not be sustained when the other party who is

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<sup>1518</sup> *ibid.*

<sup>1519</sup> T T Arvind, 'Transplant Effect in Harmonization' (2010) 59(1) Intl Comp LQ 65, 73.

<sup>1520</sup> *Baker Marina v Danos & Curole* [2001] 7 NWLR 337.

<sup>1521</sup> UNCITRAL Model Law on International Commercial Arbitration 1985 with Amendments as Adopted in 2006 (7 July 2006) UNCITRAL Doc V.19-09955 (V.10-58515), Explanatory Note, para 46.

<sup>1522</sup> Jean-Frédéric Morin and Edward Richard Gold, 'An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries' (2014) 58 Intl Stud Q 781, 782.

<sup>1523</sup> T T Arvind, 'Transplant Effect in Harmonization' (2010) 59(1) Intl Comp LQ 65, 73.

<sup>1524</sup> Claudio M Radaelli, 'The Puzzle of Regulatory Competition' (2004) 24(1) J Pub Pol 1.

<sup>1525</sup> *ibid.*

<sup>1526</sup> *ibid.*

<sup>1527</sup> Jean-Frédéric Morin and Edward Richard Gold, 'An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries' (2014) 58 Intl Stud Q 781, 782.

<sup>1528</sup> Daniel Berkowitz, Katharina Pistor and Jean-Francois Richard, 'The Transplant Effect' (2003) 51 Am J Comp L 163, 166-67.



attracted to do business with the Indian company realises that their law does not reflect the purpose of the Arbitration Model Law. This is why Nigeria should be intentional about the legal transplant mechanism they adopt for the e-WR system, to ensure the transplanted law is meaningful to its people by facilitating access to finance for farmers.

The fact that Nigeria implements the purpose of the laws it adopts on some occasions but does not at other times demonstrates its inconsistency with legal transplant. Therefore, this research maintains that the solution to this problem is further training for lawmakers and the NLRC, as well as making the amendment process of laws easier than it is presently, as discussed in section 6.2.2.1 above.

### **6.3. The Scope of Creditors in the Secured Transactions in Movable Assets Act 2017**

Another legal problem that could affect the introduction of e-WRs in Nigeria to facilitate access to finance is the scope of creditors as provided for in STMAA. This law defines a creditor as a 'person' who grants a facility against a security interest created under STMAA.<sup>1529</sup> The phrase person used here implies a human being or a body corporate.<sup>1530</sup> Thus, anybody can be a creditor in Nigeria.<sup>1531</sup> Apart from STMAA, the MLST, which provides a benchmark for countries to adopt in terms of secured transactions, equally adopted a flexible definition of a creditor.<sup>1532</sup> According to this model law, a secured creditor is a person who has a security right.<sup>1533</sup>

While it is good that there is flexibility in the legal description of a secured creditor, which is aimed at broadening the scope of persons that can lend to grantors to increase access to finance, this could pose a problem in the initial stage when e-WRs are adopted in Nigeria because the concept is new to Nigeria. Thus, it is contended in this research that it will be better to initiate the use of e-WRs in Nigeria in a regulated system, like banks and other financial institutions that grant loans to grantors, rather than allowing unregulated creditors, like natural persons or loan sharks to participate as creditors. This can be reflected in the potential WR legislation, its regulation, or as an exception in the definition of 'creditors' under STMAA.<sup>1534</sup>

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<sup>1529</sup> Secured Transactions in Movable Assets Act 2017, s 63. (Nigeria).

<sup>1530</sup> *ibid.*

<sup>1531</sup> *ibid.*

<sup>1532</sup> UNCITRAL Model Law on Secured Transactions (1 July 2016) UNCITRAL Doc V.19-08779(V.16-04667), art 2 (ff)(i).

<sup>1533</sup> *ibid.*

<sup>1534</sup> Secured Transactions in Movable Assets Act 2017, s 63. (Nigeria).

The above is important because even with the regulation of banks and other financial institutions by CBN and the Banks and Other Financial Institutions Act 2020 (BOFIA), access to finance using e-WRs could still be challenging due to the current conditions of the regulated financial institutions. The state of these institutions, which could impact the effective use of e-WRs to obtain finance, and their possible remedies, will be elaborated on from the next paragraph. Since this is the case with regulated creditors, it is inferred that more problems could arise from unregulated creditors who are unmonitored and unaccountable to any institution backed up by law. Nevertheless, the rule that only regulated creditors can participate in the e-WR system could be eased in Nigeria after some years of testing how access to finance using e-WRs fared with only regulated institutions as secured creditors.

CBN recognises various kinds of banks and financial institutions.<sup>1535</sup> They include Bureaux-de-Change (BDCs), Commercial Banks, Development Finance Institutions (DFIs), Discount Houses, Finance Companies (FCs), Holding Companies (HCs), Merchant Banks, Micro-finance Banks (MFBs), Non-Interest Banks, Primary Mortgage Banks (PMBs) and Payment Service Banks (PSBs).<sup>1536</sup>

BDCs deal majorly in foreign exchange; discount houses serve as an intermediary between CBN and other banking institutions to manage liquidity in the money markets; and HCs manage equity investments for other companies, usually its subsidiaries.<sup>1537</sup> The primary responsibilities of these institutions do not include providing loans to businesses; hence, they are not relevant to this research.

PMBs deal mainly with loans for housing, while PSBs do not grant loans, though they are a hybrid of conventional banks and fintech companies that provide flexible bank services to underserved populations like those in remote areas.<sup>1538</sup> Thus, they are also not relevant to

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<sup>1535</sup> Central Bank of Nigeria, *List of Financial Institutions: 2021 Annual Economic Report* (CBN 2021).

<sup>1536</sup> *ibid.*

<sup>1537</sup> Financial Policy and Regulation Department, 'Revised Operational Guidelines for Bureaux de Change in Nigeria' (2015) CBN Guideline <<https://www.cbn.gov.ng/out/2015/fprd/revised%20bdc%20circular%20and%20guidelines-corrected-final%202015.pdf>> accessed 5 January 2024; see also Ukpai Kama and others, 'Discount Houses and the Changing Financial Landscape in Nigeria' (2013) CBN Occasional Paper No 49 <<https://www.cbn.gov.ng/out/2014/rsd/occasional%20paper%20no.%2049.pdf>> accessed 5 January 2024; Financial Policy and Regulation Department, 'Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria' (2014) CBN Guidelines <[https://www.cbn.gov.ng/out/2014/fprd/holdco%20regulation%20\(cleaned\)%20-%20final%20for%20issuance%203.pdf](https://www.cbn.gov.ng/out/2014/fprd/holdco%20regulation%20(cleaned)%20-%20final%20for%20issuance%203.pdf)> accessed 5 January 2024.

<sup>1538</sup> Abdullahi Ibrahim and others, 'Effect of Primary Mortgage Banks Recapitalization on Nigeria's Mortgage Depth' (2022) 2(1) *Creatus Business Review* 9; see also Sunday Adewale Olaleye and others, *The Telco Banks: Exploring the Implications of Payment Service Banks in Nigeria* (CEMRI White Paper Series Number 2022/174, 2022).

this research. Furthermore, although merchant banks carry on similar business as commercial banks, they focus mainly on large companies.<sup>1539</sup> Consequently, they do not fit the context of this research as a huge population of farmers are MSMEs while a few are large-scale farmers.<sup>1540</sup>

Financial institutions such as commercial banks, DFIs, FCs, MFBs, and non-interest banks are considered relevant to this research. They will be analysed below to highlight that regulated creditors have numerous challenges that could impact e-WRs, let alone unregulated creditors. Nonetheless, possible remedies would be proffered to demonstrate that although regulated creditors may have challenges that will affect e-WRs, there are ways to make them efficient creditors under the prospective e-WR system. It is essential to indicate that analysing the problems regulated creditors could face under the e-WR system might raise some socio-economic challenges since it could affect individuals in the society, that is, farmers, or Nigeria, which is the society.<sup>1541</sup> Notwithstanding this, the preceding sections focus on making a case for regulated creditors for the prospective e-WR system as an exception to STMAA's scope of creditors.

### 6.3.1. Commercial Banks

Commercial banks are usually privately owned and perform several activities like receiving deposits, keeping them, and granting credit, especially to their customers, as well as other activities.<sup>1542</sup> They are profit-oriented and, thus, charge high interest rates from the grantors to avoid risks.<sup>1543</sup> This could be detrimental to some farmers, particularly MSMEs, who may not be able to meet up with the exorbitant interest rates of commercial banks.<sup>1544</sup> It is important to remember that although medium and large commercial farmers are among the categories of farmers discussed in this research, micro and small farmers, especially those in rural areas, face more challenges in obtaining credit from commercial banks.<sup>1545</sup>

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<sup>1539</sup> LB Ajayi and OG Obisesan, 'Effect of Merchant Bank Operation on Economic Development in Nigeria' (2018) 1(1) Afr J Acct Financ Res 9.

<sup>1540</sup> Regina Nneamaka Mgbenka, Evangeline Nwakaego Mbah and Ezeano Caleb Ike, 'A Review of Small holder Farming in Nigeria: Need for Transformation' (2015) 5(2) Agric Eng Res J 19.

<sup>1541</sup> South African Institute of International Affairs, 'Socio-Economic Problems Facing Africa: Insights from Six APRM Country Review Reports' (Occasional Paper, No 34, 2009).

<sup>1542</sup> Primus E Emenuga, 'Effect of Commercial Banks' Credit on Agricultural Productivity in Nigeria' (2019) 15(3) Acta Universitatis Danubius 417.

<sup>1543</sup> Andrew A Igwemma and others, 'Commercial Banks Loans and Lending Rate in Nigeria: A Toda-Yamamoto Causality Approach' (2020) 11(2) J Econ Sust Dev 13.

<sup>1544</sup> *ibid.*

<sup>1545</sup> Mohammed Shamsidin Ango Abdullahi and Yogesh Kumar Gupta, 'Financing Agriculture in Nigeria: A Comparative Review of Roles Played by Private, Public, and International Financial Institutions and Agencies' (2022) 10(6) Univers J Acct Financ 925.

While it is proposed that Nigeria consider introducing e-WRs to improve access to finance for farmers, there have been other initiatives different from the e-WR system through which Nigeria attempted to facilitate farmers' access to finance. However, the initiatives faced some challenges that could be linked to the problems of commercial banks with regard to agricultural finance. The Agricultural Credit Guarantee Scheme Fund (ACGSF) was one of the initiatives set up by the Nigerian government to support agricultural finance.<sup>1546</sup>

ACGSF was set up in 1977 to guarantee commercial banks that provide secured loans to farmers, and CBN oversaw the scheme.<sup>1547</sup> This scheme set aside the initial funds of 100 Million Naira, an equivalent of United States Dollars (USD) 64.7 Million as of 1977, to guarantee bank loans for farmers.<sup>1548</sup> Although the government had guaranteed farmers to enable commercial banks to extend credit to them, commercial banks demanded huge collaterals, which many farmers could not afford, including high interest rates.<sup>1549</sup> This was because commercial banks prioritise profit maximisation and risk prevention that could affect their business.<sup>1550</sup> By virtue of this problem faced by ACGSF, it could be assumed that e-WRs will face a similar setback in Nigeria when farmers present them as collateral in commercial banks.

Nonetheless, this research argues that introducing e-WRs can mitigate the above problem because, according to section 3.3.1.1 of this thesis, farmers can use them as collateral since they can be reliable trade documents. This will reduce the demand for other forms of collateral, such as land, farming equipment, and houses, among others, by commercial banks.

While the above is advantageous to farmers, for the idea of using e-WRs as collateral to be acceptable to commercial banks, the government has to make policies that will mandate CBN to direct banks to adopt certain practices, like developing a strategy that will govern agricultural

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<sup>1546</sup> Friday Osemenshan Anetor and others, 'Credit Supply and Agricultural Production in Nigeria: A Vector Autoregressive (VAR) Approach' (2016) 7(2) J Econ Sust Dev 131, 132.

<sup>1547</sup> *ibid.*

<sup>1548</sup> *ibid.*; see also Iyeli I Iyeli, Ezi Chukwugoziem Tom and Eyong I Ogbala, 'A Critical Appraisal of Exchange Rate Policies and the Value of Domestic Currency in Nigeria, 1970-2002' (2008) 5 J Contemp Res 279, 287.

<sup>1549</sup> Mohammed Shamsidin Ango Abdullahi and Yogesh Kumar Gupta, 'Financing Agriculture in Nigeria: A Comparative Review of Roles Played by Private, Public, and International Financial Institutions and Agencies' (2022) 10(6) Univers J Acct Financ 925, 928.

<sup>1550</sup> *ibid.*

finance.<sup>1551</sup> This will help commercial banks devise ways to minimise the risks that could occur due to price volatility of commodities in the warehouse, which e-WRs cover.

Commercial banks can minimise their risks by granting credit to farmers based on a loan-to-value (LTV) basis.<sup>1552</sup> That is, commercial banks will charge a specified percentage of the current value of the commodities in the warehouse, which e-WRs cover.<sup>1553</sup> The percentage is usually calculated based on the difference between the value of the commodity and the credit provided.<sup>1554</sup> This will help banks when the prices of the goods stored change due to price volatility and when they intend to sell the collateral due to a default in loan repayment.<sup>1555</sup>

Hedging is another means through which commercial banks can reduce their risks by mitigating the problem of price volatility.<sup>1556</sup> It is a means of utilising derivatives to predict the minimum and maximum prices of products in a commodity market.<sup>1557</sup> Derivatives are financial instruments whose value depends on an underlying asset or benchmark.<sup>1558</sup> In other words, the value of the financial instrument, in this case, e-WRs, which is the security, will be derived from the performance of a secondary source, for example, the exchange rate in the financial market, stock market, and others.<sup>1559</sup>

Alternatively, commercial banks can utilise a system that combines commodity and financial markets.<sup>1560</sup> An example of this kind of platform in Nigeria is the electronic commodity market platform AFEX maintains.<sup>1561</sup> However, AFEX is privately owned.<sup>1562</sup> In section 6.2.1.3 of this thesis, the NCX was identified as a government-owned commodity exchange platform, which ordinarily was designed to be linked with a financial exchange platform like SAFEX

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<sup>1551</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 22.

<sup>1552</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 7.

<sup>1553</sup> *ibid.*

<sup>1554</sup> *ibid.*

<sup>1555</sup> *ibid.*

<sup>1556</sup> Daliborka Jovičić and others, 'Warehouse Receipts Functioning to Reduce Market Risk' (2014) 61(2) *Econ Agric* 347, 351; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 58.

<sup>1557</sup> *ibid.*

<sup>1558</sup> Timothy E Lynch, 'Derivatives: A Twenty-First Century Understanding' (2011) 43(1) *Loy U Chi LJ* 1.

<sup>1559</sup> *ibid.*

<sup>1560</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 59.

<sup>1561</sup> African Development Bank (AfDB) Group, *Agricultural Market Access Sub-Strategy for Africa: Commodity Exchanges, Warehouse Receipt Systems, and New Standards* (AfDB Report, 2017).

<sup>1562</sup> *ibid.* 48.

incorporated into the Johannesburg Securities Exchange (JSE).<sup>1563</sup> Unfortunately, the NCX is moribund despite the government's effort to restructure the institution.<sup>1564</sup>

Hedging is advantageous to commercial banks who accept e-WRs as security and farmers who utilise e-WRs as collateral.<sup>1565</sup> For the banks, hedging mitigates the cost of building a technology that will monitor commodity markets because of volatility in the prices of commodities that e-WRs represent.<sup>1566</sup> Thus, it is cost-effective for banks because future prices of goods would be determined in advance.<sup>1567</sup> Regarding farmers, since banks utilise hedging to avert the price of commodity risk, they can advance a higher loan sum to farmers because it will be easier to apply a higher LTV ratio.<sup>1568</sup>

Where commercial banks do not adopt hedging to mitigate the risks that arise due to price volatility, they can develop a system that will monitor the Nigerian commodity markets and notify the banks of any changes in the value of goods that e-WRs represent.<sup>1569</sup> Nonetheless, this is more expensive than hedging. Thus, commercial banks build a new system instead of monitoring commodity prices with existing tools, like those that enable it to monitor foreign exchange (Forex) in the country.<sup>1570</sup> Also, creating the new system could require commercial banks to hire specific staff with commodity market experience, train existing staff, and develop some IT systems.<sup>1571</sup>

Although the creation of this strategy will guarantee lending to farmers, commercial banks, being profit-oriented, could opt out of creating the above system because of the cost, thereby affecting access to finance for farmers using e-WRs. One of the solutions to this problem is government intervention to help commercial banks derive incentives from lending to farmers, especially MSMEs.<sup>1572</sup> In 2011, the Nigerian government introduced the Nigerian Incentive-

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<sup>1563</sup> *ibid* 38.

<sup>1564</sup> *ibid* 50; see also The Technical Committee on Commodities Trading Ecosystem, *The Report on Commodities Trading Ecosystem in Nigeria* (The Securities and Exchange Commission Nig Doc, 2018) 62; Kingsley Obi Omeihe, Ibiyemi Omeihe and Bla Josee Charlotte Eba, *Price Volatility and the Nigerian Commodity Exchange (NCX)* (African Development Policy and Practice Insights Policy Paper 3/3, 2023).

<sup>1565</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 59.

<sup>1566</sup> *ibid*.

<sup>1567</sup> *ibid*.

<sup>1568</sup> *ibid*.

<sup>1569</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 4.

<sup>1570</sup> Daliborka Jovičić and others, 'Warehouse Receipts Functioning to Reduce Market Risk' (2014) 61(2) *Econ Agric* 347, 351.

<sup>1571</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 4.

<sup>1572</sup> *ibid* 70.

Based Risk Management System for Lending (NIRSAL) to provide commercial banks with incentives and technical support to minimise the risks of secured lending to farmers, particularly MSMEs.<sup>1573</sup>

The project was worth about USD 500 Million, with about USD 300 Million to serve as risk-sharing facilities for commercial banks that participate in agricultural finance, including other incentives granted to them by CBN.<sup>1574</sup> This project also mapped out about USD 60 Million to help commercial banks with technical support that will enable them to provide finance and other sums from the 500 Million, which was set apart to support access to finance for farmers.<sup>1575</sup>

Apart from NIRSAL, the Nigerian government also put in place the Commercial Agricultural Credit Scheme (CACS) in 2009 through CBN in conjunction with the Federal Ministry of Agriculture and Rural Development.<sup>1576</sup> The government raised a seven-year bond worth 200 Billion Naira as an intervention fund for the CACS project through the Nigerian Debt Management Office.<sup>1577</sup> This was an equivalent of approximately USD 1.3 Billion.<sup>1578</sup> The scheme was designed to contribute to commercial banks' capacity to lend to farmers against security.<sup>1579</sup>

This scheme is designed to support commercial banks to build a system that will monitor commodity markets and cushion the effect of non-performing loans, including others like

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<sup>1573</sup> Friday Osemenshan Anetor and others, 'Credit Supply and Agricultural Production in Nigeria: A Vector Autoregressive (VAR) Approach' (2016) 7(2) J Econ Sust Dev 131, 132; see also Abubakar Sadiq Abdulazeez, 'Assessing the Impact of NIRSAL Micro Finance in Promoting Entrepreneurship/Small and Medium Enterprises in Jimeta, Adamawa State' (2023) 8(7) Intl J Novel Res 887.

<sup>1574</sup> Abubakar Sadiq Abdulazeez, 'Assessing the Impact of NIRSAL Micro Finance in Promoting Entrepreneurship/Small and Medium Enterprises in Jimeta, Adamawa State' (2023) 8(7) Intl J Novel Res 887.

<sup>1575</sup> *ibid.*

<sup>1576</sup> Friday Osemenshan Anetor and others, 'Credit Supply and Agricultural Production in Nigeria: A Vector Autoregressive (VAR) Approach' (2016) 7(2) J Econ Sust Dev 131, 132; see also Statistics Department CBN, *Commercial Agricultural Credit Scheme: Evolution and Impact Assessment Report* (CBN 2018).

<sup>1577</sup> *ibid.*; see also Aderibigbe S Olomola and Maryam Yaro, 'Commercial Banks' Response to Government's Financial Stimulus for Improved Agricultural Financing in Nigeria' (2015) International Food Policy Research Institute Working Paper, No 28 <<https://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/129209/filename/129420.pdf>> accessed 21 March 2022.

<sup>1578</sup> Babatunde S Omotosho and Murjanatu Wambai, 'Is the Naira-US Dollar Real Exchange Rate Misaligned?' (MPRA paper, No 98354, 2012).

<sup>1579</sup> Friday Osemenshan Anetor and others, 'Credit Supply and Agricultural Production in Nigeria: A Vector Autoregressive (VAR) Approach' (2016) 7(2) J Econ Sust Dev 131, 132; see also Statistics Department CBN, *Commercial Agricultural Credit Scheme: Evolution and Impact Assessment Report* (CBN 2018).

building IT systems.<sup>1580</sup> Non-performing loans arise when grantors default on the repayment of part or the entire loan sum.<sup>1581</sup> Moreover, participating in the scheme and planning for potential non-performing loans arising from agricultural finance will reflect positively on the commercial bank by demonstrating that they have a quality credit portfolio and a good risk management strategy.<sup>1582</sup>

Although the NIRSAL and CACS are in place, only a few commercial banks, like Union Bank and Stanbic IBTC Bank, have taken advantage of the project.<sup>1583</sup> This implies that if more banks do not participate, access to finance could remain a potential problem in Nigeria even with the introduction of e-WRs, as commercial banks may not be willing to utilise their funds to set up a credit strategy for e-WR. Even commercial banks that lend on an LTV basis and utilise hedging should participate in these schemes to cushion the effects of non-performing loans. This will encourage them to lend more to farmers using e-WR as collateral.

Nevertheless, the NIRSAL scheme has a problem, especially with its scope.<sup>1584</sup> The scheme covers limited agricultural produce like cotton, soybean, rice, tomato, cassava, and maize.<sup>1585</sup> This limitation could influence the funds the banks will obtain to develop a system that will monitor the commodity market, as the technology will be enabled to monitor a limited number of products. This will, in turn, affect the number of farmers who will be granted credit even when commercial banks participate in the programme. That is, farmers who do not deal in the abovementioned commodities will be excluded from access to finance.

Although this will pose a disadvantage for farmers, it will be advantageous to the banks as they will have a small number of products to monitor in the commodity market. However, it is essential to indicate that many countries with a WR legislation avoid narrowing the scope of commodities the legislation accommodates.<sup>1586</sup> They generally provide for agricultural commodities. For instance, the Ugandan WR legislation provides that all goods, that is,

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<sup>1580</sup> *ibid.*

<sup>1581</sup> M Jathurika, 'Impact of Non-Performing Loans on Financial Performance: A Case of Sri Lankan Listed Commercial Banks' (2019) 5(1) *Intl J Acct Bus F* 86.

<sup>1582</sup> Peter K Ozili, 'Non-Performing Loans and Financial Development: New Evidence' (2019) *J Risk Financ* 1.

<sup>1583</sup> Mohammed Shamsidin Ango Abdullahi and Yogesh Kumar Gupta, 'Financing Agriculture in Nigeria: A Comparative Review of Roles Played by Private, Public, and International Financial Institutions and Agencies' (2022) 10(6) *Univers J Acct Financ* 925, 928.

<sup>1584</sup> Friday Osemenshan Anetor and others, 'Credit Supply and Agricultural Production in Nigeria: A Vector Autoregressive (VAR) Approach' (2016) 7(2) *J Econ Sust Dev* 131, 132.

<sup>1585</sup> *ibid.*

<sup>1586</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015).



personal property, that are subject to storage contracts or bailment, which can be packed, processed, substituted or transformed, are recognised under the WR system.<sup>1587</sup> The Tanzanian WR legislation provides for all agricultural commodities, including any other commodity the Minister may prescribe.<sup>1588</sup> Nigeria, in its WR Bill, did not restrict the types of agricultural produce it covers.<sup>1589</sup>

In addition, Nigeria is rich in many crops, such as rubber, groundnut, palm oil, cocoa and others.<sup>1590</sup> Thus, NIRSAL should consider broadening its scope to accommodate Nigeria's wealth of agricultural products. This is because it will be easier for commercial banks to upgrade their technology to monitor a variety of goods through participating in the NIRSAL programme, including other schemes, than for many farmers, especially MSMEs, to lose out on access to credit.

From the ongoing, it is submitted that although commercial banks have high interest rates because they are profit-oriented and risk-conscious, they can be competent creditors to farmers who would potentially use e-WRs as collateral, especially when the banks take some actions, like participating in the remedies provided in this section.

### **6.3.2. Development Finance Institutions (DFIs)**

DFIs are special financial institutions with the objective of developing sectors that boost the economy, such as the agricultural sector.<sup>1591</sup> They can be fully government-owned, owned by a bank like CBN, privately owned, a partnership between the government and a bank, or a partnership between the government and the private sector.<sup>1592</sup>

DFIs contribute to the general socio-economic development of a country.<sup>1593</sup> Thus, one of its functions is to provide low-interest long and short-term loans to businesses to promote industrialisation.<sup>1594</sup> DFIs have also benefited countries like Holland, Japan, and India, among

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<sup>1587</sup> Warehouse Receipt System Act 2006, s 2 (Uganda).

<sup>1588</sup> The Warehouse Receipts Act 2005, s 2 (Tanzania).

<sup>1589</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 104.

<sup>1590</sup> Kamil Sertoğlu, Sevin Ugural and Festus Victor Bekun, 'The Contribution of Agricultural Sector on Economic Growth of Nigeria' (2017) 7(1) Intl J Econ Financ Iss 547.

<sup>1591</sup> Michael Ojo Oke, 'Exploring Development Finance Institutions to Bridge the Infrastructure Deficit During a Period of Revenue Decline in Nigeria' (2021) 9(1) Glob Scient J 2455, 2465.

<sup>1592</sup> *ibid.*

<sup>1593</sup> *ibid* 2458.

<sup>1594</sup> *ibid* 2459.

others, in developing industrialisation by providing long-term loans to businesses with low interest rates.<sup>1595</sup>

CBN has certified six DFIs to operate in Nigeria, such as The Bank of Agriculture (BOA), Development Bank of Nigeria Plc, and Bank of Industry, among others.<sup>1596</sup> BOA is relevant to this research because the study deals with farmers who are stakeholders in the agricultural sector, especially MSMEs.<sup>1597</sup> Thus, they require financial institutions that will grant them long-term credit with minimal interest rates.

Although BOA is a regulated creditor and is appropriate for enhancing access to finance for farmers using e-WRs, it faces numerous challenges in Nigeria that impact its effective operation.<sup>1598</sup> First, the bank is grossly underfunded by the government and CBN.<sup>1599</sup> As a matter of fact, the capital that should be made available to BOA to advance credit at low interest rates has not been paid up by the government or CBN for years.<sup>1600</sup> Both are responsible for funding BOA because they jointly own the institution at a ratio of 60:40.<sup>1601</sup> However, it is argued that a full or partial privatisation of BOA will provide sufficient funds for the bank to function efficiently and advance secured credit to farmers.<sup>1602</sup>

There is a need for a more capable management for BOA.<sup>1603</sup> The appointment of the management team is politicised, which gives room for the employment of unqualified persons in decision-making positions.<sup>1604</sup> This affects the bank staff, who are generally unmotivated and dissatisfied.<sup>1605</sup> Consequently, the staff productivity is poor.<sup>1606</sup> Also, many of the bank's staff, like the management team, have little or no background in agriculture and economics, which is relevant because the bank is a specialised bank in agricultural economics.<sup>1607</sup>

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<sup>1595</sup> *ibid* 2458.

<sup>1596</sup> Central Bank of Nigeria, 'Financial Institutions and Supervision' <<https://www.cbn.gov.ng/supervision/f institutions.asp>> accessed 5 October 2023.

<sup>1597</sup> Regina Nneamaka Mgbenka, Evangeline Nwakaego Mbah and Ezeano Caleb Ike, 'A Review of Small holder Farming in Nigeria: Need for Transformation' (2015) 5(2) Agric Eng Res J 19.

<sup>1598</sup> Adetunji Adeniyi, 'Nigeria's Bank of Agriculture: An Agenda for Organizational Renewal' (2021) 10(1) J Bus Admin Res 41, 46.

<sup>1599</sup> *ibid*.

<sup>1600</sup> *ibid*.

<sup>1601</sup> *ibid*.

<sup>1602</sup> *ibid* 44.

<sup>1603</sup> *ibid* 46.

<sup>1604</sup> *ibid*.

<sup>1605</sup> *ibid* 45.

<sup>1606</sup> *ibid*.

<sup>1607</sup> *ibid*.

This problem can be mitigated if BOFIA provides a minimum qualification requirement for the management of such banks because it stipulates that CBN supervises and regulates the activities of other financial institutions and specialised banks.<sup>1608</sup> This type of requirement is seen in CAMA, which enshrined the qualification of the Registrar-General of CAC.<sup>1609</sup> It stipulated that the Registrar-General shall be a legal practitioner of at least ten years post-call, with experience in company law or administration for at least eight years.<sup>1610</sup> This reduces the challenge of unqualified management. Lessening the problem of unqualified management is important because the challenge affects the lack of attention to the use of technology, which impacts the bank's efficiency.<sup>1611</sup> That is, farmers have to come to BOA physically to carry out transactions.<sup>1612</sup> This is inconsistent with e-WRs, which require the use of technology.

To compound issues, there are few branches of BOA across Nigeria, and most of them are in urban or semi-urban areas, whereas many farmers that need their services reside in rural areas.<sup>1613</sup> By virtue of these challenges, potentially obtaining credit using e-WRs from the BOA would be cumbersome and might not be transparent, which means that many farmers may find it difficult to obtain credit using e-WRs in BOA.<sup>1614</sup> Also, because BOA is underfunded, transaction costs would be increased, and loans would attract high interest rates just like commercial banks.<sup>1615</sup> This could make farmers resort to commercial banks for loans even though BOA is designed to make access to credit easier for farmers and minimise the interest rates on the loans.

Therefore, where these challenges are mitigated, BOA will be an ideal secured creditor for farmers when e-WRs are introduced in Nigeria.

### **6.3.3. Microfinance Banks (MFBs)**

MFBs were formally known as community banks because of their contribution to the development of rural communities.<sup>1616</sup> Its purpose is to serve as bankers to low-income

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<sup>1608</sup> Banks and Other Financial Institutions 2020, s 60(1)(a).

<sup>1609</sup> Companies and Allied Matters Act 2020, s 9(1).

<sup>1610</sup> *ibid.*

<sup>1611</sup> Adetunji Adeniyi, 'Nigeria's Bank of Agriculture: An Agenda for Organizational Renewal' (2021) 10(1) J Bus Admin Res 41, 45.

<sup>1612</sup> *ibid.*

<sup>1613</sup> Mohammed Shamsidin Ango Abdullahi and Yogesh Kumar Gupta, 'Financing Agriculture in Nigeria: A Comparative Review of Roles Played by Private, Public, and International Financial Institutions and Agencies' (2022) 10(6) *Univers J Acct Financ* 925, 928.

<sup>1614</sup> Regina Nneamaka Mgbenka, Evangeline Nwakaego Mbah and Ezeano Caleb Ike, 'A Review of Small holder Farming in Nigeria: Need for Transformation' (2015) 5(2) *Agric Eng Res J* 19, 45.

<sup>1615</sup> *ibid.*

<sup>1616</sup> Ikechukwu A Acha, 'Microfinance Banking in Nigeria: Problems and Prospects' (2012) 1(5) *Intl J Financ Account* 106; see also Kingsley Onyekachi Onyele and Charity Onyekachi-Onyele, 'The Effect

earners and MSMEs, especially by granting them credit with little interest.<sup>1617</sup> Unfortunately, MFBs have not lived up to expectations.

The first problem with MFBs is the lack of basic infrastructure, like good roads where they are located, and lack of power, which leads to a high cost of alternative power generation, among others.<sup>1618</sup> Although some MFBs are situated in urban areas like the Tier 1 Unit MFBs, they have some branches in rural and semi-urban areas with infrastructural problems.<sup>1619</sup> Poor infrastructure is a challenge that makes it difficult to operate the bank effectively.<sup>1620</sup> Due to the high cost of running the MFBs and the nature of their customers, mostly MSMEs and low-income individuals, the cost of transactions and interest on loans are usually as high as commercial banks and sometimes higher.<sup>1621</sup> This would pose a problem of access to finance using e-WRs for farmers, especially MSMEs in MFBs.

Even with some of the MFBs becoming neo-banks, that is, banks that operate solely online (mobile application driven) without having a physical bank, such as Moniepoint and Opay, among others, they face regulatory limitations, which restrict them from carrying on some services, like providing loans to individuals or companies.<sup>1622</sup> The Central Banks of countries like Brazil have considered neo banks, which are commonly financial technological companies (fintech), as a means to increase the opportunities to obtain credit.<sup>1623</sup> This is because they bridge geographical barriers; they are faster because they reduce unnecessary bureaucracy that exists in traditional banks in terms of access to credit, and they mitigate the problem of infrastructure, as no physical building is required.<sup>1624</sup> Thus, CBN should consider the limitations placed on neo-banks to minimise the issues that limit access to finance in MFBs, like poor infrastructure, especially as Nigeria could introduce the use of e-WRs, which would be compatible with the digital nature of neo-banks.

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of Microfinance Banks on Poverty Reduction in Nigeria' (2020) 8(3) *Manag Dynamic Know Econ* 257, 258; Garba Yusuf, 'Microfinance Banks in Nigeria Benefits and Challenges' (2017) 11 *Beam J Art Sci* 1; Bala Abubakar, 'Problem and Prospects of Microfinance Banks in Jimeta Metropolis, Adamawa State' (2020) 20(7) *J Manag Sci Entrep* 116, 117.

<sup>1617</sup> *ibid.*

<sup>1618</sup> Ikechukwu A Acha, 'Microfinance Banking in Nigeria: Problems and Prospects' (2012) 1(5) *Intl J Financ Account* 106, 108.

<sup>1619</sup> Financial Policy and Regulation Department, 'Guidelines for the Regulation and Supervision of Microfinance Banks' (2020) Central Bank of Nigeria 1, 9.

<sup>1620</sup> Ikechukwu A Acha, 'Microfinance Banking in Nigeria: Problems and Prospects' (2012) 1(5) *Intl J Financ Account* 106, 108.

<sup>1621</sup> *ibid.*

<sup>1622</sup> Emmanuel Mogaji and Nguyen Phong Nguyen, 'High Street Banking on the App: Branding Strategies of Traditionally-Driven Neobanks' (2024) 42(4) *Intl J Bank Market* 301.

<sup>1623</sup> Luis Hernan Contreras Pinochet and others, 'Propensity of Contracting Loans Services from Fintech's in Brazil' (2019) 37(5) *Intl J Bank Market* 1190.

<sup>1624</sup> *ibid.*

Another problem with MFBs is the poor banking culture of their customers, who consistently fail to repay interest on loans irrespective of the tenure of the loans.<sup>1625</sup> Some MFBs in Northern Nigeria are affected the most due to the Islamic belief that prohibits interest accruing on loans.<sup>1626</sup> Due to this culture, MFBs are reluctant to lend to businesses.<sup>1627</sup> It is argued in this research that e-WRs can mitigate this problem. This is because, where e-WRs are used as collateral, security agreements covering the e-WR transactions would stipulate the rights and liabilities of both the MFBs and grantors.<sup>1628</sup> Thus, where the loan sum is paid without the payment of interest as agreed, MFBs can sell some or all the goods that the e-WRs represent to recover their interest and remit the remainder of the sum or goods to the grantor.<sup>1629</sup>

Sometimes, MFBs procure funds in the form of grants from donations and investors, amongst other sources, to advance secured credit to MSMEs with low interests.<sup>1630</sup> However, they take a long time to process the loans, which causes delays in business.<sup>1631</sup> Applying this to the potential Nigeria's e-WR system, when the process of advancing credit that attracts low interest takes a long time, the farmer will continue paying storage fees while waiting for the loan to be processed by the MFB. It will also be challenging to utilise the stored goods for another purpose since they have been presented as collateral while waiting for approval. Hence, this is detrimental to the farmers' business.<sup>1632</sup> Therefore, the management of the MFBs should work to reduce unnecessary bureaucracy and delays in processing loans for farmers. The use of technology and adequate staff training can mitigate this challenge.<sup>1633</sup>

Nevertheless, the funds available to MFBs to avail low-interest credit to businesses are usually limited and cannot cater to the large population of businesses that require credit, like farmers,

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<sup>1625</sup> Ikechukwu A Acha, 'Microfinance Banking in Nigeria: Problems and Prospects' (2012) 1(5) Intl J Financ Account 106, 108.

<sup>1626</sup> *ibid.*

<sup>1627</sup> *ibid.*

<sup>1628</sup> Secured Transactions in Movable Assets Act 2017, s 3(1); s 5(c); see also Chapter Four of this Thesis, s 4.2.1.2.1.1.

<sup>1629</sup> Annelise Riles, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets* (UCP 2011) 38.

<sup>1630</sup> Financial Policy and Regulation Department, 'Guidelines for the Regulation and Supervision of Microfinance Banks' (2020) Central Bank of Nigeria 1, 21.

<sup>1631</sup> Kingsley Onyekachi Onyele and Charity Onyekachi-Onyele, 'The Effect of Microfinance Banks on Poverty Reduction in Nigeria' (2020) 8(3) Manag Dynamic Know Econ 257, 270.

<sup>1632</sup> *ibid.*

<sup>1633</sup> Akingunola RO and others, 'Microfinance Banks and Entrepreneurship Development in Nigeria: A Case of Ogun State' (2013) 5(28) Eur J Bus Manag 100; see also Adebisi MA, Olusegun TS and Yakubu J, 'Microfinance Sustainability in a Digitalised Economy' (2022) 60(1) Econ Financ Rev 53.

especially those with MSMEs, which could result in many of them being left out.<sup>1634</sup> A viable means to mitigate this challenge, including the problem of non-performing loans by grantors, is that MFBs can partner with local and domestic intergovernmental organisations like the International Monetary Fund (IMF), the International Finance Corporation (IFC), and others.<sup>1635</sup> The organisations can provide various support such as funds, staff training, technical aid, and others.<sup>1636</sup> This relationship can be mutual in that when the MFB that receives support succeeds and becomes financially independent, they can, in turn, support the organisations in other projects.<sup>1637</sup>

Following the analysis in this section, although MFBs are regulated creditors, they have certain challenges that can impact farmers' use of e-WRs as collateral when e-WRs are introduced in Nigeria. Nevertheless, this section demonstrates that these problems can be resolved to make MFBs competent creditors in Nigeria's prospective e-WR system.

#### **6.3.4. Non-Interest Banks**

Non-interest banks are in sharp contrast to commercial banks.<sup>1638</sup> It is also known as the Islamic banking system and is in line with the tenets of Islamic commercial jurisprudence.<sup>1639</sup> While commercial banks advance secured loans to their customers with a high interest rate, non-interest banks do not require the payment of interest on any loan.<sup>1640</sup> This is where the name 'Non-interest Bank' emanates from. Non-interest banks in Nigeria have access to Islamic development funds from the Islamic Financial Service Board that help them maintain the non-interest policy.<sup>1641</sup> Furthermore, unlike commercial banks that are profit-oriented, non-interest banks adopt a profit-and-loss banking system. That is, the grantor who obtains a loan for their business shares the profits and losses of the business with the bank who is the creditor.<sup>1642</sup>

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<sup>1634</sup> Kingsley Onyekachi Onyele and Charity Onyekachi-Onyele, 'The Effect of Microfinance Banks on Poverty Reduction in Nigeria' (2020) 8(3) *Manag Dynamic Know Econ* 257, 270.

<sup>1635</sup> Daniel C Hardy, Paul Holden, and Vassili Prokopenko, 'Microfinance Institutions and Public Policy' (2002) International Monetary Fund Working Paper WP/02/159 <<https://www.imf.org/external/pubs/ft/wp/2002/wp02159.pdf>> accessed 15 November 2023.

<sup>1636</sup> *ibid* 9.

<sup>1637</sup> *ibid* 10.

<sup>1638</sup> Michael Takim Otu and Miebaka Nabiebu, 'Challenges and Prospects of Non-Interest (Islamic) Banking System in Nigeria' (2019) 6(7) *Intl J Humanit Soc Sci Edu* 100.

<sup>1639</sup> *ibid*; see also Nuruddeen Abba Abdullahi, 'Islamic Banking in Nigeria: Issues and Prospects' (2016) 4(2) *J Emerg Econ Islam Res* 1, 5.

<sup>1640</sup> Michael Takim Otu and Miebaka Nabiebu, 'Challenges and Prospects of Non-Interest (Islamic) Banking System in Nigeria' (2019) 6(7) *Intl J Humanit Soc Sci Edu* 100.

<sup>1641</sup> *ibid* 102.

<sup>1642</sup> *ibid* 102.

While this form of banking aims to create employment, facilitate access to finance, especially for MSMEs, expand the banking system and mitigate poverty, it has some limitations in Nigeria. The first problem is the ethnoreligious diversity in Nigeria.<sup>1643</sup> There are more than 250 ethnic groups in Nigeria, with a population of Christians, Muslims, and traditional religions.<sup>1644</sup> The eastern and southern parts of Nigeria are dominated by Christians, the northern region is dominated by Muslims, and the west has a mixed population of Christians and Muslims. Only about 10 per cent of the Nigerian population practises traditional religion.<sup>1645</sup> Therefore, there are ethnoreligious sentiments about the Islamic banking system in Nigeria.<sup>1646</sup>

The above diversity has hindered the patronage of these banks, including the misconception that only Muslims can be customers at these banks or granted credit.<sup>1647</sup> Some Nigerians also misconstrue non-interest banks as a ploy to Islamise Nigeria; hence, apart from the north, other parts of the country rarely patronise the banks.<sup>1648</sup> These ideologies of non-Muslim Nigerians about non-interest banks are comprehensible because the banks are operated according to Sharia principles.<sup>1649</sup> Also, Sharia law is applicable only in Northern Nigeria.<sup>1650</sup> Therefore, for this type of bank to be recognised as an effective creditor by the rest of Nigerians, including for access to finance using e-WRs, awareness has to be created to demystify these beliefs.

Furthermore, because non-interest banks are governed by Sharia law, there is a problem with the legal frameworks available to support the practice of non-interest banks.<sup>1651</sup> Apart from CBN, which makes regulations for non-interest banks, the other laws that affect banking in Nigeria were designed mainly for conventional banks, such as commercial banks.<sup>1652</sup> This

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<sup>1643</sup> *ibid* 104.

<sup>1644</sup> *ibid*; see also Mathias Onyinye Okpala and Ifeanyi Chris Onodugo, 'Ethnicity, Religion, Politics and the Challenges of National Development in Nigeria' (2023) 8(1) *Intl J Multidiscip Edu Res* 8.

<sup>1645</sup> *ibid*.

<sup>1646</sup> Nuruddeen Abba Abdullahi, 'Islamic Banking in Nigeria: Issues and Prospects' (2016) 4(2) *J Emerg Econ Islam Res* 1, 11; see also Michael Takim Otu and Miebaka Nabiebu, 'Challenges and Prospects of Non-Interest (Islamic) Banking System in Nigeria' (2019) 6(7) *Intl J Humanit Soc Sci Edu* 100, 103.

<sup>1647</sup> *ibid*.

<sup>1648</sup> *ibid*.

<sup>1649</sup> Shahzad Q Qadri, 'Islamic Banking: An Introduction' (2008) 17 *Bus L Today* 59.

<sup>1650</sup> Japhet Olusadum Nnaeto, Emenike Everest Uzor and Juliet Anulika Ndoh, 'Appraisal of the Conflict Between Sharia Law and Rule of Law on Rights of Women in Nigeria' (2022) 10(6) *Glob J Pol L Res* 1.

<sup>1651</sup> Michael Takim Otu and Miebaka Nabiebu, 'Challenges and Prospects of Non-Interest (Islamic) Banking System in Nigeria' (2019) 6(7) *Intl J Humanit Soc Sci Edu* 100, 103.

<sup>1652</sup> *ibid*; see also Nuruddeen Abba Abdullahi, 'Islamic Banking in Nigeria: Issues and Prospects' (2016) 4(2) *J Emerg Econ Islam Res* 1, 14.

affects the operations of non-interest banks, especially because Sharia law is limited in Nigeria, unlike in jurisdictions such as Saudi Arabia, where Sharia law is predominant.<sup>1653</sup>

In addition, because non-interest banks operate with Islamic tenets, there is a problem with hiring experienced and skilled staff knowledgeable in the accounting and auditing standards applicable to non-interest banks.<sup>1654</sup> This is because many universities and professional bodies like the Institute of Chartered Accountants of Nigeria (ICAN), among others, base their practice on conventional accounting and auditing practices.<sup>1655</sup>

In a practical sense, the idea of profit and loss, as well as risk sharing between the grantor and the bank who is the creditor, poses a challenge because this could require the grantor to divulge all their business secrets to the banks.<sup>1656</sup> Furthermore, on the part of the non-interest banks, hedging will be a problem, especially in an e-WR system, where the banks will be required to monitor the goods stored in the warehouse and their prices, which could fluctuate.<sup>1657</sup>

Non-interest banks do not utilise hedging like commercial banks because they consider it to be at variance with Sharia law.<sup>1658</sup> However, a few studies have tried to develop Sharia-compliant hedging.<sup>1659</sup> Unfortunately, some of the principles of Sharia-based hedging are problematic because they do not fulfil the purpose of applying hedging in the first place. For instance, one of the principles states that the implication of hedging shall not be to generate profit or preserve the capital of the loan granted to a grantor.<sup>1660</sup> Therefore, it is submitted that non-interest banks prohibit using hedging to prevent losses for banks.<sup>1661</sup> This is relevant to this study because the research is about finding viable means through which e-WRs can be

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<sup>1653</sup> Michael Takim Otu and Miebaka Nabiebu, 'Challenges and Prospects of Non-Interest (Islamic) Banking System in Nigeria' (2019) 6(7) Intl J Humanit Soc Sci Edu 100, 103.

<sup>1654</sup> Nuruddeen Abba Abdullahi, 'Islamic Banking in Nigeria: Issues and Prospects' (2016) 4(2) J Emerg Econ Islam Res 1, 12.

<sup>1655</sup> *ibid.*

<sup>1656</sup> *ibid.* 13.

<sup>1657</sup> Daliborka Jovičić and others, 'Warehouse Receipts Functioning to Reduce Market Risk' (2014) 61(2) Econ Agric 347, 351; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 58.

<sup>1658</sup> Rima Turk Ariss and Yolla Saredidine, 'Challenges in Implementing Capital Adequacy Guidelines to Islamic Banks' (2007) 9 J Bank Reg 46, 58.

<sup>1659</sup> Hiyam Mohammad Al-Zedaneen and Omar Yacoub Ibrahim Abdelrahim, 'The Shariah-Based Hedging Instruments Used for Managing the Foreign Exchange Rate- Related Risks' (2020) 17(7) PalArch J Archaeol Egypt 15460, 15470.

<sup>1660</sup> *ibid.*

<sup>1661</sup> *ibid.*



accepted by banks as collateral for advancing credit to farmers. Thus, both the interests of banks and farmers should be protected.

From the above evaluation, although non-interest banks are regulated creditors, they face numerous challenges that could prevent them from being competent creditors in Nigeria's proposed e-WR system unless these problems are resolved.

### 6.3.5. Finance Companies (FCs)

FCs are relevant to this research because they contribute extensively to the economic development of Nigeria.<sup>1662</sup> They perform well in providing credit to MSMEs; they are effective in agricultural loans and WR finance, including guaranteeing the quality and quantity of the goods in the warehouse are the same as specified by the grantor.<sup>1663</sup> Although CBN did not prohibit commercial banks, DFIs, MFBs and non-interest banks from dealing in WR finance, it is recommended that it should expressly state that the aforementioned regulated creditors should deal with WR finance, just as it did with FCs.<sup>1664</sup>

FCs are companies whose business is to provide short-term financial services to individuals and industrial, commercial, and agricultural enterprises, even though they are not classified as banks by CBN.<sup>1665</sup> They mobilise money from various sources like shareholders' funds, investing public, and government MSME schemes, among others, to provide credit for its customers.<sup>1666</sup>

In the past, the challenge with FCs was the lack of regulation.<sup>1667</sup> However, FCs now fall under the financial institutions regulated and supervised by CBN.<sup>1668</sup> They set rules for how FCs operate from pre-incorporation to winding up.<sup>1669</sup> Nonetheless, the major problem with FCs is

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<sup>1662</sup> Igbaniibo Dumini Solomon and Iwedi Marshal, 'The Intermediation Functions of Finance Companies and Economic Growth: Issues, Theory and Empirical Evidence from Nigeria' (2015) 3(3) J Financ Account 47.

<sup>1663</sup> Financial Policy and Regulation Department, 'Revised Guidelines for Finance Companies in Nigeria' (2014) CBN Guideline <<https://www.cbn.gov.ng/out/2014/ccd/revised%20guidelines%20for%20finance%20companies%20in%20nigeria.pdf>> accessed 9 January 2024.

<sup>1664</sup> *ibid.*

<sup>1665</sup> *ibid* 2.

<sup>1666</sup> *ibid* 10; see also AO Enofe, VE Osa-Erhabor and AJ Ehiorobo, 'Finance Companies, Central Bank of Nigeria and Economic Development' (2013) 4(10) J Econ Sust Dev 67, 68.

<sup>1667</sup> AO Enofe, VE Osa-Erhabor and AJ Ehiorobo, 'Finance Companies, Central Bank of Nigeria and Economic Development' (2013) 4(10) J Econ Sust Dev 67.

<sup>1668</sup> Central Bank of Nigeria, *List of Financial Institutions: 2021 Annual Economic Report* (CBN 2021).

<sup>1669</sup> *ibid*; see also Financial Policy and Regulation Department, 'Revised Guidelines for Finance Companies in Nigeria' (2014) CBN Guideline <<https://www.cbn.gov.ng/out/2014/ccd/revised%20guidelines%20for%20finance%20companies%20in%20nigeria.pdf>> accessed 9 January 2024.

that many MSMEs, including agricultural businesses in Nigeria, are not aware of their existence; hence, they do not have substantial patronage.<sup>1670</sup> The creation of awareness is needed for FCs to perform effectively and thrive in providing access to finance for agribusinesses in Nigeria using e-WRs, especially since their scope covers WR finance. Therefore, they can be effective regulated creditors when Nigeria adopts the e-WR system.

#### **6.4. Conclusion**

This chapter continued to address the third research question, which centres on whether it would be possible to successfully operate an e-WR system in Nigeria and inquire into how it can be managed to facilitate access to finance for farmers while contributing to the development of Nigeria's economy.<sup>1671</sup> Based on this, this chapter analysed legal issues that could affect the introduction of e-WRs in Nigeria and proffered potential solutions to those problems.

One of the critical problems identified in this chapter concerned how e-WRs would be issued and registered in Nigeria when adopted, including warehouse licensing. This chapter examined the mechanisms of issuing and registering e-WRs in the United States and South Africa. From there, two options for issuing and registering e-WRs were created for Nigeria.

It was submitted that Nigeria could utilise the central registry provided in the WR Bill like the ESC in South Africa. That is, the Agency, which operates the central registry, will provide software that will enable them to empower warehouse operators to issue e-WRs and to monitor e-WR transactions while making provisions for brokers and telephonic systems to assist farmers that are not technically savvy. Alternatively, following the United States model, through the Agency, Nigeria can license service providers to provide software that will enable them to empower licensed warehouses in Nigeria to issue e-WRs and track e-WR transactions. Moreover, following section 5.6 of this thesis, which discusses technological neutrality in an e-WR system, the solutions offered by the United States and South Africa do not limit Nigeria to a particular platform or software. Thus, they can choose the mechanism that they find convenient, especially financially.

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<sup>1670</sup> AO Enofe, VE Osa-Erhabor and AJ Ehiorobo, 'Finance Companies, Central Bank of Nigeria and Economic Development' (2013) 4(10) J Econ Sust Dev 67, 72.

<sup>1671</sup> The third research question is, 'Is There a Potential for Successfully Operating the Warehouse Receipt System in Nigeria with the Form(s) of Warehouse Receipt Selected, and How Can it be Managed to Facilitate Access to Finance for Farmers while Improving Nigeria's Economy?'

In addition, it was concluded in this chapter that warehouses in Nigeria should keep an internal record to track the deposits and withdrawal of goods. It was indicated that this would make the inspection of warehouses easy for the Agency. Licensing of warehouses in Nigeria was also recommended to ensure that the Agency adequately monitors the e-WR system. Nevertheless, this chapter suggests that although unlicensed warehouses can operate legally in Nigeria, the WR Bill should be amended to clarify that unlicensed warehouses must meet the quality standards prescribed by the Bill for licensed warehouses. Furthermore, this chapter proposed that the National Assembly review some of the licensing protocols in the WR Bill, such as the publication of notice by the applicant warehouse.

Another crucial issue identified in this chapter is the problem of legal transplant, one of the theoretical frameworks in this research. This centred on the mechanism of legal transplant adopted by Nigeria and Nigeria's inconsistency in carrying out legal transplant.

Concerning the mechanism of legal transplant, this chapter demonstrated that Nigeria could adopt the emulation mechanism, which makes it easy for countries to draw lessons from external sources, like the laws of other countries and how it is practised in those jurisdictions. However, this chapter emphasised that the adopting country must have a proper understanding of the law being transplanted so that it can work effectively for them. This determines the consistency of a country in transplanting laws from other jurisdictions. It was identified that Nigeria is inconsistent in transplanting laws. It gets some transplants right, like the international commercial arbitration it adopted from Arbitration Model Law, while it gets others wrong on its first attempt, such as the plea bargain it adopted from the United States.

Nevertheless, this chapter proposes a solution to the above challenge. It recommends that legislators and their associates, like the NLRC, acquire further training on legal transplant and that the process of amending laws in Nigeria be made easier and faster.

Finally, the scope of creditors provided by STMAA was raised as a potential problem in farmers' prospective use of e-WRs for access to finance. It was identified that the definition of creditor included regulated institutions, like banks and unregulated entities, such as individuals. It was proposed that upon introducing e-WRs in Nigeria, only regulated institutions, like commercial banks, DFIs and others, should be allowed as creditors. That is, the law should narrow the scope of creditors that will be allowed to operate in the potential e-WR system as an exception to the rule that allows every type of creditor under STMAA. This recommendation was made in this study because it would be easier to hold regulated institutions accountable, unlike unregulated institutions or persons. Moreover, it was identified that regulated creditors

in Nigeria have some challenges that could impact the use of e-WRs as collateral, let alone unregulated entities. This chapter proffered some remedies to the challenges of the proposed regulated creditors in Nigeria's prospective e-WR system.

Although this last legal problem of the scope of creditors had some elements of socio-economic issues, the next chapter will primarily focus on the potential socio-economic challenges that could affect e-WRs when introduced in Nigeria.

## **CHAPTER SEVEN: POTENTIAL SOCIO-ECONOMIC CHALLENGES OF USING ELECTRONIC WAREHOUSE RECEIPTS AS COLLATERAL IN NIGERIA AND POSSIBLE REMEDIES**

### **7.1. Introduction**

Chapter six of this thesis discussed some legal problems that could arise when e-WRs are introduced in Nigeria. This chapter centres on the potential socio-economic problems Nigeria could face upon introducing e-WRs in Nigeria. From its name, socio-economic issues arise due to a combination of social and economic factors affecting individuals in the society or the society itself.<sup>1672</sup> This type of problem borders on issues like poverty, educational inequalities and technological disparities, among other challenges.<sup>1673</sup> Thus, they are more personal to the daily survival of individuals in a State.

Based on the above, this chapter, like chapter six, will continue to attempt the third research question in this thesis.<sup>1674</sup> That is, it will investigate how the prospective Nigeria's e-WR system will be managed to mitigate possible socio-economic problems, such as technological awareness, information asymmetry, proximity of warehouses to farmers, and others. The evaluation of these possible challenges is significant because they could impact farmers' use of e-WRs as collateral, and this could also affect the improvement of Nigeria's economy through the e-WR system.

Some of the socio-economic challenges identified in this research are examined below with potential remedies to the problems.

### **7.2. The Nature of Some Commercial Farmers**

In section 6.3 of this thesis, while discussing the scope of creditors in the Secured Transactions in Movable Assets Act 2017 (STMAA), it was highlighted in sections 6.3.1 to 6.3.5 that regulated creditors, such as commercial banks and microfinance banks (MFBs) among others should be the creditors involved in the potential e-WR system in Nigeria. Nonetheless, a problem that could influence the regulated creditors' decision to lend to

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<sup>1672</sup> South African Institute of International Affairs, 'Socio-Economic Problems Facing Africa: Insights from Six APRM Country Review Reports' (Occasional Paper, No 34, 2009).

<sup>1673</sup> *ibid.*

<sup>1674</sup> The third research question is, 'Is There a Potential for Successfully Operating the Warehouse Receipt System in Nigeria with the Form(s) of Warehouse Receipt Selected, and How Can it be Managed to Facilitate Access to Finance for Farmers while Improving Nigeria's Economy?'

farmers, particularly to smallholders, is the informal and fragmented nature of farmers.<sup>1675</sup> Also, warehouse operators could decline to accept goods from such farmers for storage because they are in small quantities.<sup>1676</sup> One of the causes of the low quantity of production by smallholders is their insufficient use of modern agricultural equipment and techniques.<sup>1677</sup> Thus, smallholders will find it more difficult than other groups of farmers to store their goods, receive e-WRs, and obtain credit from financial institutions using e-WRs as collateral.<sup>1678</sup>

A practical way of resolving the difficulty above is through agricultural cooperative societies.<sup>1679</sup> Cooperative societies are voluntary and flexible organisations of people with similar interests, usually rooted in democracy.<sup>1680</sup> The members of cooperative societies work together to meet their mutual needs.<sup>1681</sup> The Nigerian Cooperative Societies Act govern cooperative societies.<sup>1682</sup> The Act defines a cooperative society as a voluntary organisation of people united by a common bond to pursue their economic goals for their benefit.<sup>1683</sup> Therefore, smallholders could join agricultural cooperative societies and deposit their agricultural produce with them.<sup>1684</sup>

The import of the above is that rather than going directly to warehouses to deposit their goods or approaching financial institutions directly to obtain credit, the cooperative societies can perform these activities on behalf of smallholders.<sup>1685</sup> This also suggests that the leader of the cooperative society who deposits the goods in the warehouse could be the one in control of the e-WRs issued.<sup>1686</sup> Nevertheless, as discussed in section 3.3.1 of this thesis, smallholders are protected because they still retain ownership of the e-WRs irrespective of the fact that the

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<sup>1675</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 78; see also Simon White and Dan Aylward, *Business Environment Reform Facility: Formalisation of Smallholder Agriculture and Agri-business* (Department for International Development 2016).

<sup>1676</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 13.

<sup>1677</sup> Adeyemi John Adeola and Danladi Ibrahim Musa, 'The Impact of Nigerian Agricultural, Cooperative and Rural Development Bank to the Socio-Economic Development of 3 Rural Areas of Yobe State-Nigeria' (2022) 10(4) Glob Sci J 2143.

<sup>1678</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 13.

<sup>1679</sup> *ibid.*

<sup>1680</sup> Md Ruhul Amin and Mohammed Mahin Uddin, 'Socio-economic Impacts of Cooperative Societies: An Empirical Study' (2014) 2(2) Socrates 179.

<sup>1681</sup> *ibid.*

<sup>1682</sup> The Nigerian Cooperative Societies Act 1993.

<sup>1683</sup> *ibid* s 57.

<sup>1684</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 13.

<sup>1685</sup> *ibid.*

<sup>1686</sup> M I Olumese and E A Onemolease, 'An Analysis of Agricultural Cooperative Society and Economic Development in Ovia South West Communities of Edo State, Nigeria' (2018) 3(5) J Agric Sci Pract 107.

cooperative leaders could be in control of them.<sup>1687</sup> This is because where a person who is in possession of goods deposits them in a warehouse and obtains an e-WR over such goods, the rightful owner of the goods retains proprietary rights over the e-WR notwithstanding that the depositor has control of it.<sup>1688</sup>

Although Nigeria has many agricultural cooperative societies, especially in rural areas, they find it difficult to access credit from conventional banks, like commercial banks, because of the notion that the loans will not be repaid.<sup>1689</sup> This is why many cooperative societies prefer to approach financial institutions specifically designed to advance credit to cooperative societies known as Cooperative Banks since they have a definite bias in their favour.<sup>1690</sup>

According to the Nigerian Cooperative Societies Act, a cooperative bank is one registered under the Act, and has fulfilled the requirements of the Banks and Other Financial Institutions Act 2020 (BOFIA), that is, the Act that regulates financial institutions in Nigeria.<sup>1691</sup> Cooperative banks are designed to support cooperative societies by extending them credits and helping them attain the statutory requirements of the liquidation ratio set by the Nigerian Cooperative Societies Act.<sup>1692</sup>

It is also easier for cooperative societies to obtain finance from cooperative banks because they sometimes invest or deposit their funds with the banks.<sup>1693</sup> The Nigerian Agricultural Cooperative and Rural Development Bank (NACRDB) was Nigeria's cooperative bank, which specialised in agriculture.<sup>1694</sup> However, in 2010, NACRDB became known as the Bank of Agriculture (BOA), the agricultural Development Finance Institution (DFI) discussed in section 6.3.2 of this thesis.<sup>1695</sup>

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<sup>1687</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 61(2); see also *Armory v Delamirie* [1722] EWHC J94; 1 Strange 505.

<sup>1688</sup> *ibid*; see also The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 61(2).

<sup>1689</sup> Ajayi Ibidolapo Ezekiel, 'Challenges and Opportunities of Agricultural Cooperative Societies on Economic Sustainability of Rural Dwellers in Ekiti State, Nigeria' (2023) 41(11) Asian J Agric Ext Econ Soc 168; see also Brai MM, 'Challenges and Prospects of Agricultural Cooperative Societies in Nigeria' (2016) 1(3) CARD Intl J Sci Adv Innov Res 14.

<sup>1690</sup> The Nigerian Cooperative Societies Act 1993, s 57.

<sup>1691</sup> *ibid*.

<sup>1692</sup> *ibid*.

<sup>1693</sup> The Nigerian Cooperative Societies Act 1993, s 33 (a).

<sup>1694</sup> Adetunji Adeniyi, 'Nigeria's Bank of Agriculture: An Agenda for Organizational Renewal' (2021) 10(1) J Bus Admin Res 41.

<sup>1695</sup> *ibid*.

Section 6.3.2 highlighted some of the challenges of BOA, such as underfunding, poor management, and insufficient branches, which are mainly located in urban and semi-urban areas, among other problems.<sup>1696</sup> This research also proffered solutions to these issues.<sup>1697</sup> Therefore, unless the Nigerian government mitigates the challenges of BOA, it will be difficult for agricultural cooperative societies to effectively represent their members, especially smallholders in accessing finance from financial institutions using e-WRs as collateral.

The leadership of agricultural cooperative societies are crucial since they could be the ones in control of e-WRs on behalf of smallholders.<sup>1698</sup> Thus, where the leadership of a cooperative society is incompetent, it will affect the society's financial management records, especially where misappropriation of funds or default in repayment of previous loans are involved.<sup>1699</sup> This will jeopardise the relationship of the society with warehouse operators and financial institutions.<sup>1700</sup> This will equally negatively impact access to finance for farmers.<sup>1701</sup>

This problem could be resolved by regular training of the leaders and participating in workshops on the management and administration of cooperative societies.<sup>1702</sup> This is important because the quality management of an agricultural cooperative society is one of the financial institutions' criteria for lending to the cooperative society.<sup>1703</sup> Furthermore, to check the excesses of the leaders, there has to be monitoring to regulate their activities.<sup>1704</sup> This can be done by auditing the cooperative society's account and conducting inspections from time to time by the Director of Cooperatives or any of their representatives or agents.<sup>1705</sup>

Sometimes, depending on the cooperative societies' agreement with financial institutions, the nature of credit obtained by cooperative societies can require a partial repayment of loans by

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<sup>1696</sup> *ibid* 45; 46; see also Mohammed Shamsidin Ango Abdullahi and Yogesh Kumar Gupta, 'Financing Agriculture in Nigeria: A Comparative Review of Roles Played by Private, Public, and International Financial Institutions and Agencies' (2022) 10(6) *Univ J Acct Financ* 925, 928.

<sup>1697</sup> *ibid*.

<sup>1698</sup> M I Olumese and E A Onemolease, 'An Analysis of Agricultural Cooperative Society and Economic Development in Ovia South West Communities of Edo State, Nigeria' (2018) 3(5) *J Agric Sci Pract* 107, 107, 111.

<sup>1699</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 13.

<sup>1700</sup> M I Olumese and E A Onemolease, 'An Analysis of Agricultural Cooperative Society and Economic Development in Ovia South West Communities of Edo State, Nigeria' (2018) 3(5) *J Agric Sci Pract* 107, 107; 111.

<sup>1701</sup> *ibid*.

<sup>1702</sup> *ibid* 107.

<sup>1703</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 13.

<sup>1704</sup> M I Olumese and E A Onemolease, 'An Analysis of Agricultural Cooperative Society and Economic Development in Ovia South West Communities of Edo State, Nigeria' (2018) 3(5) *J Agric Sci Pract* 107, 111.

<sup>1705</sup> The Nigerian Cooperative Societies Act 1993, s 36-37.



their members.<sup>1706</sup> Hence, the cooperatives pay off the remainder of the credit sum when they sell the goods deposited with them by the smallholder.<sup>1707</sup> For this type of agreement between financial institutions and cooperative societies to subsist, another condition that cooperative societies must meet is that they must be formal and legally recognised or registered.<sup>1708</sup> The Cooperative Act provides for the registration procedure of a cooperative society.<sup>1709</sup>

### **7.2.1. The Sustainability of Warehouses to Support the Use of Electronic Warehouse Receipts**

Another challenge farmers could face in Nigeria upon introducing e-WRs is the sustainability of warehouses. There must be functional warehouses before the issuance of e-WRs will occur.<sup>1710</sup> Also, the goods stored in the warehouse, which e-WRs represent, must be in good condition before they can be utilised as collateral to obtain credit from financial institutions.<sup>1711</sup> Some potential factors that could influence the sustainability of warehouses when e-WRs are introduced include the availability of uninterrupted electricity and Information Technology (IT), among others. These will be analysed below, and this chapter will attempt to proffer solutions to these challenges.

### **7.2.2. Insufficient Warehouses, Storage Facilities and Equipment**

The introduction of e-WRs is crucial because it curbs post-harvest losses.<sup>1712</sup> It does this by encouraging farmers to store their goods in warehouses.<sup>1713</sup> Apart from storing goods, warehouse operators often offer services such as cleaning, drying, grading, and packaging agricultural goods.<sup>1714</sup> These ensure high-quality goods that could be utilised as collateral through e-WRs.<sup>1715</sup> Nevertheless, insufficient warehouses or storage facilities and equipment

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<sup>1706</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 13.

<sup>1707</sup> *ibid.*

<sup>1708</sup> *ibid.*

<sup>1709</sup> The Nigerian Cooperative Societies Act 1993, ss 3-7.

<sup>1710</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 1.

<sup>1711</sup> *ibid.*

<sup>1712</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 9.

<sup>1713</sup> *ibid.*

<sup>1714</sup> *ibid.*; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 3.

<sup>1715</sup> *ibid.*; see also World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 13.

to process or preserve the goods in the warehouse is a potential challenge that could affect the prospective e-WR system in Nigeria.<sup>1716</sup>

This problem can be mitigated by the urgent encouragement of the Public-Private Partnership (PPP) in building, purchasing, and maintaining warehouses and their equipment.<sup>1717</sup> PPP is an arrangement that involves the public sector, that is, government bodies and private companies, where both parties share skills, risks, assets, and returns in a project to provide services for the use of the occupants of a jurisdiction.<sup>1718</sup> In the instance of the prospective e-WR system in Nigeria, PPP can reduce the government's burden of solely providing storage facilities and equipment.<sup>1719</sup> The government can encourage the private sector to build more warehouses, especially because public, private and field warehouses are usually privately owned.<sup>1720</sup> The government can do this by providing incentives for private companies, such as the allotment of lands for them to build warehouse facilities and a reduction in their tax burdens, among other incentives, to encourage private sector participation.<sup>1721</sup> PPP could be mostly utilised to establish large and well-equipped warehouses in different parts of Nigeria.

### 7.2.3. Constant Power Failure in Nigeria

Despite the solution proffered above, another problem that emerges even when warehouse facilities and equipment are provided is the constant power failure in Nigeria.<sup>1722</sup> Regular

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<sup>1716</sup> Ugochukwu G A Uwaoma, Chidiadi Obinna Esi-Ubani and Prince Chinenye Emeh, 'Warehousing Management Systems and Sales of Maize in Abia State, Nigeria' (2018) 6(2) Intl J Soc Sci Humanit Res 230; see also Rasaq Adekunle Olabomi and others, 'Sustainable Agricultural Infrastructure and Development of Rural Economy in Nigeria' (2021) 1(2) Socio Econ Policy Stud 72; Richardson Kojo Edeme and others, 'Infrastructural Development, Sustainable Agricultural Output and Employment in ECOWAS Countries' (2020) 2 Sust Futures 100010.

<sup>1717</sup> Aderibigbe Olomola, 'Policy Options for Agricultural Investments and Governance of Markets in Support of Small-Scale Agriculture in Nigeria' (Oxfam Research Reports, 2013) 28; see also Augustine Arimoro, 'Public-Private Partnership and the Right to Property in Nigeria' (2019) 19 Afr Hum Rts LJ 763.

<sup>1718</sup> Ereneus K Marbaniang, JK Chauhan and Pynbianglang Kharumnuid, 'Public Private Partnership (PPP) in Agriculture: A Step Towards Sustainable Agricultural Development' (2020) 2(2) Agric Food 387; see also Bonphace Mangeni, 'The Role of Public-Private Partnerships (PPPs) in Ensuring Technology Access for Farmers in Sub-Saharan Africa' (2019) 19(1) Afr J Food Agric Nutr Dev 14137; Augustine Arimoro, 'Public-Private Partnership and the Right to Property in Nigeria' (2019) 19 Afr Hum Rts LJ 763.

<sup>1719</sup> *ibid.*

<sup>1720</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021; see also The South African Institute of International Affairs, *Working Together: Assessing Public-Private Partnerships in Africa* (Nepad Policy Focus Report, No. 2, 2005).

<sup>1721</sup> The South African Institute of International Affairs, *Working Together: Assessing Public-Private Partnerships in Africa* (Nepad Policy Focus Report, No. 2, 2005).

<sup>1722</sup> Makinde K and others, 'Power Source Availability as a Means of Reducing Agricultural Post Harvest Losses' (2017) 6(9) Intl J Engr Res Tech 228.

power cuts disrupt the proper processing and storage of agricultural goods, which could spoil the goods.<sup>1723</sup> Also, constant power supply is essential in warehouses to operate IT gadgets, like computers, phones, and others, especially since an e-WR system requires all warehouse records to be in electronic format.<sup>1724</sup>

Constant power failure contributes a great deal to the socio-economic problems of Nigeria as the situation continuously threatens different industries, particularly manufacturing, processing, agriculture, and storage.<sup>1725</sup> Some businesses become moribund, while others relocate outside Nigeria because of the high cost of doing business influenced by constant power failure.<sup>1726</sup> Furthermore, constant power failure can expose warehouses to the risk of being joined in a product liability claim lawsuit where a third party is injured and can prove that they were hurt as a result of damage to the goods the warehouse stored.<sup>1727</sup>

Constant power failure in Nigeria is mainly caused by inefficient grid models, mismanagement of electricity infrastructure, and inadequate modern lines, among other reasons.<sup>1728</sup> The Nigerian national grid faces constant system failure due to its regular collapse, leading to low voltages or a total blackout in Nigeria.<sup>1729</sup> This thesis contends that Captive Solar Power (CSP) is a plausible solution to the problem of poor electricity supply, which could adversely affect the potential e-WR system in Nigeria.<sup>1730</sup> CSP is an off-grid renewable energy plant that

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<sup>1723</sup> *ibid.*

<sup>1724</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 3; see also Stanley Ebitare Boroh and Emmanuel Nwakanma, 'Crisis of Infrastructure and Agricultural Development in Africa: The Case of Nigeria' (2018) 5(3) *Abuja J Sociol Stud* 236.

<sup>1725</sup> Olatunji Obafemi and others, 'Electric Power Crisis in Nigeria: A Strategic Call for Change of Focus to Renewable Sources' (2018) 413 *IOP Conf Ser Mater Sci Engr* 1; see also Adewale A Adesanya and Joshua M Pearce, 'Economic Viability of Captive Off-grid Solar Photovoltaic and Diesel Hybrid Energy Systems for the Nigerian Private Sector' (2019) *Renew Sust Energ Rev* 114.

<sup>1726</sup> *ibid.*

<sup>1727</sup> Joshua S Adeyele and Muhammad N Maiturare, 'Repositioning the Nigerian Insurance Industry for Sustainable Development: Risk Management Perspective' (2012) 4(5) *Eur J Bus Manag* 22, 27; see also Gbade Akinrinmade, 'The Jurisprudence of Product Liability in Nigeria: A Need to Complement the Existing Fault Theory' (2016) 7(2) *J Sust Dev L Pol* 188.

<sup>1728</sup> Sunday Olayinka Oyedepo, 'Energy and Sustainable Development in Nigeria: The Way Forward' (2012) 2(15) *Energ Sust Soc* 1; see also Chukwuka Onyekwena, Joseph Ishaku and Precious C Akanonu, 'Electrification in Nigeria: Challenges and Way Forward' (2017) Centre for the Study of Economies of Africa 2<sup>nd</sup> Draft Paper <<https://cseaafrica.org/images/posts/1264636466846674.pdf>> accessed 17 July 2024.

<sup>1729</sup> Lawrence Ekeng and others, 'Voltage Collapse in Nigeria Power System: Causes and Remedies' (2024) 19(1) *IOSR J Elect Elect Engr* 54.

<sup>1730</sup> Sakib Amin and others, 'The Role of Captive Power Plants in the Bangladesh Electricity Sector' (2021) Asian Development Bank Working Paper No 1238 <<https://www.adb.org/sites/default/files/publication/692451/adbi-wp1238.pdf>> accessed 2 October 2023.

derives its power from solar, which companies usually install for their sole consumption.<sup>1731</sup> It is off-grid because it is not derived from the Nigerian national grid or a distributed grid.<sup>1732</sup>

The Nigerian government recognises CSP, although the Nigerian energy sector is largely privatised.<sup>1733</sup> Nigeria has a regulation specifically designed for Captive Power Plants (CPP), irrespective of whether the plant is solar-based like the CSP, diesel-based, or in any other form.<sup>1734</sup> This regulation was made pursuant to section 96(1) of the Electric Power Sector Reform Act 2005, which empowers the Nigerian Electricity Regulatory Commission (NERC) to make regulations concerning any matter which relates to the content of the Act.<sup>1735</sup> Thus, the NERC's regulation grants permits to CPP installation companies for captive power generation exceeding 1 Megawatt (MW) in Nigeria.<sup>1736</sup>

The above indicates that the scope of Captive Power Generation (CPG), which the regulation covers, is the generation of electricity that exceeds 1 Megawatt (MW) for the sole consumption of the energy generator without selling such energy to a third party.<sup>1737</sup> In other words, while a licence is required to generate energy through other means legally accepted in Nigeria, like transmission-based on-grid generation and embedded generation, a licence is not needed for CPP, but a permit when it exceeds 1MW.<sup>1738</sup> This makes business easy for CSP installers, and accessible to consumers.<sup>1739</sup>

In the prospective e-WR system in Nigeria, warehouse operators can install CPP, which generates an uninterrupted power supply to warehouses to enable them inter alia to operate their storage facility and equipment, including their IT gadgets. Thus, it will be possible to effectively preserve the quality of the goods that are covered by e-WRs and operate the software that enables the issuance of e-WRs. In addition, financial institutions can rely on e-

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<sup>1731</sup> *ibid.*

<sup>1732</sup> GOPA-International Energy Consultants GmbH (GOPA Intec), *The Nigerian Energy Sector: An Overview with a Special Emphasis on Renewable Energy, Energy Efficiency and Rural Electrification* (GIZ, NESP, FMP Report, 2<sup>nd</sup> edn, 2015) 31.

<sup>1733</sup> Chukwuka Onyekwena, Joseph Ishaku and Precious C Akanonu, 'Electrification in Nigeria: Challenges and Way Forward' (2017) Centre for the Study of Economies of Africa 2<sup>nd</sup> Draft Paper <<https://cseaafrica.org/images/posts/1264636466846674.pdf>> accessed 17 July 2024.

<sup>1734</sup> Nigerian Electricity Regulatory Commission (Permits for Captive Power Generation Regulations) 2008.

<sup>1735</sup> *ibid* preamble.

<sup>1736</sup> *ibid.*

<sup>1737</sup> *ibid* s 2.

<sup>1738</sup> GOPA-International Energy Consultants GmbH (GOPA Intec), *The Nigerian Energy Sector: An Overview with a Special Emphasis on Renewable Energy, Energy Efficiency and Rural Electrification* (GIZ, NESP, FMP Report, 2<sup>nd</sup> edn, 2015) 31; see also Detail Commercial Solicitors, 'Nigeria Power Guide' (2012) 1 Detail 1.

<sup>1739</sup> *ibid.*

WRs to advance credit to farmers, knowing that the goods which the e-WRs cover, used as collateral are in good shape.

Although CPP can be in different forms, such as diesel, natural gas, wind and others, this research proposes the use of the solar renewable energy source because it is the most prospective.<sup>1740</sup> Furthermore, Nigeria generates a considerable amount of sunlight.<sup>1741</sup> It has an average of about 6.5 hours of sunlight daily each year. That is, about 3.5 hours of sunshine in the coastal regions of Nigeria and about 9 hours daily in northern Nigeria. Thus, unlike diesel, Nigeria has enough free sunlight to generate sufficient CSP to solve the challenge of unreliable power supply.

It could be argued that solar energy is expensive; hence, it will be unaffordable for warehouse operators, and farmers can be made to pay more storage fees than required to cover the solar energy generation. However, studies demonstrate that though the installation cost of CSP is expensive, in the long run, it saves significant energy costs for the owner compared to on-grid energy generation or other alternative sources of energy generation like coal, fuel, diesel and others that emit carbon.<sup>1742</sup> This argument is derived from the life cycle cost analysis done to compare renewable energy derived from solar with other forms of energy generation.<sup>1743</sup>

One of the cost analysis centres on the environmental implications of using different renewable energy sources.<sup>1744</sup> This is important because energy transition is the order of the day.<sup>1745</sup> It saves the environment and promotes climate change policies.<sup>1746</sup> Energy transition is the evolution from the use of fossil fuel-based energy systems like petroleum, diesel, and coal, among others, to cleaner sources of energy generation like solar.<sup>1747</sup> CSP is a green energy

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<sup>1740</sup> Sakib Amin and others, 'The Role of Captive Power Plants in the Bangladesh Electricity Sector' (2021) Asian Development Bank Working Paper No 1238, 2 <<https://www.adb.org/sites/default/files/publication/692451/adbi-wp1238.pdf>> accessed 2 October 2023; see also O S I Fayomi and others, 'Pillars of Effective and Efficient Energy Systems in Nigeria' (2021) 665 *Earth Environ Sci* 1; Sunday Olayinka Oyedepo, 'Energy and Sustainable Development in Nigeria: The Way Forward' (2012) 2(15) *Energ Sust Soc* 1, 4.

<sup>1741</sup> O S I Fayomi and others, 'Pillars of Effective and Efficient Energy Systems in Nigeria' (2021) 665 *Earth Environ Sci* 1, 5; see also Sunday Olayinka Oyedepo, 'Energy and Sustainable Development in Nigeria: The Way Forward' (2012) 2(15) *Energ Sust Soc* 1, 2.

<sup>1742</sup> S Sreenath, K Sudhakar and A F Yusop, 'Technical Assessment of Captive Solar Power Plant: A Case Study of Senai Airport, Malaysia' (2020) 152 *Renew Energy* 849; see also Behnam Zakeri and Sanna Syri, 'Electrical Energy Storage Systems: A Comparative Life Cycle Cost Analysis' (2015) 42 *Renew Sust Energ Rev* 569; Beijia Huang and others, 'Life Cycle Cost Analysis of Solar Energy via Environmental Externality Monetization' (2023) 856(1) *Sci Total Environ* 158910.

<sup>1743</sup> *ibid.*

<sup>1744</sup> *ibid.*

<sup>1745</sup> *ibid.*

<sup>1746</sup> Frans Berkhout, Peter Marcotullio and Tatsuya Hanaoka, 'Understanding Energy Transitions' (2012) 7 *Sustain Sci* 109.

<sup>1747</sup> *ibid.*

that mitigates greenhouse gases like carbon dioxide, methane, and others produced by fossil fuel-based energy systems that pollute the atmosphere.<sup>1748</sup> Also, among all the renewable energy sources, solar has been submitted to be the cleanest and cheapest.<sup>1749</sup>

Based on the above, warehouses should consider the medium to long-term benefits of CSP and adopt them rather than not utilising them because of their initial installation cost. In addition, just as PPP was recommended to mitigate the issue of insufficient warehouses, storage facilities and equipment in section 7.3.1 of this chapter, PPP can also be utilised to facilitate the installation of CSP in warehouses.<sup>1750</sup> This way, the problem of constant power failure will be minimised, and the sustainability of warehouses will be promoted.

#### **7.2.4. Further Remedies to the Problem of Sustainability of Warehouses**

##### **7.2.4.1. Performance Guarantee**

Aside from renewable energy, performance guarantee is another means of ensuring the sustainability of warehouses to promote the introduction of e-WRs in Nigeria.<sup>1751</sup> This will enhance access to finance using e-WRs because the financial institutions, that is, the regulated creditors, will be more inclined to lend against the goods in the warehouse without the fear that the goods will perish and they will not recover their funds.<sup>1752</sup> Performance guarantee protects the rights of depositors of goods in the warehouse and the rights of creditors or anyone that will be negatively affected if there is a problem with the goods in the warehouse.<sup>1753</sup>

Performance guarantee can be done in different forms and should be contained in the WR legislation as a mandatory provision for warehouse operators.<sup>1754</sup> It can be in the form of insurance for the goods in the warehouse or a performance bond. It can also be in the form of an indemnity fund.<sup>1755</sup>

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<sup>1748</sup> Deepashika Vithanage and Isuri Vithanage, 'Implementing Renewable Energy by Considering the Greenhouse Gas Emissions' (2021) 2(3) J Res Tech Engr 9.

<sup>1749</sup> *ibid.*

<sup>1750</sup> Aderibigbe Olomola, 'Policy Options for Agricultural Investments and Governance of Markets in Support of Small-Scale Agriculture in Nigeria' (Oxfam Research Reports, 2013) 28.

<sup>1751</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 4.

<sup>1752</sup> *ibid* 27.

<sup>1753</sup> *ibid.*

<sup>1754</sup> *ibid.*

<sup>1755</sup> *ibid* 28.

#### 7.2.4.1.1. Performance Bonds

Warehouse operators usually take out performance bonds to meet conditions laid down by a WR regulator.<sup>1756</sup> In secured transactions, they adequately compensate depositors or creditors financially in the event of the failure of warehouses.<sup>1757</sup> That is, they are applicable where warehouses fail to deliver the expected quantity or quality of goods for any reason, such as negligence of the warehouse operators, power failure, or theft, among others.<sup>1758</sup>

In Nigeria, the Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022 (WR Bill) provides for performance bonds.<sup>1759</sup> The Nigerian Independent Warehouse Regulatory Agency (the Agency) created by the WR Bill requires a warehouse operator to execute a performance bond as a condition for obtaining a licence.<sup>1760</sup> Thus, performance bonds mandate warehouse operators to diligently perform their duties to depositors and creditors where WRs are utilised as collateral.<sup>1761</sup> The WR Bill further provides that an injured party from the breach of any duties of the warehouse operator for which a performance bond has been taken out can seek redress for such breach in court.<sup>1762</sup> This ensures warehouse operators take their duties seriously to prevent damage to the goods e-WRs cover. Nevertheless, it is the responsibility of the warehouse operator to provide the funds for performance bonds.<sup>1763</sup>

#### 7.2.4.1.2. Indemnity Funds

Another type of performance guarantee is the indemnity fund.<sup>1764</sup> Indemnity or guarantee funds also cover such incidents as negligence of warehouse operators or losses incurred because of fraud, among others.<sup>1765</sup> The funds boost the confidence of depositors of goods and creditors in an e-WR system, and make e-WRs more reliable trade documents.<sup>1766</sup> In Kazakhstan, for instance, the compensation a depositor of goods in a warehouse will receive

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<sup>1756</sup> *ibid.*

<sup>1757</sup> *ibid.*

<sup>1758</sup> *ibid.* 29.

<sup>1759</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 18.

<sup>1760</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 18(1).

<sup>1761</sup> *ibid.*

<sup>1762</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 19.

<sup>1763</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 18(1).

<sup>1764</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 29.

<sup>1765</sup> *ibid.*

<sup>1766</sup> *ibid.*

from an indemnity fund or a creditor, depending on the case, is a minimum of 80 per cent of the market value of the goods based on their quality.<sup>1767</sup> Also, indemnity funds and the performance bond tend to lower the insurance cost.<sup>1768</sup> This makes insurance policies more accessible to all forms of warehouses, including smaller warehouses.<sup>1769</sup>

The warehouse can generate indemnity funds through storage fees or any charge necessary for depositing goods in the warehouse.<sup>1770</sup> However, to make deposits easier for farmers by eliminating excessive deposit fees, to boost the confidence of creditors, and to enable the e-WR system to cater to many participants, the government should support indemnity funds.<sup>1771</sup> That is, the initial capital for the indemnity funds should emanate from the government before warehouses consider generating indemnity funds from other sources like storage fees.<sup>1772</sup> The government can also partner with international organisations like the Food and Agriculture Organisation (FAO), the International Finance Corporation (IFC) and others to support indemnity funds.<sup>1773</sup>

Bulgaria is an example of a situation where the government supported the initial capital for indemnity funds.<sup>1774</sup> The government provided a three-year interest-free loan for warehouses to the tune of USD 2.5 million.<sup>1775</sup> This minimised the chances of warehouses boycotting indemnity funds due to lack of funds or overcharging depositors to raise money for indemnity funds.<sup>1776</sup> In contrast, Serbia is an example of a place where warehouses generate the initial capital for indemnity funds without government support. In 2014, two large-scale frauds occurred in two public warehouses in Serbia.<sup>1777</sup> Due to insufficient funds, It was difficult for the warehouses to indemnify creditors who relied on WRs, which covered the goods deposited in their warehouses as collateral.<sup>1778</sup> If this had occurred in Bulgaria, it would have been easy

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<sup>1767</sup> *ibid* 30.

<sup>1768</sup> *ibid* 29.

<sup>1769</sup> *ibid*.

<sup>1770</sup> *ibid*.

<sup>1771</sup> *ibid*.

<sup>1772</sup> Vlado Kovačević, Irena Janković and Vesna Paraušić, 'Lending Against Warehouse Receipts - Evidence from Serbia' (2021) 68(2) *Econ Agric* 341, 352.

<sup>1773</sup> *ibid*.

<sup>1774</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 29; see also Vlado Kovačević, Irena Janković and Vesna Paraušić, 'Lending Against Warehouse Receipts - Evidence from Serbia' (2021) 68(2) *Econ Agric* 341, 352.

<sup>1775</sup> *ibid*.

<sup>1776</sup> *ibid*.

<sup>1777</sup> Vlado Kovačević, Irena Janković and Vesna Paraušić, 'Lending Against Warehouse Receipts - Evidence from Serbia' (2021) 68(2) *Econ Agric* 341, 347.

<sup>1778</sup> *ibid* 352.



to indemnify the affected parties of the fraud since the government supports warehouses with the initial funds to take out indemnity funds.<sup>1779</sup>

The WR Bill does not provide for indemnity funds. It only provides for performance bonds.<sup>1780</sup> However, although indemnity funds and performance bonds perform similar functions, indemnity funds are cheaper.<sup>1781</sup> This is because, with performance bonds, the onus of providing the funds for the bond usually lies on the warehouse operator.<sup>1782</sup> Conversely, with indemnity funds, the government or international organisations can support the warehouse operator with funds, making it easier for indemnity funds to cover more incidents.<sup>1783</sup> Hence, this research recommends indemnity funds for Nigeria instead of performance bonds. This implies that Nigeria should consider amending its WR Bill to replace performance bonds with indemnity funds.

#### **7.2.4.1.3. Insurance**

While performance bonds or indemnity funds cover incidents within the warehouse operators' control, insurance policies usually cover unforeseen circumstances such as flood, fire, or any Act of God or natural occurrences beyond the warehouse operator's control.<sup>1784</sup> However, only an insignificant fraction of about 3 million Nigerians are insured because many do not take insurance policies seriously.<sup>1785</sup> Also, compared to other African countries like South Africa, Tanzania, Kenya, and others, Nigeria's insurance industry does not perform efficiently.<sup>1786</sup> This is because the insurance sector is faced with various challenges like poor enforceability of insurance claims, some insurance companies' inability to satisfy their customers because of their nonchalance, and insurance fraud, among others.<sup>1787</sup>

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<sup>1779</sup> *ibid.*

<sup>1780</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 18(1).

<sup>1781</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 29.

<sup>1782</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 18(1).

<sup>1783</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 29.

<sup>1784</sup> *ibid.*

<sup>1785</sup> Ebelechukwu Okiche, Emeka Adibe and Clara Obi-Ochiabutor, 'Dysfunctional Nigerian Insurance Industry: Failure of Law or Regulation?' (2022) 17 Nigerian J Rev 109,121.

<sup>1786</sup> *ibid.*

<sup>1787</sup> Fadekemi Chidinma Adeloye, 'Claims Management and Performance of Insurance in Nigerian Manufacturing Companies' (2024) 11(1) Intl J Soc Sci Art Humanit 13; see also Tajudeen Olalekan Yusuf, 'Control of Insurance Fraud in Nigeria: An Exploratory Study (Case Study)' (2009) 16(4) J Financ Crim 418; Yeside Oyetayo, 'Principles-Based Regulations: A Model for Legal Reform in the Nigerian Insurance Industry' (2015) 59(1) J Afr L 64.

Although Nigeria has an insurance law and a government body, the National Insurance Commission, that oversees the affairs of insurance in Nigeria, the problems of the insurance industry persist.<sup>1788</sup> A viable means to mitigate these challenges is to support the insurance law in Nigeria and its agency with principle-based regulations, which will serve as a benchmark for insurance companies to carry out their operations.<sup>1789</sup> This type of regulation is used in other jurisdictions, such as the United Kingdom (UK), to support the insurance industry.<sup>1790</sup> For example, the UK has the Prudential Regulation Authority and Financial Conduct Authority.<sup>1791</sup> Thus, Nigeria can benefit from international standard-setting organisations like the International Association of Insurance Supervisors.<sup>1792</sup>

It is commendable that the WR Bill made insurance of goods in the warehouse a mandatory requirement.<sup>1793</sup> Therefore, the warehouse operators must insure all the goods in the warehouse against fraud, theft, negligence, flood, explosion, storm, and others.<sup>1794</sup> It even urged depositors to ensure that warehouse operators perform this act.<sup>1795</sup> Therefore, where the insurance industry is improved in Nigeria following the recommendation above, section 98(1) of the WR Bill, which provides for mandatory insurance in the prospective e-WR system in Nigeria, would function effectively.

It is desirable for a WR legislation to provide for a combination of more than one performance guarantee to afford extra security for the goods in the warehouse and guarantee the reliability of e-WRs as collateral, especially in developing countries like Nigeria.<sup>1796</sup> The WR Bill provides for both performance bonds and insurance.<sup>1797</sup> However, since the analysis of indemnity funds in this study shows that they can be cheaper than performance guarantee, Nigerian legislators should consider amending the WR Bill to provide for indemnity funds and insurance instead.

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<sup>1788</sup> Insurance Act 2003.

<sup>1789</sup> Yeside Oyetayo, 'Principles-Based Regulations: A Model for Legal Reform in the Nigerian Insurance Industry' (2015) 59(1) J Afr L 64.

<sup>1790</sup> *ibid.*

<sup>1791</sup> *ibid* 68.

<sup>1792</sup> *ibid* 64.

<sup>1793</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 98(1).

<sup>1794</sup> *ibid* s 98(1).

<sup>1795</sup> *ibid* s 21(2)(b).

<sup>1796</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 28.

<sup>1797</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 18; s 21(2)(b); s 98.

#### 7.2.4.2. Inspection of Warehouses

Another way of sustaining warehouses is by encouraging regular inspections by the Agency established by the WR Bill<sup>1798</sup> This will ensure that warehouses maintain a high standard of storage practices, which will further make e-WRs more reliable.<sup>1799</sup> The WR Bill provides for the inspection of licensed warehouses by the Agency or its agent.<sup>1800</sup> This will ascertain whether their storage facilities and equipment are in good shape.<sup>1801</sup> The Agency equally inspects licensed warehouses to determine their goods classification and weighing arrangements.<sup>1802</sup>

Instead of emphasising that only licensed warehouses should be inspected, legislators should consider including the inspection of unlicensed warehouses as indicated in section 6.2.1.5 of this thesis, especially if they store goods for the public.<sup>1803</sup> Thus, they should maintain a high storage standard despite being unlicensed.<sup>1804</sup>

Furthermore, the WR Bill fails to include when the inspection of warehouses should be conducted. Assuming it provided that the inspection should be done periodically, it can be inferred to mean within a reasonable time.<sup>1805</sup> However, the silence of the Bill regarding the timeframe creates an ambiguity.<sup>1806</sup> This implies that there is no definite time with which the inspection should be conducted. It could be a 6-monthly, yearly, or 5-yearly inspection. Therefore, to enhance the sustainability of warehouses in Nigeria, the legislators should consider amending section 99 of the WR Bill to make the time for inspection of warehouses more specific.

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<sup>1798</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 15.

<sup>1799</sup> *ibid.*

<sup>1800</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 99.

<sup>1801</sup> *ibid* s 99 (a).

<sup>1802</sup> *ibid* s 99 (b-c).

<sup>1803</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 20 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021.

<sup>1804</sup> *ibid.*

<sup>1805</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 15.

<sup>1806</sup> Kalejaiye S Abiola, Isaac Oyagiri Buduka and Idowu Olubunmi, 'Ambiguities in the Language of Law: A Case Study of Selected Court Cases in Nigeria' (2019) 8(9) *Intl J Humanit Soc Sci Invent* 53, 55.

### 7.3. Accessibility of Warehouses by Commercial Farmers

Another problem that could affect the use of e-WRs as collateral in Nigeria is the proximity of warehouses to agricultural production areas or farms.<sup>1807</sup> This is important in an e-WR system because it influences farmers' cost of participation in the system.<sup>1808</sup> That is, it affects the cost of transporting the goods to the warehouses, particularly where the farmers are located in rural areas.<sup>1809</sup> Since most warehouses are situated in urban and semi-urban areas, the high cost of transportation becomes another problem due to poor road networks in Nigeria, especially when travelling from rural to urban areas.<sup>1810</sup>

For an e-WR system to function effectively, it is essential for infrastructural requirements for warehouse storage, also known as the suitability of warehouses, to be contained in the WR legislation.<sup>1811</sup> This specifies the types of agricultural goods to be stored, like it is in Tanzania and Uganda, among other countries, while still providing for the location of warehouses.<sup>1812</sup> In other words, one of the requirements for licensing of warehouses should be that they are located in areas easily accessible to farmers.<sup>1813</sup>

This requirement is not included in the conditions for licensing warehouses under the WR Bill.<sup>1814</sup> Thus, amending the WR Bill to include the location of warehouses as a prerequisite

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<sup>1807</sup> The Food and Agriculture Organisation of the United Nations, *The State of Food and Agriculture: Moving Forward on Food Loss and Waste Reduction* (FAO 2019); see also Ugochukwu G A Uwaoma, Chidiadi Obinna Esi-Ubani and Prince Chinenye Emeh, 'Warehousing Management Systems and Sales of Maize in Abia State, Nigeria' (2018) 6(2) Intl J Soc Sci Humanit Res 230; Endro Gunawan and others, 'Factors Influencing Farmers' Use of the Warehouse Receipt System in Indonesia' (2019) 79(4) Agric Financ Rev 537.

<sup>1808</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 18; see also World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 4; Ugochukwu G A Uwaoma, Chidiadi Obinna Esi-Ubani and Prince Chinenye Emeh, 'Warehousing Management Systems and Sales of Maize in Abia State, Nigeria' (2018) 6(2) Intl J Soc Sci Humanit Res 230, 231.

<sup>1809</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 18; see also World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 4.

<sup>1810</sup> Stanley Ebitare Boroh and Emmanuel Nwakanma, 'Crisis of Infrastructure and Agricultural Development in Africa: The Case of Nigeria' (2018) 5(3) Abuja J Sociol Stud 236, 241; see also Samuel Oluwaseyi Olorunfemi, 'Rural Road Infrastructural Challenges: An Impediment to Agricultural Development in Idanre Local Government Area of Ondo State, Nigeria' (2020) 12(2) Ghana J Geography 108.

<sup>1811</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 22.

<sup>1812</sup> *ibid*; see also The Warehouse Receipts Act, 2005, s 18 (Tanzania); Warehouse Receipt System Act, 2006, s 26(3) (Uganda).

<sup>1813</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 22.

<sup>1814</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 17.

for licensing or including this in its potential regulation will impact the prospective e-WR system in Nigeria since warehouses will be closer to farms, including those in rural areas.

Another way to ensure that warehouses are located close to farms, especially those in rural areas, is by creating community warehouses. Conventional warehouses or commercial warehouses are arguably large and sometimes utilise technological storage equipment.<sup>1815</sup> This is the size of warehouses that require the PPP initiative to be established, as indicated in section 7.3.1 of this chapter.<sup>1816</sup> While PPP is one option to encourage the provision of warehouses, especially large and well-equipped warehouses, community warehousing is another means of providing warehouses for farmers, particularly those in rural areas. Since, large, well-equipped warehouses are usually located in urban and semi-urban areas.<sup>1817</sup> This creates the need for community warehouses, which will be situated in farmers' communities, mainly designed for smallholders, and will be relatively smaller and less equipped than conventional warehouses.<sup>1818</sup>

The government, through the Agency created by the WR Bill, can set up community warehouses.<sup>1819</sup> They can do this in partnership with international organisations like the United States Agency for International Development (USAID), the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), and others.<sup>1820</sup> Cooperative societies or private companies could also set up community warehouses with the aid of an international organisation.<sup>1821</sup> This is possible because Nigeria already partners with these kinds of

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<sup>1815</sup> Anthony Aboagye, 'Structuring African Warehouse Receipt Systems to Succeed' (2023) 9(4) Athens J Bus Econ 475.

<sup>1816</sup> Aderibigbe S Olomola and Maryam Yaro, 'Commercial Banks' Response to Government's Financial Stimulus for Improved Agricultural Financing in Nigeria' (2015) International Food Policy Research Institute Working Paper, No 28 <<https://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/129209/filename/129420.pdf>> accessed 21 March 2022; see also Ereneus K Marbaniang, JK Chauhan and Pynbianglang Kharumnuid, 'Public Private Partnership (PPP) in Agriculture: A Step Towards Sustainable Agricultural Development' (2020) 2(2) Agric Food 387; Bonphace Mangeni, 'The Role of Public-Private Partnerships (PPPs) in Ensuring Technology Access for Farmers in Sub-Saharan Africa' (2019) 19(1) Afr J Food Agric Nutr Dev 14137; Augustine Arimoro, 'Public-Private Partnership and the Right to Property in Nigeria' (2019) 19 Afr Hum Rts LJ 763.

<sup>1817</sup> Anthony Aboagye, 'Structuring African Warehouse Receipt Systems to Succeed' (2023) 9(4) Athens J Bus Econ 475.

<sup>1818</sup> *ibid.*

<sup>1819</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 7(1)(p).

<sup>1820</sup> Anthony Aboagye, 'Structuring African Warehouse Receipt Systems to Succeed' (2023) 9(4) Athens J Bus Econ 475, 480.

<sup>1821</sup> *ibid.*

organisations to enhance some of its infrastructure.<sup>1822</sup> For instance, the German Federal Ministry for Economic Cooperation and Development (BMZ), in conjunction with the European Union, supports renewable energy in Nigeria administered by GIZ. They collaborate with the Federal Ministry of Power and other private companies for this purpose.<sup>1823</sup>

Establishing community warehouses by the Agency in collaboration with international organisations is also possible because it has been achieved in Ghana, a West African Country like Nigeria.<sup>1824</sup> The Ghana Grain Council (GGC) is a private sector-led initiative responsible for the certification and regulation of the WR system in Ghana.<sup>1825</sup> They introduced an e-WR system in 2012 called the electronic commercial WR system.<sup>1826</sup> Thus, the GGC functions as the Agency created by the WR Bill, even though the GGC is privatised.

The GGC established community warehouses in Ghana for smallholders whose goods are usually in small quantities and have difficulties accessing commercial warehouses in urban areas to store their goods and obtain credit from financial institutions.<sup>1827</sup> The GGC was formed with funds furnished by the USAID.<sup>1828</sup> Hence, the GGC established community warehouses in corroboration with the USAID.<sup>1829</sup>

Farmers in rural areas can first store their goods in community warehouses to avoid spoilage or depreciation in their quality before they can be transferred to commercial warehouses in urban or semi-urban areas.<sup>1830</sup> Smallholders usually work with nucleus farmers to assist them in transporting the goods from the production sites to community warehouses and then to commercial warehouses.<sup>1831</sup>

A nucleus farmer is a large-scale farmer who is well financed by self or supported by NGOs or, the government, or both to take charge of smallholders by supporting them with necessities like training and inputs, among others, which will help stabilise the smallholders'

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<sup>1822</sup> GOPA-International Energy Consultants GmbH (GOPA Intec), *The Nigerian Energy Sector: An Overview with a Special Emphasis on Renewable Energy, Energy Efficiency and Rural Electrification* (GIZ, NESP, FMP Report, 2<sup>nd</sup> edn, 2015) 15.

<sup>1823</sup> *ibid.*

<sup>1824</sup> Anthony Aboagye, 'Structuring African Warehouse Receipt Systems to Succeed' (2023) 9(4) *Athens J Bus Econ* 475, 480.

<sup>1825</sup> *ibid.*

<sup>1826</sup> *ibid.*

<sup>1827</sup> *ibid* 481.

<sup>1828</sup> *ibid* 480.

<sup>1829</sup> *ibid.*

<sup>1830</sup> *ibid* 7.

<sup>1831</sup> *ibid.*

businesses.<sup>1832</sup> This can also be done by cooperative societies, as discussed in section 7.2 of this chapter.<sup>1833</sup>

Nucleus farmers would store the goods transported to commercial warehouses in their names and obtain loans on behalf of smallholders.<sup>1834</sup> The transaction between nucleus farmers and smallholders is usually based on a contract.<sup>1835</sup>

Although the goods of smallholders can be transferred to commercial warehouses in the urban or semi-urban areas from community warehouses, the goods of some smallholders could remain in community warehouses as their final destination for storage.<sup>1836</sup> This happens when smallholders cannot access a nucleus farmer or a cooperative society.<sup>1837</sup> However, the farmers need to enquire if the community warehouse operators have sufficient facilities and equipment to efficiently preserve the goods they deposit to prevent spoilage. The import of this is that smallholders must weigh the risks and benefits between storing their goods in community warehouses or travelling to commercial warehouses for storage. Therefore, where the government, in collaboration with intergovernmental organisations, sponsors community warehouses, it would be advisable for them to equally sponsor nucleus farmers to support smallholders.

Alternatively, the establishers of community warehouses could link them to commercial warehouses to enable them to issue e-WRs to smallholders, especially where appointing nucleus farmers is impractical.<sup>1838</sup> The GGC did this, and it promoted the inclusion of smallholders in getting WRs and obtaining credit even when their goods remained in community warehouses.<sup>1839</sup> Accordingly, the establishers of community warehouses in Nigeria, like the Agency, can empower them to issue e-WRs to smallholders by linking them to service providers or the central registry, as the case may be, particularly where it is unrealisable to appoint nucleus farmers. Sections 6.2.1.1 to 6.2.1.4 of this research discuss the mechanism for delivering services to commercial warehouses by service providers or the central registry. The community and commercial warehouses could be linked through software

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<sup>1832</sup> George Agana Akuriba and Damian Felladam Tangonyire, 'Effects of Nucleus-Farmer Outgrower Schemes on Profitability among Smallholder Farmers: Empirical Evidence from Northern Ghana' (2020) 6 Cogent Food Agric 1.

<sup>1833</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 13.

<sup>1834</sup> Anthony Aboagye, 'Structuring African Warehouse Receipt Systems to Succeed' (2023) 9(4) Athens J Bus Econ 475, 481.

<sup>1835</sup> *ibid.*

<sup>1836</sup> *ibid.*

<sup>1837</sup> *ibid.*

<sup>1838</sup> *ibid.*

<sup>1839</sup> *ibid.*

generated by service providers or the Agency, which would operate the central registry that would deliver services to the commercial warehouse.

Another potential means of solving the problem of farmers' accessibility to warehouses is through field warehousing. This is where a warehouse is temporarily set up by the creditor, in this case, financial institutions at the venue or close to the farms of grantors.<sup>1840</sup> The financial institution can also keep the goods in a designated public warehouse that will solely store the goods deposited by the financial institution.<sup>1841</sup> One of the reasons for this is that financial institutions may not have the resources to operate the e-WR platform like a conventional warehouse. The field warehouse has been discussed in section 2.4.1.2 of this thesis.

Nevertheless, the field warehouse is typically expensive as financial institutions incur the cost of providing a warehouse for storage and devising supervisory mechanisms for the goods in the warehouse, such as a Collateral Management Agreement (CMA) and a Stock Management Agreement (SMA), among other methods.<sup>1842</sup> Since financial institutions like commercial banks are profit-oriented, they are likely to charge high interest rates to cover the cost incurred in setting up the warehouse or leasing a public warehouse to transfer the goods. This will be expensive for farmers, especially smallholders.

The remedy to the above challenge is drawn from section 6.3.1 of this thesis, where it was recommended that the Central Bank of Nigeria (CBN) devise a mechanism that will ensure banks participate in government schemes like the Nigerian Incentive-Based Risk Management System for Lending (NIRSAL) and the Commercial Agricultural Credit Scheme (CACS); to reduce the percentage of interest they charge grantors. Also, where the challenges of other financial institutions are mitigated, as discussed in sections 6.3.2 to 6.3.5 of this thesis, especially concerning funding and the creation of awareness, secured transactions will be subsidised for farmers who can borrow with little or no interest rates.

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<sup>1840</sup> Tibor Taiji, 'The Resurrection of Field Warehousing' (2014) 55(3) Acta Juridica Hungarica 191.

<sup>1841</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, vii <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 7.

<sup>1842</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 2; see also Tibor Taiji, 'The Resurrection of Field Warehousing' (2014) 55(3) Acta Juridica Hungarica 191; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716.



Furthermore, on the issue of supervisory mechanisms adopted by financial institutions, e-WRs can mitigate one of the challenges of the CMA, which is that it usually applies to only non-negotiable WRs to prevent transfers of the WR to a third party without an express agreement from other parties to the CMA.<sup>1843</sup> This is because one of the advantages of e-WRs discussed in section 2.6.3 of this thesis is that it allows those involved in the e-WR transaction to monitor the activities in the e-WR in real-time due to its technological advantage.<sup>1844</sup> This eliminates the need for the legal formalities involved in using non-negotiable WRs, such as executing an agreement of transfer of the WR to another party.<sup>1845</sup>

In addition, security interests are created over personal property in Nigeria by executing an agreement between the creditor and the grantor.<sup>1846</sup> This agreement could contain a clause that prevents any party to the e-WR transaction from transferring the e-WR to a third party without the express consent of the other parties involved in the transaction. Therefore, CMAs can be utilised for e-WRs, whether negotiable or non-negotiable.

In terms of SMAs, it was argued in section 2.4.1.2 of this thesis that an SMA is utilised when goods are secured by a floating charge or a pledge, not necessarily with a WR.<sup>1847</sup> However, as analysed in section 4.2.1.2 of this thesis, all forms of security devices are treated the same under STMAA. Thus, nothing hinders financial institutions from utilising an SMA for an e-WR, as the requirement of a floating charge will no longer restrict it.<sup>1848</sup> It can be secured by a security agreement.<sup>1849</sup> Since security agreements are flexible and depend on an understanding reached between the financial institution and the grantor, the agreement can empower the creditor to appoint a CMC, which will then monitor the goods periodically.<sup>1850</sup> This resolves the problem of SMA raised in the later part of section 2.4.1.2 of this thesis.

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<sup>1843</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 43; 27.

<sup>1844</sup> Michael Crosby, 'Blockchain Technology: Beyond Bitcoin' (2016) 2 Applied Innov Rev 6; see also Zibin Zheng and others, 'An Overview of Blockchain Technology: Architecture, Consensus, and Future Trends' (2017) 85 Inst Elect Eng Comput Soc 557; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 724-25; Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801, 805.

<sup>1845</sup> *ibid.*

<sup>1846</sup> Jacob S Ziegel, 'The New Provisional Chattel Security Law Regimes' (1991) 70 Can Bar Rev 682, 685-86; see also Secured Transactions in Moveable Assets Act 2017, s 3(1).

<sup>1847</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) xii, 43; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 721.

<sup>1848</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 55; 109.

<sup>1849</sup> *ibid.*

<sup>1850</sup> Jacob S Ziegel, 'The New Provisional Chattel Security Law Regimes' (1991) 70 Can Bar Rev 682, 685-86; see also Secured Transactions in Movable Assets Act 2017, s 3(1); The International Finance

Furthermore, financial institutions can appoint their staff without contracting any CMC to monitor the goods in the warehouse, which will be cheaper for them, and this should be contained in the security agreements.<sup>1851</sup> This implies that financial institutions should hire staff with commodity market experience, agricultural finance, IT experience, and others or train them to perform such duties relating to e-WR financing.<sup>1852</sup> Thus, field warehousing can effectively mitigate the challenge of farmers' access to warehouses.

#### 7.4. Technological Awareness

This research identified in section 2.5 that the records or data in e-WRs are stored electronically.<sup>1853</sup> Hence, they require a well-functioning digital platform to perform efficiently. Unlike countries like the UK, where digital technology is highly advanced, emerging economies like Nigeria work towards attaining a highly advanced technological standard.<sup>1854</sup> Infrastructural inequalities have caused a great deal of digital divide and gaps in Nigeria.<sup>1855</sup> For example, digitalisation in urban areas usually gains more attention than in rural Nigeria.<sup>1856</sup> Politics and deliberate institutional actions or inaction contribute to the problem of digital technology in Nigeria.<sup>1857</sup> Therefore, the introduction of e-WRs will face some digital challenges, as discussed below.

##### 7.4.1. Inadequate Digital Infrastructure

Digital infrastructure forms the basis of the IT structure present in a country or organisation, including the services and facilities that enable IT to function effectively.<sup>1858</sup> Digital

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Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 43; xii; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 721.

<sup>1851</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 1.

<sup>1852</sup> *ibid* 7.

<sup>1853</sup> World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 3; see also Su Lei and Wang Haiying, 'Analysis of Electronic Warehouse Receipts of Bulk Commodity in Supply Chain Finance Practice' (2020 International Conference on Computer Information and Big Data Application (CIBDA), Guiyang, 17-19 April 2020) 35; UNIDROIT Working Group on Model Law on Warehouse Receipts-Guide to Enactment, 'Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIIIA – W.G.1 – Doc. 2, para 37 <<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>> accessed 11 December 2023.

<sup>1854</sup> Okoye Nonso Sunday, Uchenna Timothy Umeifekwem and Okechukwu Innocent Eme, 'Addressing Digital Technology Gap Challenges: The Nigerian Experience' (2023) 11(1) *Nig J Soc Dev* 95.

<sup>1855</sup> *ibid*.

<sup>1856</sup> *ibid*.

<sup>1857</sup> *ibid*.

<sup>1858</sup> David Tilson, Kalle Lyytinen and Carsten Sørensen, 'Digital Infrastructures: The Missing IS Research Agenda' (2010) *Inf Syst Res* 1.

infrastructure is not new in Nigeria; it was introduced over the years through a gradual accumulation of digital functionalities, practices, norms and processes, which have continued to evolve.<sup>1859</sup> Some examples of digital infrastructure include cloud services, internet backbone, broadband, digital communication suits, and operational security, among others.<sup>1860</sup>

The issuance, transfer, and registration of e-WRs, as discussed in sections 6.2.1.3 and 6.2.1.4 of this study, will involve an effective digital software and platform, which will serve a large group of people.<sup>1861</sup> Such huge platforms and software require the internet to work effectively and at high speed to avoid transaction delays.<sup>1862</sup> However, the internet speed performance depends on the generation of the broadband cellular network or mobile wireless communication employed.<sup>1863</sup> Thus, the higher the generation of the network, the higher the speed.<sup>1864</sup>

Nigeria's adoption of generations of broadband has developed over the years.<sup>1865</sup> Nigeria evolved from the analogue-based technology of the first generation (1G) to the digital wireless systems of the second, third and fourth generations (2G, 3G and 4G).<sup>1866</sup> 5G networks are gradually becoming rampant in Nigeria since it was test-launched in Abuja, Nigeria in 2019 by MTN, one of the network service providers in Nigeria.<sup>1867</sup> As a matter of fact, Nigeria was the first country in West Africa to launch 5G networks.<sup>1868</sup> Nevertheless, internet coverage and broadband services are better in urban and semi-urban areas than in rural areas, and this

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<sup>1859</sup> Joan Rodon Modol and Ben Eaton, 'Digital Infrastructure Evolution as Generative Entrenchment: The Formation of a Core–Periphery Structure' (2021) 36 (4) J Info Tech 342.

<sup>1860</sup> Okoye Nonso Sunday, Uchenna Timothy Umeifekwem and Okechukwu Innocent Eme, 'Addressing Digital Technology Gap Challenges: The Nigerian Experience' (2023) 11(1) Nig J Soc Dev 95, 97; see also David Tilson, Kalle Lyytinen and Carsten Sørensen, 'Digital Infrastructures: The Missing IS Research Agenda' (2010) Inf Syst Res 1, 5.

<sup>1861</sup> Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) Ariz J Intl Comp L 205, 209.

<sup>1862</sup> Mark de Reuver, Carsten Sørensen and Rahul C Basole, 'The Digital Platform: A Research Agenda' (2018) 33(2) J Info Tech 124; Okoye Nonso Sunday, Uchenna Timothy Umeifekwem and Okechukwu Innocent Eme, 'Addressing Digital Technology Gap Challenges: The Nigerian Experience' (2023) 11(1) Nig J Soc Dev 95.

<sup>1863</sup> Cosmas Kemdirim Agubor, Nkwachukwu Chukwuchekwa and Longinus Sunday Ezema, '5G Network Deployment in Nigeria: Key Challenges and the Way Forward' (2021) 6(3) Eur J Engr Tech Res 16.

<sup>1864</sup> *ibid.*

<sup>1865</sup> *ibid.*; see also Halliru Sani and Muhammad Dapchi Baba, '5G Networks and their Impact on the Telecommunications Industry in Nigeria' (International Mediterranean Congress, Mersin, 13-14 January 2024).

<sup>1866</sup> *ibid.*

<sup>1867</sup> CAD Pahalsen, Davou Dung Gyang and Biya Alfred Zungkat, '5G Technology: An Assessment of the Opportunities and Challenges in an Emerging Nigerian Society' (2023) 15 (2-4) Intl J Next-Gen Net 1.

<sup>1868</sup> *ibid.*

could affect the effective use of e-WRs in rural areas.<sup>1869</sup> Thus, the digital divide between businesses/residents in the rural and urban areas must be bridged.<sup>1870</sup>

Digital divide is the inequality between two or more groups in terms of access, distribution and the use of Information and Communication Technology.<sup>1871</sup> In Nigeria, the disparity exists between urban and rural dwellers.<sup>1872</sup> Factors like poverty contribute to this divide because it hinders rural dwellers from having sufficient funds to acquire gadgets with access to effective digital infrastructure.<sup>1873</sup> Poor digital skills, lack of awareness and resistance to change from analogue to digital systems equally contribute to the digital divide.<sup>1874</sup>

The government can develop policies on IT to make digital infrastructure more available to everyone and to make the reception of e-WRs easy in Nigeria.<sup>1875</sup> The policies could create a favourable environment to attract and retain investors in digital infrastructure in Nigeria, especially those interested in investing in rural areas.<sup>1876</sup> Since digital investment is expensive, the government can provide palliative measures to support the investors.<sup>1877</sup> For instance, in Canada, the government made a policy that supported digital service providers by regulating the fees they pay the government.<sup>1878</sup>

Creating digital awareness through campaigns and designing programmes, especially in rural areas, that will train Nigerians to obtain IT skills and literacy is encouraged.<sup>1879</sup> This will make

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<sup>1869</sup> Okoye Nonso Sunday, Uchenna Timothy Umeifekwem and Okechukwu Innocent Eme, 'Addressing Digital Technology Gap Challenges: The Nigerian Experience' (2023) 11(1) Nig J Soc Dev 95, 96-7.

<sup>1870</sup> *ibid*; see also Akanbi BE and Akanbi CO, 'Bridging the Digital Divide and the Impact on Poverty in Nigeria' (2012) 3(4) Comput Inf Syst Dev Inf J 81.

<sup>1871</sup> Okoye Nonso Sunday, Uchenna Timothy Umeifekwem and Okechukwu Innocent Eme, 'Addressing Digital Technology Gap Challenges: The Nigerian Experience' (2023) 11(1) Nig J Soc Dev 95, 97; see also Akanbi BE and Akanbi CO, 'Bridging the Digital Divide and the Impact on Poverty in Nigeria' (2012) 3(4) Comput Inf Syst Dev Inf J 81, 82; Ernest J Wilson, *The Information Revolution and Developing Countries* (MIT 2006).

<sup>1872</sup> Okoye Nonso Sunday, Uchenna Timothy Umeifekwem and Okechukwu Innocent Eme, 'Addressing Digital Technology Gap Challenges: The Nigerian Experience' (2023) 11(1) Nig J Soc Dev 95, 97.

<sup>1873</sup> *ibid*; see also Akanbi BE and Akanbi CO, 'Bridging the Digital Divide and the Impact on Poverty in Nigeria' (2012) 3(4) Comput Inf Syst Dev Inf J 81, 82.

<sup>1874</sup> *ibid*.

<sup>1875</sup> Cosmas Kemdirim Agubor, Nkwachukwu Chukwuchekwa and Longinus Sunday Ezema, '5G Network Deployment in Nigeria: Key Challenges and the Way Forward' (2021) 6(3) Eur J Engr Tech Res 16, 18.

<sup>1876</sup> *ibid*.

<sup>1877</sup> *ibid*.

<sup>1878</sup> *ibid*.

<sup>1879</sup> Okoye Nonso Sunday, Uchenna Timothy Umeifekwem and Okechukwu Innocent Eme, 'Addressing Digital Technology Gap Challenges: The Nigerian Experience' (2023) 11(1) Nig J Soc Dev 95, 97.

the potential use of e-WRs easier.<sup>1880</sup> This could be done by the government or companies, like telecommunications companies, as a form of Corporate Social Responsibility.<sup>1881</sup>

#### 7.4.2. Cyber Security

Although paper WRs are more prone to forgery or fraud than e-WRs, e-WRs are not entirely free from this sort of problem.<sup>1882</sup> Therefore, one of the challenges relating to technological awareness that the potential Nigeria's e-WR system could face is inadequate cyber security. In other words, cyber threats could be a challenge unless measures are taken to prevent them and make e-WRs more reliable.<sup>1883</sup>

Cyber threats do not consist of cybercrimes alone, that is, an intentional activity which attacks the cyberspace and compromises its security, for example, unauthorised access.<sup>1884</sup> It also includes inadvertent occurrences like virus attacks and problems from lack of system updates to the latest version of software, among others.<sup>1885</sup> This explains why cyber security is crucial in using e-WRs. Cyber security is the measures taken to protect the cyberspace, that is, the digital platform or software that will be utilised to operate the prospective e-WR system in Nigeria from being exposed to such threats.<sup>1886</sup>

The import of the above is that service providers or the Agency that would operate the central registry, as discussed in sections 6.2.1.3 and 6.2.1.4 of this thesis, must take preventive steps to secure their software and platforms from cyber threats or crimes. Also, warehouses that service providers or the central registry would empower to issue e-WRs must adopt measures to protect their systems against cyber threats. In addition, any party, whether the depositors, financial institutions, or buyers, who would be in control of e-WRs must ensure that they abide by the security rules that will be furnished by the warehouse operator or the service

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<sup>1880</sup> *ibid.*

<sup>1881</sup> Olanrewaju David Adeyanju, 'An Assessment of the Impact of Corporate Social Responsibility on Nigerian Society: The Examples of Banking and Communication Industries' (2012) 1(1) *Univers J Market Bus Res* 17, 29.

<sup>1882</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805.

<sup>1883</sup> Frank Ibikunle and Odunayo Eweniyi, 'Approach to Cyber Security Issues in Nigeria: Challenges and Solution' (2013) 1(1) *Intl J Cogn Res Sci Engr Edu* 100; see also Francis Uwadia and Friday I Eti, 'Cyber Security in Nigeria: Issues, Challenges and Way Forward' (2018) 3(2) *Intl Res J Adv Eng Sci* 351.

<sup>1884</sup> *ibid.*

<sup>1885</sup> *ibid.*

<sup>1886</sup> Francis Uwadia and Friday I Eti, 'Cyber Security in Nigeria: Issues, Challenges and Way Forward' (2018) 3(2) *Intl Res J Adv Eng Sci* 351.

providers/central registry or both, in addition to their own steps, which they will take to protect their participation in the potential e-WR system.

#### **7.4.2.1. Poor Handling of Data**

Apart from cyber insecurity, poor handling of data could lead to data breaches.<sup>1887</sup> This typically arises as a matter of negligence rather than a premeditated cyber theft.<sup>1888</sup> One of the situations that can result in improper data handling is where gadgets like computers and phones are carelessly kept and are inadequately secured with privacy settings like a strong password or encryption.<sup>1889</sup> It can also arise where data is given to another who is not authorised to access such data.<sup>1890</sup> These kinds of problems are covered under the Nigerian Data Protection Act 2023 (NDPA).<sup>1891</sup>

The NDPA puts a duty of care on the data controller and data processor to appropriately handle data and demonstrate accountability.<sup>1892</sup> They must also employ every appropriate means to guarantee confidentiality, integrity and availability of personal data.<sup>1893</sup> As identified in section 3.3.1.1 of this thesis, this Act is similar to the General Data Protection Regulation of the European Union.<sup>1894</sup> The NDPA describes a data controller as a person, organisation or agency who is personally or jointly responsible for determining the purpose and means of processing personal data.<sup>1895</sup>

By virtue of section 1(1) of the WR Bill, which creates the Agency to manage the WR system in Nigeria, the data controller in Nigeria's potential e-WR system would most likely be the Agency.<sup>1896</sup> The Agency is relevant here because it will take charge of the Central Registry if Nigeria decides to adopt the option of issuance and registration of e-WRs set out in section 6.2.1.3 of this thesis. The data controller could also be the service providers described in section 6.2.1.4 of this research because they will make available the software or platform that will be utilised to operate e-WRs.<sup>1897</sup> The Agency or, the service providers, or both will stipulate

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<sup>1887</sup> *ibid.*

<sup>1888</sup> *ibid.*

<sup>1889</sup> *ibid*; see also Nigerian Data Protection Act 2023, s 24(1)(f).

<sup>1890</sup> *ibid.*

<sup>1891</sup> Nigerian Data Protection Act 2023, s 1.

<sup>1892</sup> *ibid* s 24(3).

<sup>1893</sup> *ibid* s 24(2).

<sup>1894</sup> The European Union Data Protection Regulation, Regulation (EU) 2016/679.

<sup>1895</sup> Nigerian Data Protection Act 2023, s 65.

<sup>1896</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 1(1).

<sup>1897</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 804; see also Ari M Pozez, 'A Roadmap

to warehouse operators how to use the data collected from data subjects. This makes warehouse operators data processors.<sup>1898</sup>

According to the NDPA, a data processor is an individual or organisation that processes data on behalf of or at the direction of a data controller or another data processor.<sup>1899</sup> Thus, the Agency or service providers will empower warehouse operators to issue e-WRs to depositors on their behalf.<sup>1900</sup> This is why they will continue to monitor the activities carried out on the e-WRs even after issuance by warehouse operators.<sup>1901</sup>

The data subjects are the depositors, financial institutions, and buyers of e-WRs. This is because data subjects are described as individuals or organisations that own the personal data processed.<sup>1902</sup> Therefore, the Agency/service providers and the warehouse operators must employ every necessary measure to ensure that there is no occurrence of a data breach of any kind regarding the data of the users of the e-WR system, like the depositors.<sup>1903</sup> Failure to comply with this rule will attract sanctions against the Agency/service providers or the warehouse operator where the data subject makes a complaint.<sup>1904</sup> Fulfilling the conditions of the NDPA will satisfy the reliability requirement of e-WRs stated in section 3.3.1.1 of this thesis as one of the prerequisites for granting e-WRs the same legal effect of possession as paper WRs.

#### **7.4.2.2. Cyber Theft**

Poor handling of data can lead to data theft.<sup>1905</sup> However, the data theft discussed in this section is where there is unauthorised access to data (hacking) despite the security measures put in place by the data controller and the processor to protect the data of the data subject.<sup>1906</sup> Thus, the data breach here is not a result of negligence but a premeditated act. While the data

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to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) *Ariz J Intl Comp L* 205, 209.

<sup>1898</sup> Nigerian Data Protection Act 2023, s 65.

<sup>1899</sup> *ibid.*

<sup>1900</sup> *ibid.*

<sup>1901</sup> Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) *Ariz J Intl Comp L* 205, 209.

<sup>1902</sup> Nigerian Data Protection Act 2023, s 65.

<sup>1903</sup> *ibid* s 24(2); see also Francis Uwadia and Friday I Eti, 'Cyber Security in Nigeria: Issues, Challenges and Way Forward' (2018) 3(2) *Intl Res J Adv Eng Sci* 351.

<sup>1904</sup> Nigerian Data Protection Act 2023, s 47(2); see also Nigerian Data Protection Act 2023, s 48(1)-(5); Nigerian Data Protection Act 2023, s 46(1).

<sup>1905</sup> Francis Uwadia and Friday I Eti, 'Cyber Security in Nigeria: Issues, Challenges and Way Forward' (2018) 3(2) *Intl Res J Adv Eng Sci* 351.

<sup>1906</sup> Frank Ibikunle and Odunayo Eweniyi, 'Approach to Cyber Security Issues in Nigeria: Challenges and Solution' (2013) 1(1) *Intl J Cogn Res Sci Engr Edu* 100, 105.

breach resulting from negligence is mostly the responsibility of the data controller and processor, that is, the potential Agency/service providers and warehouse operators, data subjects, such as depositors and buyers of e-WRs, including financial institutions, also have to employ some measures to prevent this kind of data theft.<sup>1907</sup> This will equally prevent identity theft of e-WR users.<sup>1908</sup>

The stakeholders of the proposed e-WR system cited above can employ any technological and institutional operational measures available to protect their platform from unauthorised access.<sup>1909</sup> For example, they can install hardware or software security applications like firewalls, encryption, and passwords, among others, to achieve this.<sup>1910</sup> In addition to technological measures, the prospective Agency/service providers and warehouse operators can have a procedure known by their staff for handling data.<sup>1911</sup>

Nigeria has a law that provides for the prosecution of cybercrimes.<sup>1912</sup> It is designed to mitigate cybercrimes in Nigeria by punishing offenders found guilty of committing cybercrimes or related matters.<sup>1913</sup> Thus, this Act will support the use of e-WRs in Nigeria by deterring any person who intends to or would commit any offence that could breach security in future e-WR transactions. As a further response to the prevention of cybercrimes, in June 2022, Nigeria signed and ratified the Convention on Cybercrime, also known as the Budapest Convention.<sup>1914</sup> This is an international framework designed to address the issues of cybercrimes in member states.<sup>1915</sup> This is another step to demonstrate that Nigeria is proactive about mitigating the problem of cybercrimes and improving cyber security, and this supports the use of e-WRs.

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<sup>1907</sup> *ibid*; see also Stephen A Ojeka, Egbide Ben-Caleb and Edara-Obong Inyang Ekpe, 'Cyber Security in the Nigerian Banking Sector: An Appraisal of Audit Committee Effectiveness' (2017) 7(2) *Intl Rev Manag Market* 340.

<sup>1908</sup> Frank Ibikunle and Odunayo Eweniyi, 'Approach to Cyber Security Issues in Nigeria: Challenges and Solution' (2013) 1(1) *Intl J Cogn Res Sci Engr Edu* 100, 105.

<sup>1909</sup> Yuchong Li and Qinghui Liu, 'A Comprehensive Review Study of Cyber-attacks and Cyber Security: Emerging Trends and Recent Developments' (2021) 7 *Emerg Rep* 8176.

<sup>1910</sup> *ibid*.

<sup>1911</sup> *ibid*.

<sup>1912</sup> Cybercrimes (Prohibition, Prevention etc) Act 2015.

<sup>1913</sup> *ibid* s 1(a).

<sup>1914</sup> The International Institute for Strategic Studies, (IISS), 'Cyber Capabilities and National Power' (Report, Vol 2, 2023) IISS 84 <[https://www.iiss.org/globalassets/media-library---content--migration/files/research-papers/2023/09/cyber-capabilities-and-national-power-vol-2/cyber-capabilities-and-national-power\\_volume-2.pdf](https://www.iiss.org/globalassets/media-library---content--migration/files/research-papers/2023/09/cyber-capabilities-and-national-power-vol-2/cyber-capabilities-and-national-power_volume-2.pdf)> accessed 28 October 2023; see also Convention on Cybercrime (adopted 28 August 2022, entered into force 1 November 2022) ETS 185 (Cybercrime Convention).

<sup>1915</sup> *ibid*.



## 7.5. The Problem of Information Asymmetry

The crux of this research is to encourage the Nigerian government to adopt e-WRs to mitigate the problem of poor access to finance that farmers experience. Like other electronic trades, e-WR transactions can be faced with the problem of information asymmetry.<sup>1916</sup> Therefore, this research proposes ways to minimise this challenge and make e-WRs more transparent and reliable documents of title, which will enable financial institutions to accept them as collateral to advance credit to farmers.

As indicated in section 5.2 of this thesis, information asymmetry is an economic problem that occurs when a party to a transaction has more relevant information about the transaction than the other party.<sup>1917</sup> Thus, if the first party had the complete information about the transaction, just like the other party, it might have changed the first party's approach toward the transaction.<sup>1918</sup> There are two kinds of information asymmetry: adverse selection and moral hazard.<sup>1919</sup>

Adverse selection occurs when information asymmetry happens before a transaction is finalised.<sup>1920</sup> This form of information asymmetry can occur when farmers, especially smallholders, have limited or no knowledge of financial products and the ability to determine the most suitable ones for them.<sup>1921</sup> Hence, it is easy for some financial institutions to take advantage of them by letting them become overly indebted or by allowing them to under-participate in the products available, especially the subsidised ones.<sup>1922</sup> This way, the financial institutions maximise profit at the expense of the farmers. Some other financial institutions can avoid lending to farmers who do not possess adequate financial literacy but select only those with substantial knowledge.<sup>1923</sup> This diminishes access to finance.

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<sup>1916</sup> Sulin Ba, Andrew B Whinston and Hang Zhang, 'Building Trust in the Electronic Market Through an Economic Incentive Mechanism' (The International Conference on Information Systems, North Carolina, 12-15 December 1999).

<sup>1917</sup> Donald D Bergh and others, 'Information Asymmetry in Management Research: Past Accomplishments and Future Opportunities' (2019) 45(1) J Manag 122.

<sup>1918</sup> *ibid.*

<sup>1919</sup> *ibid.*

<sup>1920</sup> Xiang Hui, Maryam Saeedi and Neel Sundaresan, 'Adverse Selection or Moral Hazard, an Empirical Study' (2018) 66(3) J Industr Econ 610.

<sup>1921</sup> Elaine Tinsley and Natalia Agapitova, *Private Sector Solutions to Helping Smallholders Succeed: Social Enterprise Business Models in the Agriculture Sector* (WBG 2018) 5.

<sup>1922</sup> *ibid* 4.

<sup>1923</sup> *ibid* 5.

One of the founders of information asymmetry, Michael Spence, argued that signalling is a remedy for adverse selection.<sup>1924</sup> That is, the farmers have to demonstrate to the financial institutions that they have financial literacy, especially one required to distinguish credit products, are informed about the pros and cons of each one, and can identify the most suitable ones for them.<sup>1925</sup> However, for this to be effective, farmers have to gain in-depth knowledge of financial products.<sup>1926</sup>

Financial institutions themselves can mitigate this kind of information asymmetric problem by advertising on various platforms like social media, radio, and comic books, among other platforms.<sup>1927</sup> In addition, they can organise financial literacy training about their products, how they work, and who they are most suited for.<sup>1928</sup> They can do this themselves or outsource it to external entities.<sup>1929</sup> The problem with this is that financial institutions, like commercial banks, may not be willing to expend income to organise these forms of training since they are profit-oriented.<sup>1930</sup> Thus, if they eventually carry the programs out, they could include it in the cost of the interest on the loan, which would lead to high interest rates that farmers, especially smallholders, would struggle to afford.<sup>1931</sup>

Section 6.3.1 of this research indicated that the government provided schemes like NIRSAL and CACS to grant incentives to banks and support them to cushion risks like non-performing loans as well as reduce high interest rates on loans.<sup>1932</sup> These schemes can also provide funds to the banks to carry out programs that enlighten farmers on suitable credit products for them.<sup>1933</sup> Furthermore, financial institutions can partner with donors, like intergovernmental organisations and NGOs, to provide funds that will cover the training.<sup>1934</sup> For example, Opportunity International, a Non-profit Organisation, designed a series of self-learning

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<sup>1924</sup> Michael Spence, 'Job Market Signalling' (1973) 87(3) QJ Econ 355.

<sup>1925</sup> *ibid* 358.

<sup>1926</sup> Elaine Tinsley and Natalia Agapitova, *Private Sector Solutions to Helping Smallholders Succeed: Social Enterprise Business Models in the Agriculture Sector* (WBG 2018) 5.

<sup>1927</sup> *ibid* 22.

<sup>1928</sup> *ibid* 5.

<sup>1929</sup> *ibid*.

<sup>1930</sup> Andrew A Igwemma and others, 'Commercial Banks Loans and Lending Rate in Nigeria: A Toda-Yamamoto Causality Approach' (2020) 11(2) J Econ Sust Dev 13.

<sup>1931</sup> *ibid*; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 4.

<sup>1932</sup> Friday Osemenshan Anetor and others, 'Credit Supply and Agricultural Production in Nigeria: A Vector Autoregressive (VAR) Approach' (2016) 7(2) J Econ Sust Dev 131, 132.

<sup>1933</sup> *ibid*; see also Elaine Tinsley and Natalia Agapitova, *Private Sector Solutions to Helping Smallholders Succeed: Social Enterprise Business Models in the Agriculture Sector* (WBG 2018) 5.

<sup>1934</sup> Elaine Tinsley and Natalia Agapitova, *Private Sector Solutions to Helping Smallholders Succeed: Social Enterprise Business Models in the Agriculture Sector* (WBG 2018) 5.

materials like games, comic books, and television programs, among others, to help farmers, especially smallholders and those in rural areas, acquire training on access to finance.<sup>1935</sup>

The most common problem of information asymmetry is moral hazard.<sup>1936</sup> This type of information asymmetry mainly occurs after both parties to a transaction have agreed to do business.<sup>1937</sup> With regards to obtaining finance using e-WRs, financial institutions can withhold relevant information about their loan policies that could change the terms of a loan agreement but disclose it after an agreement has been reached between them and the grantors who use e-WRs as collateral.<sup>1938</sup> It could also be the other way round, where farmers collaborate with warehouse operators to mislead creditors about the quality and quantity of goods that e-WRs utilised as collateral cover.<sup>1939</sup>

Field warehousing, which utilises collateral monitoring mechanisms, such as CMAs and SMAs, is a viable solution to this form of information asymmetry.<sup>1940</sup> SMAs, for instance, involve periodic monitoring of the quantity and quality of the goods in the warehouse by an inspector.<sup>1941</sup> Nonetheless, spot checks should be adopted instead of an announced warehouse visit.<sup>1942</sup> In addition, financial institutions that create security interests on e-WRs emanating from other types of warehouses other than field warehouses can equally utilise spot checks done by their staff to monitor the goods in the warehouse.<sup>1943</sup> This will make the

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<sup>1935</sup> *ibid*; see also Opportunity International, 'Financing Smallholder Farmers to Increase Incomes and Transform Lives in Rural Communities' <<https://opportunity.org/content/News/Publications/Knowledge%20Exchange/Financing-Smallholder-Farmers-Opportunity-International.pdf>> accessed 15 March 2024.

<sup>1936</sup> Xiang Hui, Maryam Saeedi and Neel Sundaresan, 'Adverse Selection or Moral Hazard, an Empirical Study' (2018) 66(3) J Industr Econ 610, 611; see also Eric D Beal, 'Posner and Moral Hazard' (2000) 7 Conn Ins LJ 81, 84.

<sup>1937</sup> Xiang Hui, Maryam Saeedi and Neel Sundaresan, 'Adverse Selection or Moral Hazard, an Empirical Study' (2018) 66(3) J Industr Econ 610, 611.

<sup>1938</sup> Bach Nguyen and Nguyen Phuc Canh, 'Formal and Informal Financing Decisions of Small Businesses' (2021) 57 Small Bus Econ 1545.

<sup>1939</sup> Sulin Ba, Andrew B Whinston and Hang Zhang, 'Building Trust in the Electronic Market Through an Economic Incentive Mechanism' (The International Conference on Information Systems, North Carolina, 12-15 December 1999).

<sup>1940</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 1.

<sup>1941</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) xii; 1; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 721.

<sup>1942</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 38.

<sup>1943</sup> Frank Höllinger and Lamon Ruten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 5 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

checks more reliable to avoid moral hazards.<sup>1944</sup> Therefore, this will serve as a remedy for moral hazard, which originates from depositors and warehouse operators.

Furthermore, security contracts that will be entered between financial institutions and the farmers intending to utilise e-WRs as collateral can also solve the problem of information asymmetry.<sup>1945</sup> The security contract should state all the terms and conditions of the transaction, including what happens where any terms are modified.<sup>1946</sup> The contract should also include that any form of misrepresentation or actions done in bad faith, like hiding vital information or acting deceptively by any of the parties during the time the contract persists, will vitiate the contract and necessary damages paid to the affected party.<sup>1947</sup> In other words, the party withholding vital information will bear the liability for any losses incurred by the affected party in the transaction.<sup>1948</sup> This will promote transparency and reliability in the prospective use of e-WRs in Nigeria.

## 7.6. Conclusion

This chapter made it apparent that it would be challenging to introduce e-WRs in Nigeria to mitigate poor access to finance and enhance Nigeria's economy without addressing the potential problems that could prevent the effective use of e-WRs in Nigeria. It examined how the introduction of e-WRs could affect the stakeholders of the prospective e-WR system in Nigeria. Thus, it continued to answer the third research question in this thesis, which examines how the proposed e-WR system in Nigeria will be managed.<sup>1949</sup>

One of the prospective socio-economic problems identified in this chapter was that farmers, especially smallholders, could find it difficult to deposit their goods in the warehouse or get e-WRs, which would enable them to obtain credit due to the small quantities of their goods. Cooperative societies were suggested as one of the solutions to this challenge since cooperative societies can collect farmers' goods and represent them by depositing their goods

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<sup>1944</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 38.

<sup>1945</sup> Secured Transactions in Movable Asset Act 2017, s 5-6; see also Peng Du, Hong Shu and Zhuqing Xia, 'The Control Strategies for Information Asymmetry Problems Among Investing Institutions, Investors, and Entrepreneurs in Venture Capital' (2020) 11 Front Psychol 1.

<sup>1946</sup> *ibid.*

<sup>1947</sup> Peng Du, Hong Shu and Zhuqing Xia, 'The Control Strategies for Information Asymmetry Problems Among Investing Institutions, Investors, and Entrepreneurs in Venture Capital' (2020) 11 Front Psychol 1, 4.

<sup>1948</sup> *ibid.*

<sup>1949</sup> The third research question is, 'Is There a Potential for Successfully Operating the Warehouse Receipt System in Nigeria with the Form(s) of Warehouse Receipt Selected, and How Can it be Managed to Facilitate Access to Finance for Farmers while Improving Nigeria's Economy?'

in a warehouse and obtaining credit on their behalf. Nevertheless, it was recommended that agricultural cooperative societies should have accountable leaders, be registered and legally recognised as prescribed by the Cooperative Societies Act to make it easier and cheaper for financial institutions to lend to them on behalf of their members.

This chapter established that an e-WR system will only succeed in Nigeria with adequate storage facilities and equipment. It also opined that even where warehousing facilities and equipment are abundant, issues such as an unreliable power supply will affect the sustainability of warehouses, which will directly impact access to finance using e-WRs.

This chapter offered three solutions to ensure that warehouses are reliable enough to preserve goods that e-WRs cover and that financial institutions can lend on such goods. CSP was recommended to ensure an uninterrupted electricity supply in warehouses to power the gadgets that will be used for the potential e-WR platform and to run the equipment that will process goods.

Another solution proposed in this chapter for the sustainability of warehouses in Nigeria was a performance guarantee. This chapter analysed three types of performance guarantees: performance bonds, indemnity funds, and insurance. Although performance bonds perform similar functions as indemnity funds, indemnity funds are preferred because they are cheaper and cover more incidents. Thus, Nigeria is encouraged to consider replacing performance bonds with indemnity funds in its WR Bill.

Inspection of warehouses by the Agency was another means of ensuring the sustainability of warehouses, as analysed in this chapter. This will guarantee that warehouses keep up with the standards they were licensed for. Nevertheless, it was submitted that Nigeria should amend the WR Bill to provide that all warehouses, whether licensed or not, should be inspected. The chapter also recommended that the WR Bill should include a specific timeframe for warehouses to be inspected.

Accessibility of warehouses to farmers was identified as one of the socio-economic problems associated with introducing e-WRs in Nigeria. It was recognised that when warehouses are located far away from farmers, the cost of transportation is impacted, including the fact that there are poor road networks from rural to urban areas. Therefore, it was submitted that the procedure for licensing warehouses in the WR Bill or its potential regulation should cover the proximity of warehouses as one of the conditions for obtaining a licence. Furthermore, it was

recommended that the Agency, alone or in partnership with intergovernmental organisations or NGOs, can set up community warehouses and appoint nucleus farmers to support farmers that deposit their goods in the community warehouses.

This chapter discussed the potential challenges of cyber threats and crimes that could adversely affect e-WRs when introduced in Nigeria. However, in highlighting these problems, it was demonstrated that Nigeria can mitigate them through the frameworks it put in place, such as the NDPA and the Cybercrimes (Prohibition, Prevention, etc) Act, among others. This will protect the e-WR system and punish offenders who intend to commit fraud, forgery, and unauthorised access, among other cybercrimes, when e-WR is introduced in Nigeria.

Finally, this chapter highlighted information asymmetry as a potential problem e-WRs will face when introduced in Nigeria. Adverse selection and moral hazard were identified as types of information asymmetry. It was indicated that farmers, especially smallholders, can be excluded from obtaining finance using e-WRs due to financial illiteracy or the inability to differentiate between financial packages. Thus, it was submitted that adequate training could be provided by different sources, including financial institutions, to educate farmers on financial products and minimise adverse selection.

Regarding moral hazard, it was identified that farmers could act in bad faith by collaborating with warehouse operators to mislead financial institutions about the quantity and quality of goods e-WRs cover that are used as collateral. It was recommended that financial institutions conduct spot checks on warehouses to ensure that the quantity and quality of goods e-WRs cover are intact.

In summary, this chapter demonstrates that although Nigeria could face some socio-economic problems when e-WRs are introduced, they can surmount the challenges and operate a successful e-WR system in an organised and secure manner while promoting the inclusivity of all scales of farmers, whether large, medium, small or micro farmers.

## CHAPTER EIGHT: CONCLUSION AND RECOMMENDATION

### 8.1. Overview

I examined some of the challenges that plague Nigeria, which led to the rapid and steady decline in its economy, especially since 2015, before the coronavirus pandemic (COVID-19), and their contribution to extreme hunger, to the extent that the Nigerian government declared a state of emergency on food security.<sup>1950</sup> The fact that Nigeria has the second-highest population of extremely poor in the world worsens matters.<sup>1951</sup>

Like many researchers, I agree that the diversification of the Nigerian economy from excessive dependence on crude oil to a more sustainable sector like agriculture will mitigate the above problems faced by Nigeria.<sup>1952</sup> However, unlike these researchers, I identified a niche that has not been extensively explored, especially concerning Nigeria, which I strongly argue will improve the country's economic outlook. Therefore, I contended that warehouse receipts (WRs) will be crucial in Nigeria to facilitate access to finance for commercial farmers, especially Micro, Small and Medium Enterprises (MSMEs), who will utilise them as collateral to obtain credit from financial institutions.<sup>1953</sup>

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<sup>1950</sup> Hussaini Abdu, 'State of Emergency Declaration on Food Security: Policy Brief' (Care, August 2023) <<https://www.care-international.org/sites/default/files/2023-08/State-Of-Emergency-Declaration-On-Food-Security-A-Policy-Brief.pdf>> accessed 23 November 2023; see also Blessing Gominah, 'Nigeria: Country Brief' (The United Nations World Food Programme, May 2024) <<https://www.wfp.org/countries/nigeria#:~:text=Conflict%20and%20insecurity%2C%20rising%20inflation,June%2DAugust%202024%20lean%20season>> accessed 2 July 2024; David Tsokar and others, '26.5 Million Nigerians Projected to be Food Insecure in 2024' *FAO in Nigeria* (Abuja, 9 November 2023); International Bank for Reconstruction and Development, *Nigeria Poverty Assessment 2022: A Better Future for All Nigerians* (WBG 2022); Chapter One of this Thesis, s 1.1.1.

<sup>1951</sup> International Bank for Reconstruction and Development, *Poverty and Shared Prosperity 2020: Reversals of Fortune* (WBG 2020) 76; see also Chapter One of this Thesis, s 1.1.1.

<sup>1952</sup> Adeyinka Olure-Bank and others, 'Diversification of the Nigerian Economy Towards a Sustainable Growth and Economic Development' (2015) 3(2) *Intl Econ Financ Manag Sci* 107; see also The Nigerian Economic Summit Group, 'National Independent Warehouse Receipt System Bill FactBook' (Financial System Strategy, 2020) 4 <<https://agra.org/wp-content/uploads/2019/12/Nigeria-National-Warehouse-Receipt-System-Bill-Factbook.pdf>> accessed 12 July 2022; Muhammad Zayyanu Bello and Chika Umar Aliyu, 'Diversification of the Nigerian Economy for Sustainable Development: Issues and Challenges' (2016) 3(2) *Intl J Econ Bus M Stud* 75; Karolina Pawlak and Małgorzata Kołodziejczak, 'The Role of Agriculture in Ensuring Food Security in Developing Countries: Considerations in the Context of the Problem of Sustainable Food Production' (2020) 12 *Sust* 1; Enaibre Felix Ighosewe, David Chucks Akan and Oghenekparobo Ernest Agbogun, 'Crude Oil Price Dwindling and the Nigerian Economy: A Resource-Dependence Approach' (2021) 12 *Mod Econ* 1160; see also John Okey Onoh and Obianuju Edith Ndu-Okereke, 'Dependence on Oil Income Earnings and Diversification of the Economy: The Nigerian Response' (2018) 8(2) *Dev Count Stud* 95.

<sup>1953</sup> Frank Höllinger and Lamon Rutten, 'The Use of Warehouse Receipt Finance in Agriculture in ECA Countries' (2009) The Food and Agriculture Organisation (FAO) World Bank Cooperative Programme and FAO European Bank of Reconstruction and Development (EBRD) Cooperative Programme Technical Background Paper, 37 <[http://www.eastagri.org/files/FAO\\_EBRD-Warehouse-Receipt-Financing.pdf](http://www.eastagri.org/files/FAO_EBRD-Warehouse-Receipt-Financing.pdf)> accessed 7 June 2021.

This study revealed that although several studies have been conducted on WRs and WR systems in and for different parts of the world, including in Sub-Saharan Africa, adequate research has not been conducted on WRs and the WR system concerning Nigeria, especially as it relates to facilitating access to finance for farmers and enhancing Nigeria's economy.<sup>1954</sup> Thus, this research is vital because it contributes to the limited literature in this field of study regarding Nigeria, and it is expected to create awareness to draw more researchers to this area.<sup>1955</sup>

In addition, this research is significant because it will encourage the saving of Nigeria's dwindling resources, which are expended in the production of WR Bills every other year, by serving as a tool to motivate legal and political institutions like the Nigerian Law Reform Commission (NLRC) and the legislature, among others, to enact a WR legislation.<sup>1956</sup>

Considering the magnitude of the economic challenges engulfing Nigeria, which I identified in section 1.1.1 of this study, even when WRs exist in the country, the purpose of this study was to examine whether the ineffective use of WRs as collateral contributes to the prolonged problem of poor access to finance for farmers in Nigeria. This also warranted an examination of the WR Bill to discover whether a law reform is required before it is passed to facilitate access to credit for farmers who will use WRs as collateral.

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<sup>1954</sup> UNCITRAL, 'Warehouse Receipt: Developing an UNCITRAL Instrument on Warehouse Receipt' (2019) UNCITRAL 77; see also Gideon Onumah, 'Implementing Warehouse Receipt Systems in Africa: Potential and Challenges' (Fourth African Agricultural Markets Program Policy Symposium, Lilongwe, 6-7 September 2010); Jonathan Coulter and Gideon Onumah, 'The Role of Warehouse Receipt Systems in Enhanced Commodity Marketing and Rural Livelihood in Africa' (2002) 27 Food Policy 319; Anthony Aboagye, 'Structuring African Warehouse Receipt Systems to Succeed' (2023) 9(4) Athens J Bus Econ 475; African Development Bank (AfDB) Group, *Agricultural Market Access Sub-Strategy for Africa: Commodity Exchanges, Warehouse Receipt Systems, and New Standards* (AfDB Report, 2017); Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) xi; Mario J Miranda, Francis M Mulangu and Francis H Kemeze, 'Warehouse Receipt Financing for Smallholders in Developing Countries: Challenges and Limitations' (2019) 50 Agric Econ 629; Iliya Bawa, 'Enhancing Competitiveness of Agro Commodity Marketing in Nigeria' in Bassey Anam and Nathaniel Ozigbo (eds), *Development Perspectives in Economics, Public Finance and Entrepreneurship* (Advanced 2019) 37; Elizabeth Mwaniki and others, 'Investments in Warehouse Receipt Systems Urgently Needed to Reduce Food Waste and Post-harvest Losses in Nigeria' <<https://agra.org/wp-content/uploads/2023/03/Policy-Brief-Nigeria-Warehouse-Receipt-Systems.pdf>> accessed 27 May 2024; The Nigerian Economic Summit Group, 'National Independent Warehouse Receipt System Bill FactBook' (Financial System Strategy, 2020) 4 <<https://agra.org/wp-content/uploads/2019/12/Nigeria-National-Warehouse-Receipt-System-Bill-Factbook.pdf>> accessed 12 July 2022; Richard Downie, *Growing the Agriculture Sector in Nigeria* (CSIS Report, 2017).

<sup>1955</sup> *ibid.*

<sup>1956</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2016; see also The Nigerian Independent Warehouse Regulatory Agency (Establishment, Etc.) Bill 2018, The Warehouse Receipts and Other Related Matters Bill 2020; The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022.



I proposed that where the above aims of the research are achieved, and Nigeria adopts the recommendations made, farmers will easily obtain finance from creditors using WRs as collateral, improving their business and positively impacting domestic production, storage, commodity exchange and export.<sup>1957</sup> This will equally help in achieving the first and second United Nations (UN) Sustainable Development Goals (SDGs), which are to end poverty in all its forms everywhere; end hunger, achieve food security, improve nutrition, and promote sustainable agriculture.<sup>1958</sup> Thus, the agricultural sector will be strengthened as a better source of income for Nigeria than crude oil.

I achieved the aims of this research by evaluating the form of WRs that will be more suitable for Nigeria to facilitate farmers' access to finance. This was the motive behind the formulation of the first research question.<sup>1959</sup> It became pertinent to analyse which form of WR creditors will trust the more to minimise some of the risks involved in lending to farmers, especially MSMEs, and the one that will be more efficient in WR transactions generally. This also helped determine why WRs were not effectively utilised as collateral by farmers, which caused their problem of poor access. In the end, it was established that electronic warehouse receipts (e-WRs) are more suitable for Nigeria than paper WRs and will be more efficient in mitigating the challenge of poor access to finance for farmers in Nigeria. This will be explained further in the primary outcome of this study in section 8.2.1. Therefore, this study is essential because e-WRs are relatively new in Commercial Law, and this thesis has evaluated how they can be employed in Nigeria to improve its economy through their utilisation as collateral by farmers.<sup>1960</sup>

I also achieved the purpose of this research by examining the concept of property in Nigeria to determine whether e-WRs can be recognised as property and whether security interests

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<sup>1957</sup> A T Adewale and others, 'Effect of Credit to Farmers and Agricultural Productivity in Nigeria' (2022) 1(3) East Asian J Multidiscip Res 377; see also Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 9; see also UNIDROIT, 'Study LXXXIII: Model Law on Warehouse Receipts' (UNCITRAL/ UNIDROIT, 30 March 2021) <<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>> accessed 18 May 2023; see also Jonathan Coulter and Gideon Onumah, 'The Role of Warehouse Receipt Systems in Enhanced Commodity Marketing and Rural Livelihood in Africa' (2002) 27 Food Policy 319, 323.

<sup>1958</sup> Department of Economic and Social Affairs, *Global Sustainable Development Report 2023: Times of Crisis, Times of Change - Science for Accelerating Transformations to Sustainable Development* (UN 2023); see also International Centre for Trade and Sustainable Development (ICTSD), *Achieving Sustainable Development Goal 2: Which Policies for Trade and Market* (ICTSD 2018) 35; The United Nations Sustainable Development Goals Report (2022) UN Doc 22-04175.

<sup>1959</sup> The first research question was, 'What Form of Warehouse Receipt Will Be More Suitable in Nigeria to Facilitate Access to Finance for Farmers and Enhance Nigeria's Economy?'

<sup>1960</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) xi; see also Chapter Two, s 2.5 - 2.6.3.

can be created over them to allow them to be used as collateral by farmers and accepted as security by creditors. This was the idea behind the second research question.<sup>1961</sup> In addition, I achieved the aims of this study by conducting a feasibility study to appraise the prospect of productively operating a WR system that solely permits the use of e-WRs, that is, the electronic warehouse receipt system (e-WR system) in Nigeria, to mitigate the challenge of farmers' poor access to finance. This creates a potential picture of how the e-WR system will work if Nigeria adopts it. This was the basis for the third research question in this study.<sup>1962</sup>

Furthermore, in attaining the purpose of this study, I employed the doctrinal research methodology to examine the letters of the law directly, that is, statutes, cases, and principles.<sup>1963</sup> In addition to this, I equally consulted various secondary data in the public domain to support the answers to the research questions. Along with the methodology, I adopted law reform, functionalism, and legal transplants as theoretical frameworks, which shaped the answers to the questions raised in this thesis to achieve the research aims.<sup>1964</sup> These theoretical frameworks and their application in this study will be recapitulated when outlining the outcome of this research.

The following highlights the result of this study and summarises the main recommendations made to encourage Nigeria to adopt e-WRs and support the operation of the e-WR system.

## **8.2. Primary Outcome of the Research and Key Recommendations**

Although all the information in this research is important, this section reflects vital areas that highlight the major result of this study. This section also exhibits how I achieved the aim of this study by analysing the research questions identified in sections 1.4.1 to 1.4.3 of this thesis.

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<sup>1961</sup> The second research question was, 'Can the Form(s) of Warehouse Receipts Identified as Suitable for Nigeria be Considered Property in Nigeria, and Can Security Interests be Created over Them?'

<sup>1962</sup> The third research question was, 'Is There a Potential for Successfully Operating the Warehouse Receipt System in Nigeria with the Form(s) of Warehouse Receipt Selected, and How Can it be Managed to Facilitate Access to Finance for Farmers while Improving Nigeria's Economy?'

<sup>1963</sup> Rita Abhavan Ngwoke, Ibiene P Mbano and Oriaifo Helynn, 'A Critical Appraisal of Doctrinal and Non-Doctrinal Legal Research Methodologies in Contemporary Times' (2023) 3(1) Intl J Civ L Leg Res 8, 9.

<sup>1964</sup> Chapter One, s 1.5.

### **8.2.1. Research Question One: What Form of Warehouse Receipt Will Be More Suitable in Nigeria to Facilitate Access to Finance for Farmers and Enhance Nigeria's Economy?**

I considered this research question because it was identified in section 1.1 of this thesis that there are two forms of WRs. This naturally aroused interest in inquiring which form of WR would be more suited for Nigeria. Moreover, modern paper WRs have existed in commercial transactions since the 19<sup>th</sup> century, as indicated in section 2.3 of this thesis.<sup>1965</sup> Yet, the problem of access to finance for businesses like commercial farmers persists even in Nigeria.<sup>1966</sup> However, in the historical development of e-WRs contained in section 2.3.1 of this thesis, I indicated that e-WRs, which originated in the United States in 2003, enhanced professionalism and transparency in e-WR transactions and led to easy access to finance for cotton farmers since creditors could trust e-WRs as collateral due to their transparency.<sup>1967</sup>

Since Nigeria does not have WRs legislation, and the few private companies like the Africa Exchange or AFEX Commodities Exchange Limited (AFEX) that operate the WR system adopt paper WRs, it became imperative to examine whether Nigeria should uphold paper WRs while passing the WR Bill into law or whether it should consider e-WRs as they facilitated access to finance in countries like the United States due to their transparency.<sup>1968</sup>

In answering this question, I applied the functional comparative law theoretical framework, which is based on comparing laws or principles that perform a similar function, to address a problem in a jurisdiction which leads to a reform.<sup>1969</sup> I compared paper WRs and e-WRs, which perform similar functions according to section 2.6 of this thesis, to find the more suitable WR

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<sup>1965</sup> Bob Baulch and others, 'Commodity Exchange and Warehouse Receipts in Malawi: Current Status and their Implications for the Development of Structured Markets' (2018) IFPRI Malawi Working Paper 25, 1 <<http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/132922/filename/133133.pdf>> accessed 4 June 2021.

<sup>1966</sup> Babajide Fowowe, 'The Effects of Financial Inclusion on Agricultural Productivity in Nigeria' (2020) 22(1) J Econ Dev 61.

<sup>1967</sup> Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) Ariz J Intl Comp L 205; see also UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Issue Paper' (2020) Study LXXXIII-WG1-Doc 3, 21 <<https://www.unidroit.org/english/documents/2020/study83/wg01/s-83-wg01-03-e.pdf>> accessed 6 July 2021.

<sup>1968</sup> Bob Baulch and others, 'Commodity Exchange and Warehouse Receipts in Malawi: Current Status and their Implications for the Development of Structured Markets' (2018) IFPRI Malawi Working Paper 25, 6 <<http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/132922/filename/133133.pdf>> accessed 4 June 2021; see also Ari M Pozez, 'A Roadmap to Better Understanding the Issuance and Transfer of Negotiable Electronic Warehouse Receipts in the American Cotton Trade' (2016) 33(1) Ariz J Intl Comp L 205.

<sup>1969</sup> Rudolf B Schlesinger and others, *Comparative Law: Cases, Text, Materials* (5<sup>th</sup> edn, Foundation 1988).

to facilitate access to finance for farmers in Nigeria.<sup>1970</sup> This comparison was made by examining the characteristics of both forms of WR.<sup>1971</sup>

I found that e-WRs are better because they are more secure.<sup>1972</sup> That is, unlike paper WRs, e-WRs contain some encryption and have an additional requirement for passwords like many electronic platforms, which makes unauthorised access difficult.<sup>1973</sup> In addition, I discovered that e-WRs are more reliable than paper WRs as they minimise the chances of the wrong person gaining the right to proof of ownership. This is because the software or system that controls the e-WR can be designed to allow the user of an e-WR to view other participants in the e-WR transaction and enable the participants to monitor the activities happening in the transaction instantaneously.<sup>1974</sup> This makes e-WR transactions more transparent than that of paper WRs.

I equally demonstrated in this research that e-WRs are faster than paper WRs.<sup>1975</sup> This is because transactions can be done anywhere and at any time since e-WRs break geographical barriers.<sup>1976</sup> Thus, e-WRs will be cheaper for farmers, particularly MSMEs, who would save some costs, like transportation costs, in the transaction.<sup>1977</sup>

In answering the second research question, I discovered that unlike paper WRs, which have to be issued as a single document to make transactions faster, it is immaterial how e-WRs are

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<sup>1970</sup> *ibid*; see also World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (WBG Guide, 2016) 3; Su Lei and Wang Haiying, 'Analysis of Electronic Warehouse Receipts of Bulk Commodity in Supply Chain Finance Practice' (2020 International Conference on Computer Information and Big Data Application (CIBDA), Guiyang, 17-19 April 2020) 35.

<sup>1971</sup> Chapter Two of this Thesis, s 2.6.1-2.6.3.

<sup>1972</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; see also Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Report, Law Com No 405, 2022) para 6.17.

<sup>1973</sup> *ibid*; see also Arkan Mahmood and Ibrahim Taner Okumus, 'Design and Implementation of an Electronic Document Management System' (2017) 1(1) Mehmet Akif Ersoy Üniversitesi Uygulamalı Bilimler Dergisi 9.

<sup>1974</sup> Michael Crosby, 'Blockchain Technology: Beyond Bitcoin' (2016) 2 Applied Innov Rev 6; see also Zibin Zheng and others, 'An Overview of Blockchain Technology: Architecture, Consensus, and Future Trends' (2017) 85 Inst Elect Eng Comput Soc 557; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 725; Chapter Two of this Thesis, s 2.6.2

<sup>1975</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801, 805; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 725; Chapter Two of this Thesis, s 2.6.3.

<sup>1976</sup> *ibid*.

<sup>1977</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) Econ Agric 801, 805, see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) Unif L Rev 716, 724-25.

issued since they erase the rigorous process involved in issuing WRs as double documents due to their technological advantage of speed depending on the software the e-WR uses.<sup>1978</sup> This same technological advantage of e-WRs, which also makes participants of e-WR transactions monitor the transaction in real-time, eliminates the difficulties in transferring WRs due to non-negotiability.<sup>1979</sup> It equally enables e-WRs to combat fraud better than non-negotiable WRs since the system can prevent duplicity of documents, detect forged signatures, and mitigate similar elements that could lead to forgery or fraud in the transaction.<sup>1980</sup> This could be why paper WRs are associated with negotiable and non-negotiable WRs, while e-WRs are more often than paper WRs linked with negotiable WRs.<sup>1981</sup>

Therefore, I recommend e-WRs as a better option than paper WRs for adoption in Nigeria to facilitate access to finance for farmers who will use them as collateral. This is because e-WRs are more efficient than paper WRs as they are faster, safer, more reliable, transparent, accessible, make for cheaper transactions, and break geographical barriers.

Even with the above recommendation, I considered whether Nigeria should solely adopt e-WRs or combine them with paper WRs. In section 2.6.4 of this thesis, I argued that e-WRs differ from paper WRs, although they have similar definitions and functions. This is because e-WRs have far better features than paper WRs in terms of speed, security, transparency, and others. Since the efficacy of e-WRs has been established, should Nigeria still consider using paper WRs, especially as it was indicated in section 2.5 of this research that the world is fast transitioning digitally?<sup>1982</sup>

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<sup>1978</sup> *ibid.*

<sup>1979</sup> Michael Crosby, 'Blockchain Technology: Beyond Bitcoin' (2016) 2 *Applied Innov Rev* 6; see also Zibin Zheng and others, 'An Overview of Blockchain Technology: Architecture, Consensus, and Future Trends' (2017) 85 *Inst Elect Eng Comput Soc* 557; Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 725.

<sup>1980</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805, see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 724-25.

<sup>1981</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 2(3)(a) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; see also Marek Dubovec and Adalberto Elias, 'A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts' (2017) 22(4) *Unif L Rev* 716, 722; Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 9.

<sup>1982</sup> Alan J Malter and Aric Rindfleisch, 'Transitioning to a Digital World' (2019) 16 *Rev Market Res* 1; see also UNCTAD Digital Economy Report 2019- Value Creation and Capture: Implication for Developing Countries (4 September 2019) UNCTAD Doc UNCTAD/DER/2019.

Making Nigeria adopt a WR legislation that enables the simultaneous use of paper WRs and e-WRs implies that in a short time, Nigeria will have to amend its WR legislation to make it compatible with the sole use of e-WRs. This will waste time and resources as legislators would have to go through the rigorous amendment process to remove every trace of paper WRs, its terminology and techniques, rather than doing it just once now that the potential statute is a Bill.

Besides, some farmers with devious tendencies could prefer paper WRs because they can be manipulated easily and are more susceptible to fraud, as demonstrated in the notorious Qingdao incident recounted in section 2.6.3 of this thesis.<sup>1983</sup> This means that financial institutions generally will not trust WRs as reliable security, and this defeats the purpose of this research, which is to facilitate access to finance for farmers using e-WRs as collateral.

Furthermore, adopting a WRs legislation which provides for the co-existence of paper WRs and e-WRs in Nigeria can create an avenue for the total abandonment of e-WRs. This is because some farmers, especially those in rural areas, could assume that e-WRs are automatically challenging to use since they are digital.<sup>1984</sup> This could drive them to choose paper WRs, which they may believe is supposedly convenient. In contrast, all that is required for farmers and even other potential stakeholders of the e-WR system in Nigeria is creating awareness and capacity-building exercise. This is discussed below.

#### **8.2.1.1. Capacity Building and Awareness**

The creation of awareness is one of the tools needed to disseminate information about e-WRs when they are introduced in Nigeria. In other words, without creating adequate awareness for all the stakeholders that will potentially be involved in the e-WR system in Nigeria, that is, the farmers, financial institutions, the legislature, executive and judicial arms of government, among others, the recommendations in this study will not yield much impact. Moreover, it has been identified in section 1.3 of this thesis that one of the significances of this research is to create awareness to draw the interest of more researchers to the topic of utilising e-WRs by farmers, especially as collateral to enhance access to finance and proffer a solution to the dwindling Nigerian economy.

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<sup>1983</sup> Meng Meng and others, 'Qingdao Metals Scandal Accused Handed 23-Year Jail Term' Reuters (Asia, 10 December 2018); see also Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805.

<sup>1984</sup> Grace Aladi Achukwu and others, 'Factors Affecting the Rate of Adoption of Agricultural Technology Among Small Scale Rice Farmers in Gwagwalada Area Council of FCT Nigeria' (2023) 8(2) *J Agric Sci Pract* 30.

Conducting capacity-building exercise for the stakeholders of the e-WR system is also expedient in Nigeria. This is because many good ideas, for example, the ones presented in research, whether new or old ones depicted in new forms, get lost and may not be utilised to solve the need that warranted the formulation of the ideas in the first place.<sup>1985</sup> Hence, it is essential for the stakeholders to commit to participating in implementing the ideas that bring about change.<sup>1986</sup> The capacity-building exercise required in this research involves a multi-level learning process to induce change in the potential stakeholders of the e-WR system and reinforce their self-adaptive capabilities.<sup>1987</sup> This could be done through different forms of training, including technological awareness.<sup>1988</sup>

I recommend that all the stakeholders of the e-WR system should be enlightened on using e-WRs in Nigeria by employing various tools like social media, television, radio, mobile phones, posters, t-shirts, newspapers, and billboards, among others.<sup>1989</sup> I equally submit that through outreaches, campaigns, and press releases, farmers can be educated on the benefits of participating in the e-WR system, especially in using e-WRs as collateral, even if they are smallholders and located in rural areas.<sup>1990</sup>

The executive arm of government, through its ministries and agencies like the National Information Technology Agency (NITDA), the Central Bank of Nigeria (CBN), the Ministry of Agriculture Rural Development, and others, can organise training for farmers and financial institutions on e-WRs, especially as it relates to secured transactions, through events like conferences, workshops, reports, publications, briefings and contributions to educational material, among others.<sup>1991</sup> These institutions can equally create awareness about e-WRs through materials like Billboards, social media, t-shirts, and others.<sup>1992</sup>

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<sup>1985</sup> Terrence Morrison, *Actionable Learning: A Handbook for Capacity Building Through Case Based Learning* (Asia Dev Bank Inst 2001).

<sup>1986</sup> *ibid.*

<sup>1987</sup> *ibid*; see also Sonja Klinsky and Ambuj D Sagar, 'The Why, What and How of Capacity Building: Some Explorations' (2022) 22(5) *Clim Pol* 549.

<sup>1988</sup> *ibid.*

<sup>1989</sup> Nicole Cardinal and others, *SDG Accountability Handbook: A Practical Guide for Civil Societies* (TAP Network 2018); see also Democratic Control of Armed Forces (DCAF) and The United Nations Development Programme (UNDP), *Public Oversight of the Security Sector: A Handbook for Civil Society Organisations* (UNDP 2008).

<sup>1990</sup> *ibid.*

<sup>1991</sup> Nicole Cardinal and others, *SDG Accountability Handbook: A Practical Guide for Civil Societies* (TAP Network 2018) 80; see also Democratic Control of Armed Forces (DCAF) and The United Nations Development Programme (UNDP), *Public Oversight of the Security Sector: A Handbook for Civil Society Organisations* (UNDP 2008) 26; 75; National Information Technology Development Agency Act 2007, s 6(a);(g);(j); Banks and Other Financial Institutions Act 2020, s 30(1); s 56(1); Federal Ministry of Agriculture and Rural Development, *National Agricultural Technology and Innovation Policy (NATIP) 2022-2027* (Yetomka 2022) vi.

<sup>1992</sup> *ibid.*

In addition, I argued that although some of the financial institutions in Nigeria have the prospects of being creditors in the potential e-WR system, many farmers, particularly MSMEs, do not know about them. For instance, in section 6.3.5 of this thesis, I found that Finance Companies (FCs) can be efficient creditors in the e-WR system because they are known for providing credit to MSMEs, including agricultural loans and WR finance.<sup>1993</sup> They equally guarantee that the quality and quantity of the goods in the warehouse are the same as specified by the grantor.<sup>1994</sup> However, many farmers are unaware of their existence.<sup>1995</sup>

Therefore, I urge the government, through its agencies like CBN and the Federal Ministry of Agriculture and Rural Development, to support the above financial institutions in creating awareness about their readiness for e-WR finance, using tools like campaigns, outreaches, social media and others.<sup>1996</sup> They can also sponsor events like conferences and workshops.<sup>1997</sup> The target audience for these events is farmers, including other businesses like warehouse operators and financial institutions. The above government agencies can make regulations and policies to direct financial institutions to take their publicity seriously.<sup>1998</sup>

I also recommend that the training and awareness should not only enlighten farmers about the existence and availability of these institutions for e-WR finance, but they should equally educate them about credit facilities and products that will be most suitable for them when using e-WRs as collateral.<sup>1999</sup> In other words, the program should increase farmers' financial literacy, especially smallholders. This will mitigate the issue of adverse selection, one of the types of information asymmetry identified in section 7.6 of this research, which could occur when farmers are taken advantage of by financial institutions or excluded from obtaining credit due to their lack of financial literacy.<sup>2000</sup> CBN should provide attractive incentives to reward financial institutions that would create awareness about the e-WR finance available for

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<sup>1993</sup> Financial Policy and Regulation Department, 'Revised Guidelines for Finance Companies in Nigeria' (2014) CBN Guideline <<https://www.cbn.gov.ng/out/2014/ccd/revised%20guidelines%20for%20finance%20companies%20in%20nigeria.pdf>> accessed 9 January 2024.

<sup>1994</sup> *ibid.*

<sup>1995</sup> Chapter Six of this Thesis, s 6.3.5.

<sup>1996</sup> Nicole Cardinal and others, *SDG Accountability Handbook: A Practical Guide for Civil Societies* (TAP Network 2018) 80; see also Democratic Control of Armed Forces (DCAF) and The United Nations Development Programme (UNDP), *Public Oversight of the Security Sector: A Handbook for Civil Society Organisations* (UNDP 2008) 26; 75.

<sup>1997</sup> *ibid.*

<sup>1998</sup> Banks and Other Financial Institutions Act 2020, s 30(1); s 56(1).

<sup>1999</sup> Elaine Tinsley and Natalia Agapitova, *Private Sector Solutions to Helping Smallholders Succeed: Social Enterprise Business Models in the Agriculture Sector* (WBG 2018) 5.

<sup>2000</sup> *ibid.*



farmers, especially MSMEs.<sup>2001</sup> It should also provide a more attractive incentive for those who offer flexible and easy credit to farmers using e-WRs as collateral.<sup>2002</sup>

Furthermore, considering the potential benefits of non-interest banks towards the use of e-WRs as collateral due to their no-interest policy, I recommend that the government, through its agencies like CBN, should partner with non-interest banks to create awareness in parts of Nigeria that do not practise Sharia law to enlighten them that the spread of the bank's branches to those areas is not a ploy to Islamise Nigeria; and that non-Muslims can also be customers of the banks.<sup>2003</sup> I also implore the government to influence universities and professional bodies like the Institute of Chartered Accountants of Nigeria (ICAN), the Council of Legal Education, and others to train more professionals knowledgeable in accounting, economics, law and auditing in non-interest banks.<sup>2004</sup>

The judiciary should be substantially knowledgeable about the existence and use of e-WRs to enable them to resolve disputes emanating from e-WRs. This can be done by introducing the e-WR system in the Commercial Law curriculum in universities' law departments, and in the Corporate and Property Law practice of the Nigerian Law School. The Federal Ministry of Justice, the Council of Legal Education, the Body of Benchers, the Nigerian Bar Association, and the Deans of various university law departments in Nigeria should be responsible for broadening the knowledge of e-WRs in the judiciary. There should also be training and the creation of awareness on the use of e-WRs for members of the Bar and Bench through webinars, conferences, and workshops, among others.<sup>2005</sup>

The legislature should create awareness of e-WRs, especially how they facilitate access to finance, in its plenary sessions and committee meetings by working with the media, contributing to educational material, and holding campaigns in its constituencies, among other means.<sup>2006</sup> This will enlighten different groups like farmers, warehouse operators, and financial institutions on e-WRs.

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<sup>2001</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 70.

<sup>2002</sup> *ibid.*

<sup>2003</sup> Chapter Six of this Thesis, s 6.3.4; see also Nuruddeen Abba Abdullahi, 'Islamic Banking in Nigeria: Issues and Prospects' (2016) 4(2) J Emerg Econ Islam Res 1, 11; Michael Takim Otu and Miebaka Nabiebu, 'Challenges and Prospects of Non-Interest (Islamic) Banking System in Nigeria' (2019) 6(7) Intl J Humanit Soc Sci Edu 100, 103.

<sup>2004</sup> *ibid.*

<sup>2005</sup> Nicole Cardinal and others, *SDG Accountability Handbook: A Practical Guide for Civil Societies* (TAP Network 2018) 80; see also Democratic Control of Armed Forces (DCAF) and The United Nations Development Programme (UNDP), *Public Oversight of the Security Sector: A Handbook for Civil Society Organisations* (UNDP 2008) 26; 75.

<sup>2006</sup> *ibid.*

Since the e-WR system is digital, I recommend that all stakeholders in the e-WR system be digitally aware by obtaining basic IT training to enable them to participate effectively in the e-WR system.<sup>2007</sup> Moreover, some modes of disseminating information on e-WRs, such as social media, require this basic knowledge.<sup>2008</sup> Therefore, I urge the government, through its agencies like NITDA, to create digital awareness and train stakeholders, such as farmers and warehouse operators, in information technology (IT) to improve digital literacy in Nigeria.<sup>2009</sup> Private organisations can also create awareness and train stakeholders to enhance digital literacy in Nigeria as a form of their Corporate Social Responsibility to improve digital literacy in Nigeria.<sup>2010</sup> The government, through its legislature and executive arms, can initiate and enforce policies that bridge the gap and digital divide in Nigeria by paying attention to digitalising rural areas like urban areas.<sup>2011</sup>

I recommend that service providers or the central registry, depending on the option of issuance and registration of e-WRs Nigeria adopts as discussed in sections 6.2.1.3 and 6.2.1.4 of this research, should acquire multi-level learning and skills to ensure that handling of data is prioritised in their activities and done according to the Nigerian Data Protection Act 2023 (NDPA).<sup>2012</sup> Thus, they should employ every technological and institutional operational measure available to them, like installing applications such as firewalls, encryption, and others, to prevent unauthorised access.<sup>2013</sup> This will strengthen the reliability of e-WRs and maintain faith in the e-WR system by stakeholders, especially farmers and financial institutions.<sup>2014</sup>

E-WRs will be new to different stakeholders in Nigeria, even to government organisations like NITDA, CBN, and others assigned the responsibility of capacity building and creating awareness in this research. This implies they can only carry out the exercise if trained on e-WRs and the e-WR system. Therefore, these institutions can temporarily retain the services of external consultants or private organisations that are professionals in e-WRs to carry out

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<sup>2007</sup> Chapter Seven of this Thesis, s 7.5.

<sup>2008</sup> Nicole Cardinal and others, *SDG Accountability Handbook: A Practical Guide for Civil Societies* (TAP Network 2018) 80; see also Democratic Control of Armed Forces (DCAF) and The United Nations Development Programme (UNDP), *Public Oversight of the Security Sector: A Handbook for Civil Society Organisations* (UNDP 2008) 26; 75.

<sup>2009</sup> National Information Technology Development Agency Act 2007, s 6(a);(g);(j).

<sup>2010</sup> Olanrewaju David Adeyanju, 'An Assessment of the Impact of Corporate Social Responsibility on Nigerian Society: The Examples of Banking and Communication Industries' (2012) 1(1) *Univers J Market Bus Res* 17, 29.

<sup>2011</sup> Chapter Seven, s 7.5.1; see also Okoye Nonso Sunday, Uchenna Timothy Umeifekwem and Okechukwu Innocent Eme, 'Addressing Digital Technology Gap Challenges: The Nigerian Experience' (2023) 11(1) *Nig J Soc Dev* 95.

<sup>2012</sup> Chapter Seven of this Thesis, s 7.5.2.1; see also Nigerian Data Protection Act 2023, s 1; 46(1); 47(2); 48(1)-(5).

<sup>2013</sup> Chapter Seven of this Thesis, s 7.5.2.2.

<sup>2014</sup> Chapter Seven of this Thesis, s 7.5.2.

the training.<sup>2015</sup> With time, the trained institutions will continue training and awareness without the help of external consultants or bodies.<sup>2016</sup>

Nevertheless, certain setbacks, like cost implications, could affect the practical achievement of retaining external consultants or private companies who are experts in e-WRs and the e-WR system.<sup>2017</sup> Thus, the government needs to allocate a significant amount of funds to employ the services of external consultants and private firms.<sup>2018</sup> Also, corruption could impede the practical implementation of capacity building since government officials and the agencies involved could embezzle the funds set out to carry on the exercise.<sup>2019</sup>

Even with the above, since e-WRs perform exceedingly better than paper WRs, I maintain that Nigeria should adopt only e-WRs because equating them as alternatives to paper WRs is impractical. Moreover, I identified workable means through which stakeholders can learn about e-WRs and the e-WR system, and how to use them when adopted in Nigeria, even though there are some limitations like corruption and the availability of government funds that could impact the effective implementation of the capacity building exercise. It is also essential to reflect on whether there is a need for a transition period when Nigeria adopts WRs legislation that solely supports e-WRs.

#### **8.2.1.2. The Requirement for a Transition Period When a Legislation that Supports Electronic Warehouse Receipts is Adopted in Nigeria**

I identified in sections 2.3.2 and 5.7 of this research that AFEX operates paper WRs in Nigeria.<sup>2020</sup> However, only a few farmers utilise them because they are not well known, and Nigeria needs a WR legislation.<sup>2021</sup> Due to the absence of a WR legislation, introducing e-WRs in Nigeria will not require a set transition period as there is no existing legislation on WRs to

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<sup>2015</sup> Muhammad Abdullahi and Abubakar Sadiq Sallau, 'Benefits and Challenges of Outsourcing on Service Delivery: Lessons for Nigerian Public Organisations' (2019) 4(4) U Port Harcourt J Manag 26; see also M Howlett and A Migone, 'Policy Advice Through the Market: The Role of External Consultants in Contemporary Policy Advisory Systems' (2013) 32 Pol Soc 241.

<sup>2016</sup> *ibid.*

<sup>2017</sup> M Howlett and A Migone, 'Policy Advice Through the Market: The Role of External Consultants in Contemporary Policy Advisory Systems' (2013) 32 Pol Soc 241.

<sup>2018</sup> *ibid.*

<sup>2019</sup> U E Uwak and Anieti Nseowo Udofia, 'Corruption in Nigeria's Public Sector Organizations and its Implications for National Development' (2016) 7(3) Mediterr J Soc Sci 27.

<sup>2020</sup> Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 19; see also Bob Baulch and others, 'Commodity Exchange and Warehouse Receipts in Malawi: Current Status and their Implications for the Development of Structured Markets' (2018) IFPRI Malawi Working Paper 25, 6 <<http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/132922/filename/133133.pdf>> accessed 4 June 2021.

<sup>2021</sup> *ibid.*

transition from.<sup>2022</sup> Applying the wholesale law reform theoretical framework, I proposed a significant transformation of the WR Bill to an Act that provides solely for e-WRs by using soft laws, such as a draft of the International Institute for the Unification of Private Law (UNIDROIT) and the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Warehouse Receipts (draft MLWR). Accordingly, there is no fixed period for the training of stakeholders and capacity building exercise required to efficiently utilise the e-WR system, as it will take a gradual process for stakeholders to adapt to the e-WR system.

The above will be like any other new law introduced in Nigeria that has not existed, and where the stakeholders affected by the new law have to learn how to apply it gradually. For instance, as stated in section 2.3.2 of this thesis, the National Information Technology Development Agency Act 2007 (NITDAA) was enacted to promote IT in Nigeria, as it was a relatively new trend in Nigeria when many documents were paper-based.<sup>2023</sup> However, instead of providing a transition period for stakeholders who utilised physical means for documentation to transition into the digital mode, the law established IT Parks nationwide.<sup>2024</sup> That is, platforms that would help stakeholders adapt to the use of IT.<sup>2025</sup> The provision of these IT parks guarantees a more gradual and more effective transition period rather than putting a specific timeframe in the law to enable stakeholders to get used to IT.

In sections 6.2.1.3 and 6.2.1.4 of this study, I indicated that brokers and telephonic trading centres, which are usually private establishments, will help farmers who need to be more conversant with IT.<sup>2026</sup> However, like the IT Parks provided by the NITDAA, I recommend that the scope of the brokers and telephonic trading centres should not be limited to helping farmers carry out e-WR transactions but should be extended to provide training for other stakeholders of the e-WR system.

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<sup>2022</sup> Chapter Five, s 5.7.

<sup>2023</sup> National Information Technology Development Agency Act 2007, s 6 (c).

<sup>2024</sup> National Information Technology Development Agency Act 2007, s 6(g-h); s 19.

<sup>2025</sup> *ibid.*

<sup>2026</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa, 2011-2018' (2020) IFPRI Malawi Working Paper 35, 2 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAoGI](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAoGI)> accessed 3 January 2022; see also Electronic Silo Certificates, 'About' <<http://www.silocerts.co.za/about.html>> accessed 5 June 2023; The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 30.

Since brokers and telephonic trading centres are private establishments, I recommend that the Nigerian government, through the Agency established by the WR Bill, the Nigerian Independent Warehouse Regulatory Agency (the Agency), should provide incentives like tax holidays to enable more individuals or companies to become brokers and set up telephonic trading centres that will help enlighten stakeholders of e-WRs on how to adapt to the prospective new legislation.<sup>2027</sup> This transition system is better because it is gradual rather than providing a specific transition timeframe, which could lead to a rushed and ineffective practice of the e-WR system. This will be detrimental to e-WR transactions.

When Nigeria adopts WRs legislation based only on e-WRs, the few farmers who already use paper WRs will need to convert their documents into e-WRs. It was stated in section 5.7 of this thesis that conversion from paper WRs to e-WRs is not the same as transitioning from a law that supports paper WRs to one that provides solely for e-WRs. I indicated that a reliable process enshrined in Article 12 of the UNCITRAL Model Law on Electronic Transferable Records (MLETR) should be followed, and the converted document must indicate that it has been converted from paper WR to e-WR.<sup>2028</sup> Nevertheless, since the conversion process will be done digitally by the proposed service providers or central registry, as discussed in sections 6.2.1.3 and 6.2.1.4 of this study, it is submitted that the conversion process would be quick.<sup>2029</sup>

### **8.2.2. Research Question Two: Can the Form of Warehouse Receipts Identified as Suitable for Nigeria be Considered Property in Nigeria, and Can Security Interests be Created over Them?**

Since it was indicated that e-WRs are better for Nigeria than paper WRs, for e-WRs to promote access to finance for farmers in Nigeria, they must be recognised as property, and the law has to enable security interests to be created on them. In analysing the possibility of e-WRs being property, I explored the various definitions attributed to property, which consisted of the highest rights definition, bundle of rights, exclusionist and social constructivist definitions of property.<sup>2030</sup> I found that the abstract legal relations between individuals and the rights

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<sup>2027</sup> National Information Technology Development Agency Act 2007, s 19(2).

<sup>2028</sup> UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 17(2).

<sup>2029</sup> Vlado Kovačević and others, 'Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts' (2016) 3 (63) *Econ Agric* 801, 805.

<sup>2030</sup> Kevin Gray, 'Property in Thin Air' (1991) 50(2) *Cambridge LJ* 252, 296; see also Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1913) 23(1) *Yale LJ* 16, 23-24; Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) *DePaul L Rev* 481, 485-96; David J Seipp, 'The Concept of Property in the Early Common Law' (1994) 12(1) *L Hist Rev* 29, 80; John Cowell, *The Interpreter* (1<sup>st</sup> edn, Scolar 1607); Chapter Three of this Thesis, s 3.2.

attributed to a 'thing' constituted the definition of property rather than the 'thing' itself.<sup>2031</sup> Thus, e-WRs can be regarded as property in Nigeria where a person can create a legal relationship with another over an e-WR and where a person can have exclusive control over the e-WR with the right to exclude others from the e-WR, although the law limits this right.<sup>2032</sup> Nevertheless, these rights and relations must be within the ambit of the Nigerian laws.<sup>2033</sup>

I demonstrated an effective means of determining whether a person can create a legal relation over an e-WR in Nigeria by investigating the status of e-WRs in Nigeria. Recall that in sections 2.2.1 and 3.4 of this thesis, it was indicated that the status of WRs in a country determines how they are used. For instance, in the United States, an e-WR is recognised as a document of title, which implies that it serves as evidence of deposit and can be transferred to another party.<sup>2034</sup> Since it can be transferred from one party to another, I submitted that a security interest, that is, a legal relationship between a grantor and creditor, can be created on it.<sup>2035</sup> I demonstrated that this is in contrast with jurisdictions like England and Wales, where WRs, in general, are not recognised as documents of title. Thus, e-WRs are not transferable instruments in this jurisdiction.<sup>2036</sup> Rather, a bailment relationship between the depositor of the goods and the warehouse operator is created.<sup>2037</sup>

Following the definition of property in the first paragraph of this section, I inferred that since legal relations can be created in e-WRs in both examples of jurisdictions above, with the right to have control and exclude others from the control of the e-WR; thus, e-WRs can be recognised as property in both jurisdictions, unless their laws hold otherwise. The difference is that with jurisdictions that recognise e-WRs as documents of title, e-WRs can be used as collateral, whereas this is not possible in countries like England and Wales, where e-WRs are not documents of title.

I demonstrated that although Nigeria does not have a WR legislation, the potential status of e-WRs can be inferred from its WR Bill. Based on the above analysis, since the WR Bill

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<sup>2031</sup> *ibid.*

<sup>2032</sup> *ibid.*

<sup>2033</sup> Kevin Gray, 'Property in Thin Air' (1991) 50(2) Cambridge LJ 252, 296; see also Glen Anderson, 'Towards an Essentialist Legal Definition of Property' (2019) 68(3) DePaul L Rev 481, 504.

<sup>2034</sup> Chapter Three of this Thesis, s 3.4; see also The Uniform Commercial Code 2001 § 1—201(16); see also The Uniform Commercial Code 2003, § 7-201-210; Eli Goldston and Paul J McKenzie, 'Documents of Title-Article 7 of the Uniform Commercial Code' (1962) 23 Ohio St J 280; Henry D Gabriel, 'The UNCITRAL Model Law on Electronic Transferable Records' (2019) 24 Unif L Rev 261, 262; World Bank Group, *A Guide to Warehouse Receipt Financing Reform: Legislative Reform: Legislative Reform* (WBG Guide, 2016) 3.

<sup>2035</sup> *ibid.*

<sup>2036</sup> *Natixis SA v Marex Financial & Anor* [2019] EWHC 2549 (Comm).

<sup>2037</sup> *ibid.*

recognises WRs as documents of title, legal relations can be created on e-WRs, and they can be used as collateral where Nigeria adopts them.<sup>2038</sup> Thus, they can be recognised as property and used as collateral where Nigeria adopts them.

Regarding the type of property e-WRs are, I submitted that e-WRs are documentary intangibles because they are construed for what they represent rather than their form.<sup>2039</sup> Hence, I contended that they should have the legal effect of possession, which means that they should determine the party with the right to claim the performance of the obligations relating to e-WRs.<sup>2040</sup> Following this, I submitted that e-WRs should be seen as possessed when a person has adequate control, that is, factual control of the document, enabling them to use, transfer or dispose of the e-WR.<sup>2041</sup>

Irrespective of the above, Nigeria does not recognise intangible assets as possessable.<sup>2042</sup> Therefore, I demonstrated that jurisdictions like Nigeria need to move forward from this notion because times have changed since the concept of possession was conceived, and the modern trends in commercial law support incorporeal assets such as electronic property.<sup>2043</sup> Based on this, I recommended that Nigeria emulate the United Kingdom (UK), which now recognises the possession of electronic commercial trade documents like e-WRs through the Electronic Trade Documents Act 2023.

Using the England and Wales Law Commission Report on Electronic Trade Documents, I further evaluated how Nigeria can achieve the same or similar result as the UK regarding the possession of e-WRs by testing factors, such as reliability, divestibility and others that can

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<sup>2038</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 104.

<sup>2039</sup> Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 626; see also Chapter Three of this Thesis, s 3.3.

<sup>2040</sup> Law Commission of England and Wales, 'Electronic Trade Documents: Summary' (Law Commission, 2022) 14-15 <<https://s3-eu-west-2.amazonaws.com/cloud-platform-e218f50a4812967ba1215eaecede923f/uploads/sites/30/2022/03/Electronic-Trade-Documents-summary-of-final-report-.pdf>> accessed 15 July 2024; Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.90; Chapter Three of this Thesis, s 3.3.1.1.

<sup>2041</sup> *ibid.*

<sup>2042</sup> *ibid.*; see also Mike A A Ozekhome, *Personal Property Law in Nigeria* (PULP 2019) 179; see also Michael Bridge, *Personal Property Law* (4th edn, OUP 2015) 31.

<sup>2043</sup> Sarah Green, 'To Have and to Hold? Conversion and Intangible Property' (2008) 71(1) Mod L Rev 114, 115; see also Sarah Green and William Vaudry, 'Electronic Trade Documents: The Law Commission's Provisional Proposals, the MLETR, and the Concept of Possession' (2021) 8 J Bus L 625, 630.

make e-WRs possessable.<sup>2044</sup> Through this analysis, I submitted that Nigeria has what it takes to recognise the possession of electronic trade documents such as e-WRs.<sup>2045</sup>

After exploring e-WRs as property, I amplified how security interests can be created on e-WRs to complete the answer to the second research question rather than merely mentioning that security interests can be created on e-WRs. I examined the Secured Transactions in Moveable Assets Act 2017 (STMAA), which improved Nigeria's secured transactions practices since its enactment.<sup>2046</sup>

In demonstrating how STMAA eliminated the English law-type classification of security interests into possessory and non-possessory, I revealed that Nigeria practices a unitary/functional approach to secured transactions adopted from the Uniform Commercial Code, Article 9 and the UNCITRAL Model Law on Secured Transactions.<sup>2047</sup> Thus, all security devices in Nigeria are treated the same, which means that security interests commence in the same way: through a security agreement between the grantor and the creditor.<sup>2048</sup>

Nonetheless, I contended that Nigeria is yet to attain a complete unitary/functional approach to secured transactions because STMAA recognises the creation of security interests in other statutes, like the Companies and Allied Matters Act 2020 (CAMA).<sup>2049</sup> Whereas a typical unitary/functional system treats all secured transactions in personal property under a single law.<sup>2050</sup> Therefore, I recommended that section 2(3) of STMAA, which diminishes the unitary/functional secured transactions practice in Nigeria, including the sections of CAMA that allow the creation of security interest in personal property, should be revised to erase them.

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<sup>2044</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) ch 6; see also Chapter Three of this Thesis, s 3.3.1.1.

<sup>2045</sup> Chapter Three of this Thesis, s 3.3.1.1.

<sup>2046</sup> Michael G Bridge and others, 'Formalism, Functionalism, and Understanding the Law of Secured Transactions' (1999) 44(3) McGill LJ 567, 572; see also Jacob S Ziegel, 'The New Provisional Chattel Security Law Regimes' (1991) 70 Can Bar Rev 682, 685; Mike A A Ozehome, *Personal Property Law in Nigeria* (PULP 2019) 40;53; 55.

<sup>2047</sup> Louise Gullifer, 'The UNCITRAL Model Law and Secured Transactions Law Reform' (2022) 17 Brook J Corp Fin Com L 97, 108; see also Mike A A Ozehome, *Personal Property Law in Nigeria* (PULP 2019) 40; Chapter Four of this Thesis, s 4.2.1.2.

<sup>2048</sup> Secured Transactions in Movable Assets Act 2017, s 3(1); s 63; see also Michael G Bridge and others, 'Formalism, Functionalism, and Understanding the Law of Secured Transactions' (1999) 44(3) McGill LJ 567, 572; see also Jacob S Ziegel, 'The New Provisional Chattel Security Law Regimes' (1991) 70 Can Bar Rev 682, 685.

<sup>2049</sup> Secured Transactions in Movable Assets Act 2017, s 2(3); see also Companies and Allied Matters Act 2020, s 191 and 203.

<sup>2050</sup> Michael G Bridge and others, 'Formalism, Functionalism, and Understanding the Law of Secured Transactions' (1999) 44(3) McGill LJ 567, 572; see also Jacob S Ziegel, 'The New Provisional Chattel Security Law Regimes' (1991) 70 Can Bar Rev 682, 685.



Thus, only STMAA should deal with secured transactions on personal property in Nigeria, except for aircraft and ships.<sup>2051</sup>

Another key outcome of this research is the mode of perfection of e-WRs. Perfection was described as a step creditors take to guarantee that they rank highest in the hierarchy of creditors and other third parties over a security interest.<sup>2052</sup> I indicated that although this is not compulsory under the Nigerian law, it is necessary to protect the enforceability right of a creditor in a security agreement.<sup>2053</sup> STMAA provided that perfection occurs when a financing statement relating to a security interest is registered at any time in the National Collateral Registry by the creditor or their representative with the written consent of the grantor.<sup>2054</sup>

Through analysing the content of a financing statement, which consists of the details of the grantor, name and address of the creditor, description and tenure of collateral, among other things, I submitted that e-WRs can successfully be described in a financing statement.<sup>2055</sup> This implies that e-WRs can be registered in Nigeria's National Collateral Registry for perfection when adopted.

I also highlighted that although STMAA provides that the mode for the perfection of documents of title, which e-WRs consist of, is through possession, it was recommended that e-WRs should still be perfected through registration since possession as a form of perfection is unrealistic in Africa.<sup>2056</sup> I identified that possession is non-transparent and could lead to the intimidation of grantors by creditors who may employ the police to take forceful possession of the property.<sup>2057</sup> This research also prioritised registration as a form of perfection over control, as suggested by the draft MLWR, because control is not common in Africa and is viewed to have the same effect as possession.<sup>2058</sup> Thus, I recommend registration as the potential form of perfection of security interests in e-WRs in Nigeria.

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<sup>2051</sup> Secured Transactions in Movable Assets Act 2017, s 2(1);(2).

<sup>2052</sup> Brian Duncan and Mahmood Bagheri, 'The Relationship between the Development of Financial Markets and Security Interest Laws' (2017) 32(4) J Intl Bank L Reg 141.

<sup>2053</sup> Secured Transactions in Movable Assets Act 2017, s 8(2).

<sup>2054</sup> Secured Transactions in Movable Assets Act 2017, s 8(1); 12(1); 13(1).

<sup>2055</sup> Chapter Four of this Thesis, s 4.2.1.2.2.1; see also Secured Transactions in Movable Assets Act 2017, s 14.

<sup>2056</sup> Louise Gullifer, 'The UNCITRAL Model Law and Secured Transactions Law Reform' (2022) 17 Brook J Corp Fin Com L 97, 107; see also Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (Bloomsbury 2021).

<sup>2057</sup> Louise Gullifer, 'The UNCITRAL Model Law and Secured Transactions Law Reform' (2022) 17 Brook J Corp Fin Com L 97, 105.

<sup>2058</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts-Guide to Enactment, 'Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIIIA – W.G.1 – Doc. 2, art 19(152) <<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>>

### **8.2.3. Research Question Three: Is There a Potential for Successfully Operating the Warehouse Receipt System in Nigeria with the Form(s) of Warehouse Receipt Selected, and How Can it be Managed to Facilitate Access to Finance for Farmers while Improving Nigeria's Economy?**

Since it was determined that e-WRs would be more suitable for Nigeria than paper WRs, I conducted a feasibility study to examine the possibility of adopting an e-WR system in Nigeria to support farmers' access to finance using e-WRs. This viability study examined how the e-WR system would be operated, including the possible challenges it could encounter in Nigeria.

In section 2.3.2 of this study, I indicated that although Nigeria does not currently utilise e-WRs, it has embraced some technological innovations and laws demonstrating its willingness to adopt digital instruments like e-WRs.<sup>2059</sup> For instance, NITDA devised avenues to promote IT in Nigeria.<sup>2060</sup> One of the ways they did this was by spreading IT Parks across the country to help people learn about IT.<sup>2061</sup> This helps bridge the digital divide in Nigeria between urban and rural dwellers.<sup>2062</sup> This also contributes to mitigating one of the socio-economic challenges raised in sections 7.5 and 7.5.1 of this research. That is, the problem of technological awareness and inadequate digital infrastructure.

Another example I gave through which Nigeria signals its readiness for technological innovation, like e-WRs, was the recent partnership of NITDA with the Federal Ministry of Communications and Digital Economy to introduce the National Blockchain Policy for Nigeria in 2023.<sup>2063</sup> This policy intends to open avenues through which the public and private sectors in Nigeria will enhance their embracement of blockchain technology, which will, in turn, develop the quality of service provided by these sectors in Nigeria.<sup>2064</sup> Although the MLETR

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accessed 11 December 2023; see also UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 19(b) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023; Louise Gullifer, 'The UNCITRAL Model Law and Secured Transactions Law Reform' (2022) 17 Brook J Corp Fin Com L 97, 107.

<sup>2059</sup> The World Bank, *Nigeria Development Update: Time for Business Unusual* (WBG Report, 2021) 12.

<sup>2060</sup> National Information Technology Development Agency Act 2007, s 6; s 19.

<sup>2061</sup> National Information Technology Development Agency Act 2007, s 6(g-h); s 19.

<sup>2062</sup> National Information Technology Development Agency, *Service Charter* (Servicom Charter, 3<sup>rd</sup> edn, 2020) 1, 23 <<https://www.nitda.gov.ng/wp-content/uploads/2021/03/nitda.pdf>> accessed 13 March 2024.

<sup>2063</sup> The National Information Technology Development Agency and Federal Ministry of Communications and Digital Economy, *National Blockchain Policy for Nigeria* (NITDA Doc, 2023) <<https://nitda.gov.ng/wp-content/uploads/2023/05/National-Blockchain-Policy.pdf>> accessed 13 March 2024.

<sup>2064</sup> *ibid.*

endorses technological neutrality, which allows countries to choose which technology they wish to use in their e-WR system, blockchain is one of the technologies available to run the e-WR system.<sup>2065</sup> Hence, this is a welcomed development.

Furthermore, a country that utilises e-WRs or plans to adopt e-WRs should have a way to ensure the privacy of the data of individuals and have operational protocols to protect data and minimise unauthorised access, which will diminish the reliability of e-WRs.<sup>2066</sup> I indicated in sections 2.3.2 and 3.3.1.1 of this thesis that Nigeria enacted the NDPA, which compliments the Nigerian Constitution in guaranteeing the privacy of individuals in Nigeria.<sup>2067</sup> The NDPA further provides operational standards that ensure the accuracy and consistency of data, which will boost the reliability of e-WRs and mitigate one of the socio-economic challenges that could affect the e-WR system in Nigeria, that is the poor handling of data discussed in the section 7.5.2.1 of this thesis.<sup>2068</sup>

This research presented these examples to demonstrate that Nigeria can adopt e-WRs and the e-WR system. The following section summarises the potential management of the e-WR system and the problems e-WRs could face in Nigeria.

#### **8.2.3.1. Possible Management of the Electronic Warehouse Receipt System and the Potential Problems of Electronic Warehouse Receipts in Nigeria**

This thesis identified three types of regulatory management for an e-WR system: the government-based regulatory agency, the private-sector-based regulatory system and the arms-length regulator. It was indicated that from the structure of the WR Bill, Nigeria adopts the government-based regulatory agency approach, which is a system that creates an agency to supervise the WR system and empowers the agency through the WR legislation.<sup>2069</sup> This

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<sup>2065</sup> Chapter Five of this Thesis, s 5.6; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art-by-art Comm no 18; Felix Thompson, 'Nigeria's AFEX to Roll Out Blockchain Solution for Warehouse Receipts' (Global Trade Review, 30 September 2020) <<https://www.gtreview.com/news/africa/nigerias-afex-to-roll-out-blockchain-solution-for-warehouse-receipts/>> accessed 22 January 2023.

<sup>2066</sup> Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.50; see also UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(i-ii).

<sup>2067</sup> Nigerian Data Protection Act 2023, s 1; s 24(2-3); see also The Constitution Federal Republic of Nigeria 1999, s 37.

<sup>2068</sup> Nigerian Data Protection Act 2023, s 1; s 24(2-3); see also Law Commission of England and Wales, *Electronic Trade Documents: Report and Bill* (Law Com No 405, 2022) para 6.50; UNCITRAL Model Law on Electronic Transferable Records (13 July 2017) UNCITRAL Doc A/72/114, art 12(a)(i).

<sup>2069</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) Unif L Rev 351, 364; The Nigerian Independent Warehouse Regulatory Agency and Other Related

research proposed that Nigeria carries on with this form of regulatory mechanism because it carries the force of government, making more people comply with the system's tenets.<sup>2070</sup> I also prioritised this mode of regulation because it can perform the functions of the other two methods and is cheaper, irrespective of the fact that it has the problem of bureaucracy and political interference.<sup>2071</sup>

To remedy the above challenge, I indicated that the WR Bill already provides that the Nigerian Independent Warehouse Regulatory Agency (the Agency) will work with stakeholders like Federal Ministries, CBN, and trade organisations on its board to check its affairs.<sup>2072</sup> This will mitigate the problem of bureaucracy and political interference if this provision of the law is not merely contained on paper without putting it into practice.<sup>2073</sup>

Although this research established that Nigeria has the potential to initiate e-WRs as collateral by farmers to mitigate the problem of farmers' poor access to finance, I identified some challenges that could impact the smooth adoption of e-WRs. I classified these problems into legal problems and socio-economic challenges in chapters six and seven of this thesis. However, I will not categorise these problems in this section because some have been discussed in other sections of this chapter while reviewing other topics. For instance, the poor handling of data and its remedy are captured in section 8.2.3 of this research.

I proposed two options for the issuance and registration of e-WRs in Nigeria.<sup>2074</sup> Among other countries like Zambia and others that utilise e-WRs, in section 6.2.1 of this research, I chose the United States because it has one of the most advanced e-WR systems in the world, and e-WRs originated from there.<sup>2075</sup> I also drew an example from South Africa because it operates a successful e-WR system, and it is in Africa, like Nigeria.<sup>2076</sup> I propose that legislators be

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Matters Bill 2022, s 1(1); The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 6; Chapter Four of this Thesis, s 4.3.2.2.1.

<sup>2070</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351, 364.

<sup>2071</sup> *ibid*; see also Chapter Four of this Thesis, s 4.3.2.2.4; The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 25; 99.

<sup>2072</sup> *ibid*; see also The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 2(1); (2).

<sup>2073</sup> Gideon E Onumah, 'Warehouse Receipts and Securitisation in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issue' (2012) 17(1-2) *Unif L Rev* 351, 364.

<sup>2074</sup> Chapter Six, s 6.2.1 - 6.2.1.7.1.

<sup>2075</sup> Nurten Gün and Emine Tahsin, 'Role of Electronic Warehouse Receipt System in Development of Commodity Exchange: An Assessment for Turkey' (2019) 5(1) *Temel Eğitim Araştırmaları Dergisi* 9.

<sup>2076</sup> Jack Thunde and Bob Baulch, 'Who Uses and Who Benefits from Warehouse Receipt Systems? An Examination of Contract Level Transactions on the Agricultural Commodity Exchange for Africa,

flexible when deciding between South Africa's model of issuing and registering e-WRs and the United States version. Their decision should be based on the available resources in Nigeria during the adoption since both systems can work efficiently in Nigeria.

The above options of operating e-WRs adapted from the United States and South Africa, including the draft MLWR and the MLETR, which highlight the need for a WR system reform in Nigeria, would be adopted in Nigeria through legal transplant.<sup>2077</sup> However, legal transplant was identified as one of the challenges Nigeria could face with the introduction of e-WRs. One of the problems with legal transplant is that Nigeria could transplant the law without having a proper understanding of it, which could result in a different meaning from what it is in the originating country.<sup>2078</sup>

While a transplanted law can serve a different purpose from what it is in the originating country, in the case of introducing e-WRs in Nigeria, the laws and principles should serve the same purpose as the originating jurisdiction because they deal with the smooth operation of the e-WR system. Therefore, legislators should clearly understand the laws to avoid misinterpreting them and their purpose.<sup>2079</sup> Moreover, Nigeria has a history of inconsistent legal transplant, where it gets some right, such as the UNCITRAL Model Law on International Commercial Arbitration 1985 with Amendments as Adopted in 2006 (Arbitration Model Law) and some wrong, like plea bargain.<sup>2080</sup>

Since the legislators may not get legal transplant right in the first instance, it was recommended that they acquire further training on legal transplant and that amending laws be simplified.<sup>2081</sup>

Unless resolved, another huge problem I identified that could impact the introduction of e-WRs is the unavailability of sufficient warehouses and the constant interruption of energy in Nigeria

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2011-2018' (2020) IFPRI Malawi Working Paper 35, 3  
<[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a\\_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo\\_3YAOgl](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ebrary.ifpri.org/digital/api/collection/p15738coll2/id/133733/download&ved=2ahUKEwiX153a_eCGAxWyQUEAHf9iApUQFnoECBMQAQ&usq=AOvVaw0LvQHjWWWQAuPCo_3YAOgl)> accessed 3 January 2022; see also The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 29.

<sup>2077</sup> Chapter Five; see also Chapter Six of this Thesis, s 6.2.2 - 6.2.2.2.

<sup>2078</sup> Oliver James and Martin Lodge, 'The Limitations of 'Policy Transfer' and 'Lesson Drawing' for Public Policy Research' (2003) 1 *Pol Stud Rev* 179.

<sup>2079</sup> *ibid.*

<sup>2080</sup> T T Arvind, 'Transplant Effect in Harmonization' (2010) 59(1) *Intl Comp LQ* 65, 70; see also The Economic and Financial Crimes Act 2004, s 14(2); Chapter Six of this Thesis, s 6.2.2.1.

<sup>2081</sup> Chapter Six of this Thesis, s 6.2.2.1.

to power warehouses.<sup>2082</sup> These issues were classified under the sustainability of warehouses.<sup>2083</sup> I highlighted the extent of damage an unstable power supply could cause to all parties in the e-WR system while making e-WRs unreliable as collateral. For instance, the goods e-WRs cover could spoil or lose quality while in storage, especially if they are perishable or semi-perishable goods. This could cause the warehouse to be joined in a product liability claim lawsuit.<sup>2084</sup>

I recommended employing a Public-Private Partnership where the government encourages private companies to build, purchase, and maintain warehouses, including their equipment, by providing incentives to the private entities, which will minimise the above problem.<sup>2085</sup> I also submitted that Captive Solar Power, an off-grid renewable energy plant that gets its energy from sunlight, will remedy the problem of unstable energy supply in the warehouse.<sup>2086</sup>

I also indicated that performance guarantee, which would repay depositors, creditors or any party that will be adversely affected if there is a problem with the goods stored in the warehouse, will mitigate the issue of sustainability of warehouses.<sup>2087</sup> I argued that a combination of indemnity funds and insurance would provide extra security to the goods.<sup>2088</sup> This is irrespective of the fact that the WR Bill provides for a combination of performance bonds and insurance.<sup>2089</sup> I contended that although performance guaranty is similar to indemnity funds, indemnity funds were prioritised for Nigeria because the burden of raising

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<sup>2082</sup> Chapter Seven of this Thesis, s 7.3- 7.3.2; see also Ugochukwu G A Uwaoma, Chidiadi Obinna Esi-Ubani and Prince Chinenye Emeh, 'Warehousing Management Systems and Sales of Maize in Abia State, Nigeria' (2018) 6(2) Intl J Soc Sci Humanit Res 230; Rasaq Adekunle Olabomi and others, 'Sustainable Agricultural Infrastructure and Development of Rural Economy in Nigeria' (2021) 1(2) Socio Econ Policy Stud 72; Richardson Kojo Edeme and others, 'Infrastructural Development, Sustainable Agricultural Output and Employment in ECOWAS Countries' (2020) 2 Sust Futures 100010; Makinde K and others, 'Power Source Availability as a Means of Reducing Agricultural Post Harvest Losses' (2017) 6(9) Intl J Engr Res Tech 228.

<sup>2083</sup> Chapter Seven of this Thesis, s 7.3.

<sup>2084</sup> Joshua S Adeyele and Muhammad N Maiturare, 'Repositioning the Nigerian Insurance Industry for Sustainable Development: Risk Management Perspective' (2012) 4(5) Eur J Bus Manag 22, 27; see also Gbade Akinrinmade, 'The Jurisprudence of Product Liability in Nigeria: A Need to Complement the Existing Fault Theory' (2016) 7(2) J Sust Dev L Pol 188.

<sup>2085</sup> Aderibigbe Olomola, 'Policy Options for Agricultural Investments and Governance of Markets in Support of Small-Scale Agriculture in Nigeria' (Oxfam Research Reports, 2013) 28; see also Augustine Arimoro, 'Public-Private Partnership and the Right to Property in Nigeria' (2019) 19 Afr Hum Rts LJ 763; Chapter Seven of this Thesis, s 7.3.1.

<sup>2086</sup> Sakib Amin and others, 'The Role of Captive Power Plants in the Bangladesh Electricity Sector' (2021) Asian Development Bank Working Paper No 1238 <<https://www.adb.org/sites/default/files/publication/692451/adbi-wp1238.pdf>> accessed 2 October 2023; see also Chapter Seven of this Thesis, s 7.3.2.

<sup>2087</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 27.

<sup>2088</sup> *ibid* 28.

<sup>2089</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 18; s 21(2)(b); s 98.

funds for the performance bond is solely on the warehouse operator, while in indemnity fund, the government acting alone or in affiliation with intergovernmental organisations could support warehouses with the indemnity funds.<sup>2090</sup>

A further problem I identified that could impact e-WRs was information asymmetry.<sup>2091</sup> This can affect the transparency and reliability of digital documents like e-WRs, as one of the problems that could impact the popularity of e-WRs when Nigeria adopts them.<sup>2092</sup> I explained in section 7.6 of this thesis that information asymmetry occurs when one party to a transaction withholds relevant information from the other party, which would have changed the other party's approach to the business if they had been privy to the information.<sup>2093</sup> For instance, a grantor could collaborate with the warehouse operator to misrepresent the goods in the warehouse, which the e-WR represents, to mislead the creditor.<sup>2094</sup> This kind of information asymmetry is known as moral hazard because it is a transaction entered in bad faith and usually occurs after it has been entered.<sup>2095</sup>

I indicated that using collateral management agreements, such as CMA, could alleviate the problem of information asymmetry.<sup>2096</sup> Spot checks by creditors or their representatives could also mitigate this challenge.<sup>2097</sup> I highlighted the importance of security contracts in tackling the problem of information asymmetry.<sup>2098</sup> This is because security contracts state the terms and conditions of the transaction, including issues that could vitiate the contract, such as

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<sup>2090</sup> Philine Wehling and Bill Garthwaite, 'Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends' (EBRD/FAO Paper, 2015) 29; see also The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022, s 18(1).

<sup>2091</sup> Chapter Seven of this Thesis, s 7.6.

<sup>2092</sup> Sulin Ba, Andrew B Whinston and Hang Zhang, 'Building Trust in the Electronic Market Through an Economic Incentive Mechanism' (The International Conference on Information Systems, North Carolina, 12-15 December 1999).

<sup>2093</sup> Donald D Bergh and others, 'Information Asymmetry in Management Research: Past Accomplishments and Future Opportunities' (2019) 45(1) J Manag 122.

<sup>2094</sup> Sulin Ba, Andrew B Whinston and Hang Zhang, 'Building Trust in the Electronic Market Through an Economic Incentive Mechanism' (The International Conference on Information Systems, North Carolina, 12-15 December 1999).

<sup>2095</sup> Xiang Hui, Maryam Saeedi and Neel Sundaresan, 'Adverse Selection or Moral Hazard, an Empirical Study' (2018) 66(3) J Industr Econ 610, 611.

<sup>2096</sup> The International Finance Corporation, *Warehouse Finance and Warehouse Receipt Systems: A Guide for Financial Institutions in Emerging Economies* (WBG Guide, 2013) 1.

<sup>2097</sup> *ibid.*

<sup>2098</sup> Secured Transactions in Movable Asset Act 2017, s 5-6; see also Peng Du, Hong Shu and Zhuqing Xia, 'The Control Strategies for Information Asymmetry Problems Among Investing Institutions, Investors, and Entrepreneurs in Venture Capital' (2020) 11 Front Psychol 1.

misrepresentation, and contain damages that could be claimed by the party injured by the information asymmetry.<sup>2099</sup>

From the summary of the evaluations above, this research established that Nigeria can adopt e-WRs and effectively manage an e-WR system. Although some legal and socio-economic challenges could arise when e-WRs and an e-WR system are introduced in Nigeria, this research submits that Nigeria can surmount them to facilitate access to finance for farmers and improve its economy.

### 8.3. Implication for Theory

I developed the theoretical implication of this study by exploring the different segments of this research, as summarised in sections 8.1 to 8.2.3.1 above. That is, the prospective effect of this study, which is conceived through the theoretical frameworks contained in sections 1.5.1 to 1.5.3: law reform and comparative law theories (functionalism and legal transplant).<sup>2100</sup>

The law reform theory envisages that if the WR Bill is reformed to accommodate the sole use of e-WRs in Nigeria and passed into law, the result will be the amelioration of farmers' access to finance and Nigeria's economy. Also, the comparative law theory predicts that if the lawmakers, using functionalism theory, evaluate the materials that can aid the said law reform (MLWR and the MLETR, among others identified in this research) against the Nigerian legal system and its society, then it would be easier to transplant a well-functioning e-WR system to Nigeria.

### 8.4. Limitation of Study and Future Research

One main limitation of this research is data collection and analysis at the draft stage of the MLWR. This is because UNIDROIT and UNCITRAL adopted the draft MLWR on June 26, 2024.<sup>2101</sup> Nevertheless, significant changes were not made to the latest draft MLWR before the adoption, which a substantial part of this research was based on.<sup>2102</sup> Therefore, the

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<sup>2099</sup> Peng Du, Hong Shu and Zhuqing Xia, 'The Control Strategies for Information Asymmetry Problems Among Investing Institutions, Investors, and Entrepreneurs in Venture Capital' (2020) 11 Front Psychol 1, 4.

<sup>2100</sup> Mark Stephan Felix and Ian Smith, *A Practical Guide to Dissertation and Thesis Writing* (CSP 2019).

<sup>2101</sup> UNIDROIT, 'Study LXXXIII: Model Law on Warehouse Receipts' (UNCITRAL/ UNIDROIT, 30 March 2021) <<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>> accessed 18 May 2023.

<sup>2102</sup> UNIDROIT Working Group on Model Law on Warehouse Receipts, 'Draft Model Law on Warehouse Receipts' (2023) UNIDROIT Paper LXXXIII-W.G.6-Doc 4, art 9(1)(j) <<https://www.unidroit.org/wp-content/uploads/2023/04/Study-LXXXIII-W.G.6-Doc.-4-Draft-Model-Law-on-Warehouse-Receipts.pdf>> accessed 20 June 2023.



information in this study concerning the MLWR is limited to the available materials done by the drafters of the model law as of March 2024.

The use of the WR Bill 2022 in this study also constitutes another limitation because the Bill has not been passed.<sup>2103</sup> Moreover, Nigeria has created other WR Bills before the 2022 Bill. Thus, it will not be surprising if the legislators produce another Bill, although this is discouraged in section 1.3 of this thesis.<sup>2104</sup> It will be impractical to continue updating this research based on any new development on WRs in Nigeria, especially ones connected to a Bill. Nonetheless, the non-passage of the Bill at the time of this study is an advantage because it creates an avenue for the legislators to consider the proposal made in this research to introduce e-WRs in Nigeria, which will facilitate access to finance for farmers. They can then amend the Bill accordingly and pass it into law.

Among the benefits attributed to e-WRs, I focused only on the facilitation of access to finance for farmers. I did not explore how e-WRs would be utilised to improve other areas of agriculture and the economy, such as domestic production and export. However, the consequence of easy access to finance will influence these factors. Thus, this creates an opportunity for future research into how e-WRs can be utilised in the abovementioned areas, especially where the study aims to boost the economy.

Although other countries, especially emerging economies, can emulate Nigeria and consider e-WRs, particularly for improving farmers' access to finance where Nigeria successfully adopts e-WRs, this research is tailored toward Nigeria alone. It does not analyse how e-WRs can work in other emerging economies to facilitate access to finance for farmers. Just like the above, this creates an avenue for future studies on how other developing countries can utilise e-WRs, especially to facilitate access to finance for farmers. This could be done through comparative law, where the potential Nigerian e-WR system will be compared against the future country for the research.<sup>2105</sup>

Furthermore, this study only concentrates on farmers. I did not examine whether e-WRs can be applied to other kinds of businesses or non-agricultural related goods in Nigeria. Further research can be conducted to explore how other businesses that specialise in different areas,

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<sup>2103</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2022.

<sup>2104</sup> The Nigerian Independent Warehouse Regulatory Agency and Other Related Matters Bill 2016; see also The Nigerian Independent Warehouse Regulatory Agency (Establishment, Etc.) Bill 2018; The Warehouse Receipts and Other Related Matters Bill 2020.

<sup>2105</sup> Christopher A Whytock, 'Legal Origins, Functionalism and the Future of Comparative Law' (2009) 2009(6) Brigham Young UL Rev 1879.

like metal and petroleum, among others, can utilise e-WRs. I mentioned these kinds of goods because WRs can cover them.<sup>2106</sup>

I initially planned to utilise interviews as one of the research methodologies for this study. Thus, I planned to interview AFEX to gain from their experience in operating paper WRs in Nigeria. This would have provided insight into the modifications required to introduce e-WRs in Nigeria, especially since AFEX is one of the few companies that operate WRs in Nigeria. However, it was concluded that AFEX, a private company, might not give a wholesome picture of how WRs work in Nigeria. They will likely provide information that would put their company in a good light while ignoring the real challenges they experience with WRs. Besides, introducing e-WRs in Nigeria, which the Nigerian government could operate, might be detrimental to their business. Hence, a decision was made to work with the secondary data extensively gathered from other sources.

I also contemplated interviewing some stakeholders in this research, such as farmers and Nigeria's Ministry of Agriculture and Rural Development. However, this would entail travelling to Nigeria to conduct the interviews. The data collection for this research was around when COVID-19 was still a problem. This affected travel requirements in Nigeria for a considerable period, which would have incurred many expenses, especially as the research is self-funded. Hence, it was not cost-effective to embark on these interviews.

Nevertheless, there is sufficient secondary data to cover stakeholders' attitudes, such as those of farmers and the Nigerian government. This facilitated the prediction of their attitude towards the reception of e-WRs in Nigeria. Therefore, where necessary in the future and with sufficient funds and ample time allotted for research, interviews can be conducted with various stakeholders to gain first-hand information on their potential attitude towards e-WRs in Nigeria.

## **8.5. Conclusion**

From all the evaluations made in this research with the help of primary and secondary sources, including some theoretical frameworks, I submit that Nigeria can successfully carry out a wholesale reform of its WR practice. This will involve the amendment of the WR Bill, which I analysed in chapter five of this thesis, before passing it into law. That is, the Bill will be improved to a framework that supports solely the use of e-WRs instead of paper WRs. In chapter two of this thesis, I already established that e-WRs perform better than paper WRs.

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<sup>2106</sup> UNCITRAL, 'Warehouse Receipt: Developing an UNCITRAL Instrument on Warehouse Receipt' (2019) UNCITRAL 9; 83.

Moreover, I equally demonstrated in chapters three and four that e-WRs can be recognised in Nigeria as property capable of being used as collateral because the Nigerian property and secured transactions laws support this.

Like any new concept, Nigeria will face challenges in introducing and operating e-WRs. Thus, I identified these potential problems and provided workable solutions in chapters six and seven of this thesis. This further demonstrates that Nigeria has the potential to initiate e-WRs to facilitate access to finance for farmers, especially MSMEs.

As emphasised in section 8.1 of this chapter, this research achieved its aim of examining the WR Bill and indicating that a reform is required. It further proposed that farmers utilise e-WRs as collateral instead of paper WRs to facilitate their access to finance. Therefore, the diversification of the Nigerian economy from excessive dependence on crude oil to a more sustainable sector like agriculture to enhance the economy can work effectively through e-WRs as an added means of applying agriculture in Nigeria. The implication of this is the mitigation of hunger and poverty, that is, the achievement of the UN SDGs one and two in Nigeria.

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