



**REVIEW OF THE WAREHOUSE RECEIPT SYSTEM ACT NO. 14 OF
2006**

ISSUES PAPER

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1.0. Introduction

The Uganda Law Reform Commission (the Commission) is undertaking a review of the Warehouse Receipt System Act, No. 14 of 2006. The review is intended to explore the gaps in the regulatory framework, structure, operation as well as performance of Uganda's Warehouse Receipt System to devise feasible recommendations to increase its efficiency and effectiveness for market competitiveness and agricultural price stabilisation.

A warehouse receipt means a document representing goods issued by a warehouse keeper who is duly licensed and bonded under the warehouse receipt system Act and may be a negotiable or non-negotiable receipt. A negotiable warehouse receipt is one in which it is expressly stated that the goods received will be issued to the bearer or to the order of a named person.

A non-negotiable warehouse receipt on the other hand, is one issued to the bearer or to the order of a specified person and marked "non-negotiable" on the face of it¹.

Essentially, warehouse receipts are documents issued by warehouse operators that state the ownership of a specified commodity, its quality, quantity, characteristics and in what warehouse it is stored². A robust production and trading environment requires existence of sufficient storage space for commodities to allow the completion of clearing procedures, licensing, inspection, supply floating control, grading, food security and quality control³.

¹ See section 2 of the Warehouse Receipt Systems Act, 2006.

² Food and Agriculture Organization of the United Nations, Designing warehouse receipt legislation: Regulatory Options and Recent Trends (FAO Investment Centre) (2015) at page ix available at <https://www.fao.org/3/i4318e/i4318e.pdf> accessed on 23rd November 2022 at 10:44am

³ Smriti Chand, Warehousing: Functions, benefits and types available at <https://www.scribd.com/document/310994789/Www-Yourarticlelibrary-Com> accessed on 22nd November 2022 at 10:51am

Uganda is an agrarian economy where over 70% of the population depends on agriculture, that is subsistence and to a limited extent commercial agriculture⁴. This calls for a sound and dedicated warehouse receipt legal regime to cater for issues affecting the agricultural sector, some of which include inadequate access to financial input by farmers, lack of adequate and appropriate storage space, poor post-harvest handling commodity handling technologies, price fluctuations, food insecurity among others. This will be discussed in detail in the subsequent parts of the paper. (recast to summarise)

1.1 Background and context of the Warehouse Receipt System in Uganda

Warehouse Receipt Systems (WRS) are mechanisms that allow farmers to access markets and financial services using their commodities as collateral⁵. The system is intended to be an integral part of the agricultural sector in Uganda⁶.

The Warehouse Receipt System is designed to allow farmers and traders of agricultural produce access financing. This system in Uganda started as far back as 1995/1996 as an initiative between the Ministry of Trade, Industry and Cooperatives (MoTIC) and Uganda Coffee Development Authority with particular emphasis on coffee and cotton⁷. This paved way for the WRS under the Warehouse Receipt System Act, No. 14 of 2006.

The Warehouse Receipt System Act, No.14 of 2006 and the Warehouse Receipt System regulations were enacted in 2006 and 2007 respectively with

⁴ International Trade Administration, Uganda Country Commercial guide. Available at <https://www.trade.gov/country-commercial-guides/uganda-agricultural-sector> accessed on 23rd November 2022

⁵ Economic Policy Research Centre, "What gaps exist in Uganda's Warehouse Receipt System, available at <https://eprcug.org/blog/what-gaps-exist-in-ugandas-warehouse-receipt-systems/> accessed on 5/09/2022

⁶ NDP III

⁷ Katunze, M, Kuteesa, A, Mijumbi, T & Mahebe, (2017). Uganda Warehousing Receipt System: Improving Market Performance and Productivity, *African Development Review*, Vol. 29, No. S2, pages 135-146.

the objective of providing for the licensing of warehouses and warehouse keepers; providing for a national system of warehouse bonding for the protection of depositors and other related matters.

Currently, the use of the WRS has extended to other agricultural produce with particular emphasis on grain, that is maize, sorghum, barley.

The WRS has garnered importance due to its ability to significantly reduce post-harvest losses, enable value addition and standardisation of produce. It also enables small holder farmers to participate in commodity markets by providing them with the opportunity of consolidating their crops in a warehouse and selling jointly for better markets⁸.

The system also creates a buffer against uncertainties in supply and demand, it takes advantage of economies of scale for instance lower transportation costs, it helps Government to control price fluctuations associated with seasonality of agricultural commodities⁹. It also equips farmers with warehouse receipts that can be registered with the commodity exchange hence linking the farmers directly to purchasers thus eliminating the need for middlemen and increasing the farmers earnings and lastly it facilitates access to credit.

Uganda has put in place policy and regulatory framework to support the establishment and operations of the warehouse receipt system to harness the above highlighted advantages of the warehouse receipt system. These include Uganda's National Development Plan III¹⁰ (NDPIII), which acknowledges that limited storage capacity, particularly in warehouses in the country, impedes effective post-harvest management and structured commodity¹¹, the National Trade Policy, 2007, National Agricultural Policy, 2013 and the National Grain Policy, 2015.

⁸ Food and Agriculture Organisation of the United Nations, Designing warehouse receipt legislation: Regulatory Options and Recent Trends (FAO Investment Centre) (2015) at page ix available at <https://www.fao.org/3/i4318e/i4318e.pdf> accessed on 23rd November 2022 at 10:44am

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¹⁰ Third National Development Plan (NDPIII) 2020/21-2024/25

¹¹ Ibid

Despite this effort, the WRS still has a number of challenges that have affected its optimal operations in Uganda.

These challenges include:- low use of the warehouse system due to gaps and anomalies in the Act for instance lack of provisions that provide for use of electronic receipts, lack of awareness of the WRS and the receipts, poor infrastructure in most parts of the country that has limited access and use, lack of tradeable produce or commodities and the continued thriving of the informal trade as opposed to using the formal systems.

The result is that the country is unable to address a number of challenges including the price volatility of agricultural products and the inability of farmers to use the warehouse receipts as a source of finance among others. Consequently, the Government has committed under NDPIII to revive the WRS by addressing the bottlenecks that have limited its use including strengthening the regulatory framework.

1.2 Problem statement

The Warehouse Receipt System Act was enacted in 2006, and has been in existence for sixteen (16) years without undergoing any reforms to update it to the prevailing circumstances. The Act has a number of gaps and anomalies that have affected its implementation and ultimately the functioning of the WRS. These gaps include: -

- a) Developments in technology that necessitate the adoption of the Electronic Warehouse Receipt System (E-WRS).
- b) The law is couched in very generic terms. It is hard to tell from the face of it whether it is intended to apply to the agricultural sector or any other sector. This causes uncertainty.
- c) The law is silent on the use of warehouse receipts as collateral for obtaining agricultural or any other form of credit yet this appears to be one of the major purposes of the law in other jurisdictions.

- d) The law does not give priority to a holder of a negotiable warehouse receipt among many creditors in the queue of recovery in case a farmer fails to pay.
- e) The law gives non-deterrent penalties for breach which makes enforcement a challenge.
- f) The law creates a duplication of roles of the Authority and the Board. Section 10 of the Act empowers the Board to carry out the functions of the Authority.
- g) There is a lack of interpretation of terms used for instance words like commingle and failure among others are not interpreted in the Act

The law and the entire concept of warehouse receipts have not been adequately disseminated to the ultimate beneficiaries and so they do not understand how the entire system operates which has affected access and use.

The farmers' inability to meet the volumes, quality and types of produce demanded by warehouses, has also affected the success of the WRS. The agricultural sector in Uganda is still dominated by small holder farmers who struggle to raise the required demand due to a number of factors. This makes private investment in the system very costly.

Limited investment in Warehousing by the Government. The Government has overly relied on private players when it comes to warehousing. According to the findings of the preliminary consultations, majority of warehouses in Uganda are privately owned. Private actors tend to invest in areas where they anticipate to make profits, this has led to the inequitable distribution of warehouses across the country. This is a disadvantage to farmers who cannot access the private facilities.

The limited participation of Government has also denied the sector of practical role-modeling and enforcement of desirable standards which is crucial in light of national, regional and international obligations that Uganda is privy to for instance the Africa Free Trade Area and East African

Community Common Market. It is also detrimental to farmers since there is no deliberate effort to ensure produce is directly deposited by farmers to warehouses hence disempowering them. This affects Governments ability to fulfill its duty of ensuring national food security and also compromises the quality of warehouses established by private players.

There is a lack of clear operating procedures for instance the absence of a procedure on how warehouses receive or obtain goods or produce.

There is also a lack of institutionalisation of the major players for instance cooperatives, trader's associations, smallholder farmers, and financial institutions.

The Uganda National Development Plan III (NDP III) does not provide a clear implementation strategy on how the government intends to achieve its aspirations for an effective Warehouse Receipt System. The National Trade Policy also has a draft implementation strategy but it is brief and does not provide detailed strategies for WRS.¹²

In terms of practical implementation, the Ministry of Trade, Industry, and Cooperatives, the responsible agency, lacks an updated sector development plan with details on strategies for a functional Warehouse Receipt System.¹³

The above-identified gaps, therefore, necessitate a review of the law to provide an enabling environment that will allow the creation of warehouse facilities to store various agricultural commodities.

1.3 The objectives of the review

The overall objective of this review is to modernize the law to bring it in conformity with both modern and international warehouse receipt best practices. The specific objectives of the review are to:

¹² Economic Policy Research Centre, "What gaps exist in Uganda's Warehouse Receipt System, available at <https://eprcug.org/blog/what-gaps-exist-in-ugandas-warehouse-receipt-systems/> accessed on 17th August, 2022.

¹³ Ibid. at 9

1. Review the policy and legislative framework governing Warehouse Receipt System and identify gaps hindering its optimal implementation;
2. Undertake comparative analysis of study to borrow best practices;
3. Identify new and emerging issues due to advancements in technology; and
4. Propose recommendations for reform.

1.4 Scope of the review

The review shall focus on the reform of the warehouse receipt system Act with a view of aligning it with the current trends and economic needs of Ugandans especially those involved in Agriculture and trade. Specifically, the study shall address the regulation; management and licensing of the warehouse receipt system; the structural and institutional framework for the administration of the warehouse receipt system in Uganda; classification of warehouses and their applicability to Uganda's context; the core players of the warehouse receipt system and their obligations; the role of government and private sector in warehouse receipting; regional and international best practices; legislative gaps and recommendations.

The study will be conducted in six (6) regions of Uganda.

1.5 Justification for the review

The Warehouse Receipt System Act was enacted in 2006. However, over time several developments have occurred that require the law to be updated to bring it in conformity with the aspirations of the Government in NDP III, Vision 2040, Parish Development Model (PDM) and other policies aimed at reducing post-harvest handling losses, commercialisation of the agriculture sector and improving access to finance by farmers and other actors in the sector. The law should be reviewed to enable administrative and legislative changes to be made to enhance efficiency and effectiveness.

Despite the enactment of a relevant legal framework and a number of related policies, the use of WRS is still very low. This is attributed to a number of factors such as the lack of clear linkages between the Act and other relevant

policies, limited or poor warehouse facilities in most parts of the country, lack of awareness about the system and the biting poverty among most users who prefer to have immediate cash for their commodities to address immediate challenges and therefore cannot wait for the prices of the goods to change to the desirable level.

The Government has put in place a number of policies that ought to support the WRS. These include; the National Grain Trade Policy, 2015, NDP III, Vision 2040, the National Trade Policy 2007, the National Agricultural Policy, 2013 and the National Grain Trade policy 2015. Much as the policies are commendable given the improvements in the sector, they have been largely ineffective with regard to implementation and promotion of the use of the WRS because they either lack directly related interventions to the WRS or lack detailed intervention plans or strategies which has left most of them on paper and unachievable.¹⁴

The review of the law and related policies is, therefore, necessary to address the bottlenecks that hinder agro-industrialisation which is hoped to offer a great opportunity for Uganda to embark on its long-term aspiration of increasing household incomes and improving the quality of life.¹⁵

1.6 Methodology

The following methodology will be adopted for the review.

1.6.1 Preliminary Consultations

The Commission will carry out preliminary consultations with the different agencies and institutions that are involved in the implementation of the Warehouse Receipt System Act. This is intended to contextualize the issues and challenges faced in the implementation of the Act and get a better understanding of the Warehouse Receipts and Warehouses. The agencies

¹⁴Miriam Katunze, Annette Kuteesa et al, June 2017, Uganda Warehousing Receipt System: Improving Market Competitiveness and Service Delivery, Page 7.

¹⁵Refer to National Development Plan, Part III, Chapter 5 on Agro- Industrialisation, Pages 90-107.

targeted are Uganda Warehouse Receipt System Authority, Ministry of Trade, Industry and Cooperatives (MTIC), Ministry of Agriculture, Animal Industry and Fisheries (MAAIF), Uganda Revenue Authority (URA), Uganda Clearing and Forwarding Agents Association (UCFAA), National Agricultural Advisory Services (NAADS), Operation Wealth Creation (OWC), Ministry of Justice and Constitutional Affairs (MoJCA), Uganda Grain Traders Association (UGTA), Uganda National Farmers Federation (UNFF) and Civil Society. These consultations will assist the commission to identify the issues that will form the basis of the review process.

1.6.2 Technical working group meetings (TWG)

The Commission will constitute a technical working group comprised of persons knowledgeable in this area of law. The technical working group will be constituted of representatives from Uganda Warehouse Receipt System Authority, Ministry of Trade, Industry, and Cooperatives (MTIC), Ministry of Agriculture, Animal Industry and Fisheries (MAAIF), the Uganda Grain Council (TUGC), National Agricultural Advisory Services (NAADS), Operation Wealth Creation (OWC), Ministry of Justice and Constitutional Affairs (MoJCA), Uganda National Farmers Federation (UNFF), Uganda Grain Traders Association (UGTA), Uganda Cooperative Alliance and Civil Society. The technical working group is expected to provide the technical expertise required to accomplish the objectives of the study.

1.6.3 Stakeholder consultations

The commission will carry out stakeholder consultations with various users of the law. These consultations will include the following: -

Consensus building consultations

The Commission will carry out consensus-building consultations with different users of the law. This is intended to gather consensus on the

issues identified. The findings from these consultations will be used to enrich and strengthen the final report and recommendations.

Preliminary consultative meetings

National Validation Workshop

One (1) workshop will be held. This workshop shall consist of 30 participants including technical experts and participants from different agents and institutions

1.6.4 Report Writing

The Commission will prepare a study report containing the recommendations of the study. The report will inform the preparation of legislative proposals for reform.

PART II- POLICY AND LEGAL FRAMEWOK ON THE WAREHOUSE RECEIPT SYSTEM

2.0 Introduction

This part presents the policy and legal framework for the regulation of the WRS and the need for reform.

2.1 The National Development Plan III (NDP III)

Under the National Development Plan III (NDP III), Government aspires to increase market access and competitiveness of agricultural products in domestic and international markets, improve agricultural market infrastructure in rural and urban areas and strengthen the current agricultural price stabilisation mechanisms through, *inter alia*, the revitalisation of the warehouse receipt system and the Uganda Commodity Exchange.¹⁶ The review is intended to reform the law to achieve the above aspirations.

2.2 The National Trade Policy, 2007

Under the National Trade Policy, 2007, Government aspires to enhance returns of farmers through promotion of bulk marketing this however cannot be achieved without a functional WRS. Government also aspires to enhance competitiveness of Uganda's products and services in domestic, regional and international markets. Additionally, Government aspires to secure and maintain improved market access to domestic, regional and international markets for Uganda's goods.¹⁷ Government aspires to review and strengthen commercial or trade laws as well as complimentary laws and policies and to clarify and consolidate the relationship between the producers and traders.¹⁸

The policy further seeks to incorporate the function of District Commercial Officer to work with productive sectors to ensure a complimentary relationship between producers and traders¹⁹.

A functional warehouse system has implications for competitiveness and market access of agriculture products at domestic, regional and international markets. This is ensured through the core functions of the WRS such as

¹⁶ National Planning Authority, Third National Development Plan (NDP III) (2020/21-2024/25), Part 5, at 73.

¹⁷ National Trade Policy, 2007, Part 6 and 8 page 12-14

¹⁸ *Ibid.* Part 7 paragraph (iv) and (x), page 13

¹⁹ *Ibid.* Part 9.2, para 33 (iv)

sorting, cleaning, drying and grading. The policy however does not provide guidance on the role and importance of the WRS in promoting agricultural trade. The review of the Act is intended to bridge this gap.

2.3 The National Agricultural Policy, 2013

The National Agricultural Policy, 2013 acknowledges the importance of the warehouse receipt system in strengthening the capacity of farmers especially with respect to marketing but does not give sufficient guidance and prioritisation to warehouse receipt system.

Under the policy, Government aspires to promote and facilitate the construction of appropriate agro processing and storage infrastructure to improve post-harvest management, value addition and marketing; support then establishment of a national strategic food reserve system; and encourage or support local governments to enact and enforce bye laws and ordinances that promote house hold food security through appropriate food production and storage practices; and promote appropriate technologies and practices for minimizing post-harvest losses along the entire commodity value chain.²⁰

The policy further commits government to ensure development of infrastructure and utilities that are necessary for agriculture trade including transport and reliable access to fuel and electricity.²¹

The policy recognizes that strategies on production, storage, marketing, quality assurance and control require a well-developed and maintained agricultural marketing infrastructure. The infrastructure envisaged includes physical livestock and crop markets, fish handling facilities, abattoirs, warehouses, silos and cold chain storage. The policy observes that although the quality and quantity of market infrastructure has improved over time, it is still generally inadequate, in poor condition and unevenly distributed.²²

²⁰ The National Agriculture Policy, 2013, objective 1 para 22(ii), (iv), (vi) and (ix) at page 16.

²¹ Ibid. Objective 4, para 25(III).

²² Ibid. Part 4.5, para 36 at page 24

The policy further recognizes that facilitated farmers working together in groups are able to realise significant increases in their productivity and incomes and that farmer's institutions can be powerful advocates for new policies and laws that support agricultural development. The policy notes that over the years the Uganda National Farmers Federation (UNFF), the National Farmers Forum (NFF) and the Uganda Cooperatives Alliance (UCA) have mobilised small scale farmers into groups or cooperatives, and Government plans to empower these farmers' groups through building their capacity in management and entrepreneurship.

Findings from preliminary consultations ²³ indicate that most of the above aspirations of Government have not been effectively implemented. The review is intended to bridge the gaps.

2.4 The National Grain Policy, 2015

The vision of the National Grain Policy, 2015 is to have a globally competitive grain subsector for food security, income generation and industrialisation. The mission of the Policy is to ensure consistent quantity and quality supply of grain and grain products to the market in order to improve incomes of the subsector actors through efficient post-harvest handling, value addition and efficient regulation.²⁴ The Policy recognises that Uganda is predominantly an agricultural economy where most Ugandans (68%) depend on agriculture for both livelihood and income generation.²⁵

The Policy further recognises the importance of group marketing and storage in grain trading, both of which are core elements of the WRS. Grain traders are organised under the umbrella body, the Uganda Grain Traders Association (UGTA) and have constructed some storage and processing facilities. At the time when the Policy was developed, the national standardised storage facility for maize could only cater for 550,000 metric tonnes out of the optimal 3.2 million metric tonnes. Due to the inadequate

²³ Preliminary Consultations undertaken by the Commission in Jinja District between 31st October- 4th November 2022.

²⁴ National Grain Trade Policy, 2015 at page 9

²⁵ *Ibid.* at page 7

storage capacity and poor post-harvest handling practices, Uganda has experienced a loss of the competitive grain market from large purchasers such as World Food Programme.²⁶

Under the National Grain Policy, 2015, Government sets out to, among others, promote the institutional, policy and regulatory framework to enhance the competitiveness of the grain sector; promote value addition and innovation; promote the development, harmonisation and enhancement of standards; promote the bulk handling and marketing of grains by farmers and traders through improved storage facilities and enhanced market infrastructure; improve access to affordable credit²⁷.

Among the performance indicators to measure the achievement of the above objectives, the Policy aims to improve standards of grain storage facilities from 5% to 40%, reduce post-harvest losses from 37% to 25% and increase access to agro-processing facilities, that is, cleaning, drying and grading from 12% to 50%.²⁸

It should be noted that the grain subsector is central to the performance of the WRS. As such, challenges to the grain subsector have a direct impact on the functionality of the WRS. The Policy identifies a number of challenges affecting the grain subsector, and they include: limited agro-processing and value addition facilities (agro-processing stands at 12%)²⁹; poor storage infrastructure; limited access to finance and affordable credit³⁰; post-harvest losses (which range between 26-37%)³¹; weak market linkages and unreliable market information systems; limited awareness and enforcement of grain standards; high infestation of aflatoxins³²; inadequate agricultural inputs such as improved seeds, pesticides and fertilisers; and collapse of core administrative systems such as Uganda Commodity Exchange (UCE).³³

²⁶ *Ibid.* page 8-9

²⁷ Strategic Objectives 1,2,5 & 7 of the National Grain Trade Policy at page 10.

²⁸ *Ibid.* at page 10.

²⁹ National Grain Trade Policy Part 3.2.2 at page 15

³⁰ *Ibid.* Part 3.2.3 & 3.2.4 at page 16

³¹ UBOS 2013 cited in National Grain Trade Policy, Part 3.2.5 at page 17

³² *Ibid.* Part 3.2.6, 3.2.7 & 3.2.8 at pages 17 & 18

³³ *Ibid.* 3.2.9 & 3.2.10 at pages 19 & 20.

To address the above challenges, the Policy proposes practical priority interventions which include the following:

- a) Promote innovative post-harvest management and processing technologies and undertake management training for producers, traders, processors, transporters and storage facilities operators;
- b) Link the value chain actors to financial institutions and other possible sources of credit for construction of standard storage facilities;
- c) Support the establishment of standard warehouses and silos for food security reserves through a Public Private Partnerships (PPP)³⁴;
- d) Encourage bulk handling and marketing by mobilising a network of organised farmers/producer groups, associations, clusters or cooperatives and processors;
- e) Promote the establishment of farm-level collection facilities (cribs), group-level storage facilities (warehouses and silos) and revitalise the UCE;
- f) Provide an enabling environment for strengthening WRS for grading, standardization and quality control of grains;
- g) Establish monitoring and evaluation programs in warehouses and other storage facilities;
- h) Mobilise and train farmer groups, traders, processors and transporters on good bulk grain handling practices³⁵; and
- i) Promote the use of WRS as a source of credit.³⁶

From the foregoing discussion, it is clear that the Policy makes very important proposals and recommends very positive commitments by Government towards a functional WRS. The purpose of this review is to

³⁴ *Ibid.* Part 4.2.3, para (b), (f), (g) at page 26

³⁵ National Grain Trade Policy, *op.cit.* Part 4.2.5, para (a)-(d) at page 28, and Part 4.2.6 para (a) at page 29

³⁶ *Ibid.* Part 4.2.8, para (d) at page 31

develop practical legislative and non-legislative proposals that will help realise the Policy aspirations.

2.5 The Warehouse Receipt System Act, No.14 of 2006

This is the principal legislation governing the WRS in Uganda. The object of the Act is to provide for the licensing of warehouses and warehouse keepers, to provide for a national system of warehouse bonding for the protection of depositors and the issue of warehouse receipts.

The Act establishes the Uganda Warehouse Receipt System Authority (UWRSA) that regulates warehousing in the country³⁷. The UWRSA is empowered to inspect and classify warehouses and prescribe duties of the warehouse keepers.³⁸ The Act also creates a Board of Directors which is the governing body of the UWRSA. The underlying intention of the Act is to provide for the rights that accrue to a holder of a warehouse receipt. The Act provides for a warehouse receipt that offers security to the depositors and that can also be easily negotiated. The intention is to enable easy access to credit from financial institutions.

The Act establishes a Central Registry that maintains a register book, which will contain in a chronological order all transactions that have been carried on at the Central Registry³⁹. The Act further provides that all warehouse receipts issued in any negotiation shall be registered within a specific time. A certificate of registration signed by the Registrar shall be conclusive evidence of the issue or registration of a warehouse receipt. The Act provides that the Registrar of the Central Registry shall be the Secretary of UWRSA.⁴⁰

2.6. Designing warehouse receipt legislation: Regulatory options and recent trends by Food and Agriculture Organization of the United Nations

³⁷ Section 3 of the Warehouse Receipt System Act, No. 14 of 2006

³⁸ *Ibid.* section 5

³⁹ See section 42(1) of the Warehouse Receipt System Act, No. 14 of 2006

⁴⁰ *Ibid.* section 42(2)

Food and Agriculture Organization of the United Nations (FAO) observed that the common objective of a reform or introduction of a warehouse receipt legislation is to enhance access to credit in the agricultural sector. It may also include facilitating farmers' access to post-harvest handling and storage facilities and also fostering the use of grain warehouse receipts to attract private sector investments in the grain sector.

FAO further observes that effective and enabling legislation should protect the rights and obligations of depositors, creditors and warehouses to strengthen confidence among participants and ensure the wide use of warehouse receipts. The form of legislation on warehouse receipts and its details differ depending on the legal tradition of a country at the time of its initial introduction. These forms of legislations include a comprehensive law governing the overall WRS or general provisions contained in other civil and commercial legislation.⁴¹

FAO observes that legal frameworks governing a WRS should regulate certain key elements which include the sets of goods or commodities that warehouse receipts can be issued for, a public authority to manage the WRS and define its mandate and functions. The legal framework should also establish a system for licensing and supervising public warehouses. The legislation may include a variety of measures to guarantee the performance of warehouses and set out the rights and obligations of the parties.

The legislation may also detail the format and status of the warehouse receipts, establish a Government registration system for warehouse receipts and determine the responsibilities of the registration office. The legal framework may also determine whether the warehouse receipt is negotiable or non-negotiable, and may provide for execution and priority of obligation in the event of default of a debtor and it may as well provide for offences and penalties.

These best practices are also recognised by UNCITRAL which adopts the Warehouse Receipts Index of the World Bank's Enabling the Business of

⁴¹ Designing warehouse receipt legislation: Regulatory options and recent trends (2015), Food and Agriculture Organization of the United Nations at page xi

Agriculture Report, 2017 to measure effectiveness of legislation on warehouse receipt system.⁴² This index evaluates: the existence of a law regulating the operation of warehouse receipts; whether the warehouse operator is required by law to provide a performance guarantee such as a bond, indemnity or guarantee fund, an or insurance; whether the warehouse receipts are negotiable; which types of receipts may be issued, that is electronic or paper-based warehouse receipts or both; and what information must be provided on a warehouse receipt in order for it to be legally valid (for example, date of issuance, location of the storage facility, description of the goods, security rights over the goods.)

The enactment of the Warehouse Receipt System Act, 2006 resulted in the establishment and operationalisation of a WRS that complies with the above core elements of a warehouse receipt legislation. However, there have since been developments in the operation and use of the WRS as well as Government aspirations⁴³ to revitalise the agricultural sector that necessitate reforms to address identified gaps and challenges faced in implementing the law. The study intends to appraise Uganda's compliance with the best practices as recommended by FAO.

⁴² Warehouse Receipts: Developing an UNCITRAL Instrument on Warehouse Receipts, UNCITRAL at page 7. Available at https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf last accessed on 24th November 2022 at 11:35

⁴³ National Development Plan III, National Trade Policy, 2007, National Grain Policy, 2015, National Agriculture Policy, 2013.

PART III- ISSUES FOR CONSIDERATION

3.0 Introduction

This part presents the issues that have been identified for reform. It analyses the legal context of the issues, presents the literature reviewed and compares warehouse regimes in other jurisdictions. The part poses questions to guide the consultative process.

3.1. Gaps and anomalies in the Act

3.1.1. Duplication of roles of the Uganda Warehouse Receipt System Authority (UWRSA) and its Board.

UWRSA is established under section 3 of the Act and it is a body corporate with perpetual succession, capable of suing and being sued, borrowing money, acquiring and disposing of property in its name. The functions of the UWRSA are generally to license warehouses and warehouse keepers, and issue negotiable warehouse receipts⁴⁴. In execution of these functions, the UWRSA is empowered to investigate storage, warehousing and grading of goods, inspect warehouses licensed under the Act, prescribe the duties of warehouse keepers, revoke licences to warehouses and warehouse keepers, collect fees, examine books and records of warehouses and warehouse keepers and provide guidelines and standards for the suitable storage of goods⁴⁵.

Section 7 of the Act establishes the Board of Directors of the UWRSA. The Board is made up of the Managing Director and representatives from the

⁴⁴ See section 4 of the Warehouse Receipt System Act No. 5 of 2006.

⁴⁵ See section 5 of the Warehouse Receipt System Act No. 5 of 2006.

relevant stakeholders⁴⁶. The functions of the Board stated in section 10 of the Act are:

- a) To carry out and exercise the functions and powers of the Authority;
- b) To manage the property, funds and income of the Authority and other concerns and affairs of the Authority;
- c) To discharge the business of the Authority;
- d) To appoint and remove the staff of the Authority; and
- e) To perform such other functions as may be conferred or imposed on the Board by the Act or its regulations.

The import of the above functions is that the Act makes the Board the executing arm of the UWRSA by empowering it to perform all that the Authority is mandated to do in section 4 of the Act. Sections 4 and 10 of the Act create duplicity of roles between the UWRSA and the Board. The two provisions read together mean that the Board is mandated to carry out the functions of licensing warehouses, warehouse keepers and warehouse inspectors and issuance of the warehouse receipt books, which are the functions of the UWRSA under section 4 of the Act.

The UNCITRAL⁴⁷ has observed that warehouse supervisory bodies have the functions to institute and or implement a licensing regime; conduct on-site inspections; and impose sanctions for violations, such as licence revocation or suspension and monetary fines. The UWRSA is the body established to carry out the above functions per its mandate under section 4 of the Act.

The duplicity in roles also affects service delivery to the end user because of uncertainty as to the officers responsible for performing specific tasks in the warehouse receipt system.

⁴⁶ The stakeholders include the ministry responsible for trade, Uganda Clearing and Forwarding Agents Association, Uganda Bankers Association, Uganda Insurers Association, Uganda National Chamber of Commerce and Industry, Private Sector Foundation and farmers.

⁴⁷ See WAREHOUSE RECEIPTS: Developing An UNCITRAL Instrument On Warehouse Receipts available on https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf, accessed on 14th October 2022 at 16:12.

The Act also establishes the Board to carry out the functions of the UWRSA. This is contrary to good practice in public governance and structures of Government bodies. As an example, the Coffee Development Authority Act, Cap. 325 establishes the Uganda Coffee Development Authority⁴⁸ which has a Board. The functions of the Uganda Coffee Development Authority include issuance of certificates of the grade and quantity of coffee, to set the quality control standards under which coffee is sold and the overall supervision of the coffee sub sector among other responsibilities.⁴⁹

The functions of the Board of Uganda Coffee Development Authority are to review and formulate the policy of the Uganda Coffee Development Authority, set targets for the annual performance, appraise and evaluate the performance of management of the Uganda Coffee Development Authority, determine organizational structure and staffing and appoint and discipline staff⁵⁰. The functions of the Uganda Coffee Development Authority are technical in nature while those of its board of directors are supervisory in nature. The same should be the case between the UWRSA and its board of directors.

A board of a public institution is intended to offer oversight and strategic direction for the activities of the public institution. Involving the board of the UWRSA in the day to day running of the UWRSA is impractical given the membership. The membership of the Board of the UWRSA is made up of public and private representatives of different government departments and private associations or institutions. These members cannot in reality devote full time to the operation of the UWRSA given their primary responsibilities.

Section 10(b) of the Act gives the Board of directors of the UWRSA the function of managing the property, funds and income of the Authority. Section 18(3) of the Act goes on to provide that no money shall be withdrawn from or paid out of any bank accounts of the Authority without the authority of the Board. These provisions establish the Board of directors of UWRSA as the final accounting officer for the UWRSA. This structure is problematic

⁴⁸ See section 2 of the Coffee Development Authority Act, Cap. 325.

⁴⁹ See section 4 of the Uganda Coffee Development Authority Act.

⁵⁰ See section 6 of the Uganda Coffee Development Authority Act.

because it does not provide proper accountability structures in cases of misuse of funds and other financial related offences in the law. It also lengthens the procurement process which in turn affects the smooth running of the UWRSA.

The Act also makes the Managing Director a member of the Board. This interferes with the supervisory role of the Board since the Board cannot supervise one of its members.

Issues:

- 1. Whether it is necessary to make a distinction between the functions of the Board and the UWRSA?**
- 2. What should be the functions of the Board?**
- 3. What should be the functions of the UWRSA?**
- 4. Who should be the Accounting Officer of the UWRSA?**
- 5. Whether the Managing Director should be a member of the Board?**

3.1.2 Offences and penalties

The Warehouse Receipt System Act⁵¹ and the Warehouse Receipt System Regulations, 2007⁵² prescribe offences and penalties. The penalties are intended to ensure compliance with the Act and Rules and ensure proper conduct of the business of the WRS by all actors including protection from fraud. The offences created include; issue of receipt for goods not received⁵³, issue of receipt containing false statement⁵⁴, issue of duplicate receipt not duly marked⁵⁵, issue of receipts not stating fact of warehouse keeper's ownership of goods⁵⁶, delivery of goods without obtaining negotiable warehouse receipt⁵⁷, negotiation of receipt for mortgaged goods⁵⁸, and issue

⁵¹Part X of the Warehouse Receipt Act No. 14 of 2006.

⁵²Regulation 51 of S.I. No. 33 of 2007.

⁵³ Section 58.

⁵⁴ Section 59.

⁵⁵ Section 60.

⁵⁶ Section 61.

⁵⁷ Section 62.

⁵⁸ Section 63.

of warehouse receipt without a valid licence.⁵⁹ The Regulations provide for a general offences provision.⁶⁰

Considering that these offences and related penalties were created in 2006, they may no longer be commensurate with the magnitude of the offences brought about by the increasing size, commercialisation and competitiveness of the sector. For example, the most severe penalty that may be meted out is a fine of one thousand twenty currency points or imprisonment for a period of up-to five years which some stakeholders view as not deterrent enough to compel compliance with the Act, Regulations and related policies.

In Kenya, with a relatively newer law than Uganda and Tanzania, the Warehouse Receipt System Act in Part VII⁶¹ provides for penal provisions and a general offences provision. The Penal Provisions have more deterrent penalties of up to a term of imprisonment not exceeding ten years or a fine not exceeding ten million Kenya shillings, or both.⁶²

Issues:

- 1. Whether the penalties are sufficient?**
- 2. Whether there are any other offences that should be provided for in the Act?**

3.1.3. Absence of provisions on Electronic Warehouse Receipt System and Electronic Warehouse Receipt

The Act was enacted in 2006 and hence has been in existence for sixteen (16) years. However, there have been a number of developments that were not anticipated by the Act. In its current form, the Act does not have provisions relating to the use of technology yet technology dictates how business is done today. For example, developments in technology would necessitate the adoption of the option of the Electronic Warehouse Receipt System (E-WRS) and use of Electronic Warehouse Receipts (EWR).

According to the USAID briefing paper, the landscape for trading commodities globally has radically changed. Before revolutions in mobile

⁵⁹ Section 64.

⁶⁰ Regulation 51.

⁶¹ The Warehouse Receipt System Act, No.8 of 2019

⁶²*ibid.* Sections 43, 44, 45

communication and ICT, markets were loosely integrated, trading was based on information acquired through trips to distant countries, whereas today information on trading transactions is acquired almost instantaneously about the physical commodity, stocks, shares, or currency rates⁶³. In the case of South Africa,⁶⁴ the daily price of traded maize futures on South African Futures Exchange (SAFEX)⁶⁵ is fully integrated with the traded price of maize futures on the Chicago Board of Trade.

Electronic warehouse receipt systems facilitate faster negotiation and transfer by allowing instant transfers of ownership as this eliminates physical handover, which reduces the costs of transfer. It also enhances marketability and trade of receipts, increases efficiency in collateral management for financial institutions, and reduces documentary fraud.

However, the legal framework has to support the introduction of an electronic warehouse receipt system to avoid possible associated risks and problems like the requirements, rules, and procedures for the third-party providers operating the system and their liability.⁶⁶

There is a need therefore to review the Act to allow the use of technology in the in-Warehouse Receipt System.

Issues:

- 1. Whether E-WRS should be adopted?**
- 2. Whether Uganda's legal framework supports E-WRS?**
- 3. Whether Uganda is ready for an E-WRS?**

3.1.4. Scope of application of the Act

Countries regulate warehouse receipt systems differently depending on the needs and strengths of the economy. For the case of Uganda, the Act

⁶³USAID, November 2010, ICT to Enhance Warehouse Receipt Systems and Commodity Exchanges in Africa. Available at <https://www.marketlinks.org/sites/default/files/resource/files/FACETWRSCExv2.pdf> last accessed on 24th November 2022 at 15:44

⁶⁴ *Ibid.* at page 1

⁶⁵ The South African commodity exchange

⁶⁶ *Ibid*

provides for a broad application of the WRS, meaning it is intended to apply to a broad spectrum of agricultural commodities.

Some countries however, have a single warehouse receipt system for all sectors whereas others have WRS for commodities or goods in general.⁶⁷ Some countries set up an open warehouse receipt system but restrict it to a few commodities at its initiation.⁶⁸ In such instances, the regulatory authority is given powers to determine the specific commodities for which warehouse receipts may be issued for subsidiary legislation. This provides flexibility since there are no parliamentary procedures through amendment of the principal legislation.

Numerous factors influence the decision of what goods may or may not be the subject of warehouse receipts. One consideration for the legislator can be the importance of a specific subsector or commodity for the country. Another may be the limits of currently available warehouse infrastructure such as the cold chain for the storage of fruits and vegetables. Lastly, there are considerations such as administrative and institutional costs that result from strictly regulating many types of commodity warehouses.

The introduction of the WRS in Uganda was aimed at addressing two major challenges: lack of effective post-harvest handling and storage facilities and lack of access to short-term finance after harvest. The application of the Act was therefore intended to be limited to warehousing for agricultural commodities⁶⁹. This is because agricultural produce, especially grain, is the most available and easily stored produce throughout the country. Further, the other categories of agricultural produce are not produced in sufficient quantities to meet the bulk marketing requirements and neither are there sufficient storage facilities to accommodate bulk storage of perishables.

The scope of application of the Act with regard to the players is not comprehensive. The WRS involves three different stages, that is, bulking or

⁶⁷ Op. Cit- - Designing warehouse receipt legislation: Regulatory options and recent trends (2015), Food and Agriculture Organisation of the United Nations at pages 13 and 14

⁶⁸ Op. cit- Designing warehouse receipt legislation: Regulatory options and recent trends (2015), Food and Agriculture Organisation of the United Nations at page 13 These countries include Kazakhstan and Ukraine.

⁶⁹ Op. Cit. Designing warehouse receipt legislation: Regulatory options and recent trends (2015), Food and Agriculture Organisation of the United Nations at page 140.

storage, selling or buying or trading, and accessing credit. At each of these stages, different players or actors are involved. At the stage of bulking or storage the key players are farmers, traders and cooperatives⁷⁰. At the selling or buying or trading stage, the key actors are traders in agricultural produce, the commodity exchange, warehouse operators. Finally, at the stage of accessing credit, financial institutions, SACCOs and the UWRSA are the biggest players. There are also other actors such as Non-Government Organisations (NGOs), donors, and private organisations which mostly offer capacity building to the farmers, traders and warehouse operators at any stage of the WRS⁷¹.

The WRS originally anticipated farmers as the only depositors without catering for new players like traders, producers, farmer group traders, exporters, processors, and or any individual or corporate⁷².

In its current form, the Act does not adequately provide for the new players in the sector, and the Board and the UWRSA are not given powers by the Act to make regulations that regulate the new players. It is therefore necessary for the Act to be reviewed in order to accommodate the players with clarity and certainty.

Issues:

- 1. Whether the WRS should apply to other agricultural produce beside grain?**
- 2. Whether the WRS should apply to non-agricultural commodities?**
- 3. Whether the scope of the Act should extend to regulate the new players?**

3.1.5.Lack of provisions on use of warehouse receipts as collateral

⁷⁰ Majority of responses from our preliminary consultations in Jinja revealed that small scale farmers bulk their produce together which they either collectively transport and store at the warehouses or collectively sell to traders.

⁷¹ Katunze,M, Kuteesa, A, Mijumbi, T & Mahebe, (2017). Uganda Warehousing Receipt System: Improving Market Performance and Productivity, *African Development Review*, Vol. 29, No. S2, at pages 138 and 139

⁷² *Ibid.* at page 6.

The law is silent on the use of warehouse receipts as collateral for obtaining agricultural or any other form of credit, yet this is one of the major purposes of the law in Uganda⁷³ and other jurisdictions like Ukraine, Kazakhstan.⁷⁴

One of the primary objectives for establishing a warehouse receipt system is to ensure that farmers have access to credit. Establishing a warehouse receipt system per se does not guarantee access to credit by farmers. For lenders to accurately value pledged collateral, they must fully understand any charges or fees that will diminish the overall recovery in the event of debtor default. They further require legal safeguards for the collateral and any encumbrances that may diminish the potential of recovery of the debt. This is particularly important because many legal systems prioritise satisfying taxes and warehouse storage fees before a creditor may recover.

Therefore, warehouse receipt legislation commonly requires that any encumbrances or fees that would diminish the value of the receipt's use as collateral are clearly stated. During the warehouse licensing process, legislation in many countries requires the potential warehouse operator to submit the planned warehouse charges to the licensing authority. For example, in the Philippines, in order to apply for a license to operate a grain warehouse, applicants must submit a schedule of storage fees to be charged to the National Food Authority. Similarly, in France charges for storage and related services must be fixed and filed with the prefect before a warehouse opens.

During preliminary consultations, it was established that 66.7% of the respondents did not know of any financial institution that had extended credit based on a warehouse receipt as collateral. The main reason advanced was that financial institutions did not trust the WRS as a system able to ensure that the credit advanced can be recovered⁷⁵.

⁷³ Clause 7 of the memorandum of the Warehouse Receipt System Bill, No. 11 of 2005 intended to provide for a warehouse receipt that offers security to the depositors that can easily be negotiated so as to enable access to credit from financial institutions and provide credibility to the warehouse receipt. This however was not fully reflected in the Act.

⁷⁴ *Op. Cit.* Designing warehouse receipt legislation: Regulatory options and recent trends (2015), Food and Agriculture Organisation of the United Nations at page 16

⁷⁵ Established from the preliminary consultations held in Jinja by the Commission from 31st October to 5th November, 2022

Its therefore important to review the Act and have a provision inserted to elaborate how warehouse receipts pledged as collateral shall be treated upon default of a debtor.

Issues:

- 1. Whether the law should make provision for the use of warehouse receipts as collateral?**
- 2. Whether the law should provide for recovery?**
- 3. What is the role of the UWRSA in the recovery process?**

3.1.6. Lack of a provision on the priority of creditors in the recovery process.

The law is silent on the priority of creditors in the queue of recovery where a farmer fails to pay a lender.

One of the aims of the warehouse receipt system is to increase access to financial facilities by farmers and other players from other sectors. It's therefore important to protect the creditors from losses that accrue in the event that the holder of a warehouse receipt defaults in payment of the finances advanced on the security of a receipt or where the subject matter of the receipt is destroyed or is no longer merchantable. It is therefore important that legislative protection is given to creditors such that they have priority in payments in the event of default by the holders of warehouse receipts.

In France, in the event of non-payment of the underlying debt at maturity, the bearer of a warrant separated from the receipt can, eight days after notice and without any judicial formality, initiate the public sale of the stored merchandise by public officials, in accordance with the applicable provisions for public wholesale auctions. The same applies to an original signatory of the warrant who has paid the bearer and may initiate the sale of the merchandise against the receipt holder. The creditor on the pledged warrant is satisfied first from the proceeds, directly and without judiciary formalities, and is privileged over all other creditors. There are no other deductions before the creditor is paid except for taxes, storage, and sale expenses.

Warrant holders have no right of action against the debtor or the endorser until pledged goods are sold or where the proceeds are insufficient to cover the debt. the right of action against endorsers is forfeited if the public sale does not occur within one month after the protest.⁷⁶

It is therefore important to review the Act and insert a provision that gives the creditors priority in the recovery of credit facilities extended to holders of warehouse receipt systems in Uganda. This shall attract financial institutions to participate in the warehouse receipt systems much to the benefit of the holders of the warehouse receipt and the government of Uganda.

Issues:

- 1. What should the order of priority to recover in case of default by the debtor be?**
- 2. What should be the position of a creditor on a warehouse receipt among other creditors?**
- 3. Whether the law should permit a lender to recover without recourse to courts of law?**
- 4. In case the proceeds of the sale are insufficient to pay all creditors and the warehouse operator, who is responsible to pay the difference?**
- 5. In case of a dispute as to the value of the subject matter of the warehouse receipt, should the law provide for an independent valuer?**

Limited or lack of appreciation on how the WRS works by would be users or beneficiaries

The entire concept of the WRS and the law have not been adequately disseminated to the ultimate beneficiaries and so they do not understand how the system operates.

Depositors and other participants should be informed about the existence and procedures of a warehouse receipt system. Further, farmers and

⁷⁶ *Op. Cit.* Designing warehouse receipt legislation: Regulatory options and recent trends (2015), Food and Agriculture Organisation of the United Nations at pages 46 and 47

stakeholders should be able to determine whether the warehouse they intend to store their produce is in fact licensed under the WRS and therefore meets all licensing requirements. They should also be able to establish where the closest licensed warehouses or licensed warehouses, in general, are located.⁷⁷

To ensure that the public is informed of the whereabouts and procedures of the WRS, legislation could require the licensing and oversight authority to publish a list of licensed warehouses or the warehouse operators to publish notices of their licence. This contributes to the objective of strengthening the transparency of and subsequently confidence in the WRS. For documentation and control purposes, licensed warehouses are commonly registered in a registry maintained by the licensing authority.

Whereas 79.2 % of the respondents acknowledged that they have ever heard about the WRS, only 41.7% had used it. This was attributed to a number of factors including lack of sufficient information on how the WRS works and poor infrastructure.⁷⁸

In Brazil and India, if the relevant authority licenses a warehouse, it is required to include it on a list of licensed warehouses.⁷⁹ In Ukraine, the licensing authority maintains a central registry of certified grain warehouses.⁸⁰ Beyond maintaining a list, the authority should be required to make the list publicly accessible for any interested person by publication.⁸¹ Likewise, in Kazakhstan, local authorities are required to maintain a publicly accessible list of all licensed grain warehouses.⁸² It is therefore important to review the Act in order to make provisions that provide for the dissemination of information to interested parties and the public which will result in awareness and enhanced transparency in the operation and use of WRS.

Issues

1. What can be done to increase public awareness and use of the WRS

⁷⁷ Philine Wehling and Bill Garthwaite, “*Designing a warehouse receipt legislation*”, pg. 25

⁷⁸ Information obtained from preliminary consultations in Jinja District conducted by the Commission from 31st October to 5th November, 2022.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

- 2. Whether information dissemination will increase the use of WRS**
- 3. Whether information dissemination shall increase the acceptability of the WR as collateral by banks and other financial institutions**
- 4. Whether the WRS can help farmers to move away from informal trade in agriculture produce**

Inability by subsistence or small-holder farmers to meet the volumes of produce demanded by warehouses

Warehouse keepers are discouraged from investing in the system due to farmers' inability to meet the volumes of produce demanded by warehouses which makes private investment in the system very costly and not attractive.

Much as the Warehouse Receipt System has been in force in Uganda for some time and offers what seem to be obvious benefits such as, enabling farmers to bulk their crops for deposit, ensuring compliance with quality standards and minimum quantity requirements which makes 'sight-unseen' trade possible and thereby enabling sellers to sell to buyers in a wider geographical area than their immediate location, reducing post-harvest losses and ensuring farmers receive prices that are more competitive, the number of farmers benefiting is still small and aggregate impacts are still modest. This inevitably means that even the warehouse keepers are struggling because of low use characterised by the inability of the subsistence or small-scale farmers who constitute the majority in the agriculture or produce sector to meet the desirable volumes of produce.⁸³

Agriculture in Uganda is still dominated by smallholder farmers who occupy the majority of land and produce most crops, livestock and fisheries products. The key long-standing challenge of smallholder farming is low productivity and limited commercialisation that has frustrated the full utilisation of the productive potential of agricultural innovations in the country.⁸⁴

⁸³Kilindu Giattas and Partners, Suitability of Warehouse Receipts as Collateral for Loan Financing Transactions in Tanzania.

⁸⁴Refer to the National Planning Authority, 2013, Policy Paper on Transforming Smallholder Farming to Modern Agriculture in Uganda. Pp. 2.

In 2013, stakeholders in the sector pointed out the fact that warehouses were struggling to attract farmers' produce for a number of reasons ranging from the absence of a sizeable market for quality grains, lack of suitable storage infrastructure, difficulties in accessing finance and skills gaps among key actors. For example, it was reported that two major warehouses in the Ruwenzori region were struggling to attract the projected volumes of produce from maize farmers.⁸⁵ The two warehouses, Rwimi warehouse in Kabarole district and Nyakatonzi in Kasese district were receiving produce below the required capacity. Statistics at Rwimi warehouse indicated that the warehouse with a capacity of storing 2,000 tons of maize, managed to store only 220 tons since January while at Nyakatonzi warehouse, with a capacity of 1,000 tons, only 251 tons were stored for the year.

According to the Agriculture Financial Year Book, 2019, the WRS is finding challenges, with deposits falling and in 2015 they were almost nil. The publication shows the total licensed storage capacity in 2014 stood at 22,000 tones, very marginal in comparison to the total annual volume of grains and pulses produced in Uganda estimated at over 4.9 million tones. *"From 2010, the volume of grains deposited with licensed warehouse operators dropped sharply and the downward trend continued to nearly, nil in 2015,"* the book notes.⁸⁶ The deposits have since upped slightly but still below 30 percent of the storage capacity of warehouses in the country.

The book also notes that other key stakeholders such as the banks were also finding it difficult to extend credit facilities to those who are depositing grain in the warehouses due to the limited capacity of licensed warehouse operators to minimise in-store quantity losses and quality deterioration.

The factors that explain the above challenge include, farmers lack of adequate knowledge of how the system operates and late payments schemes that often result in many preferring immediate cash for their commodities.⁸⁷ Other factors include; lack of reliable information on prices and crop forecasting for sound decision-making, high storage costs, an ineffective or inoperational legal framework that still views warehouse receipts as unreliable, limited grades and quality standards and lack of

⁸⁵Refer to Warehouses Struggle to Attract Farmers' Produce. Accessed at <https://ugandaradionetwork.com/story/warehouses-struggle-to-attract-farmers-produce-1> on 5/10/2022.

⁸⁶The Agricultural Finance Year Book 2019.

⁸⁷Refer to Miriam Katunze, Annette Kuteesa et al, June, 2017, Uganda Warehousing Receipt System: Improving Market Competitiveness and Service Delivery, Pp.4.

deliberate strategies and mechanisms to encourage the performance of warehouses in view of the completion from the informal sector.

The above factors are exacerbated by lack of tradable commodities by Uganda since not all produce is passed through the WRS especially before sale to the market outside Uganda which affects Uganda's competitiveness regionally and internationally. There is also the challenge of limited commodities for the warehouses which currently mainly trade only in grain and yet Uganda is rich in products like fresh agricultural commodities like fish and beans which would greatly enhance the viability of the WRS.⁸⁸

In other jurisdictions, especially Kenya, Tanzania and Zambia, it was established that these countries have had mixed experiences with the establishment of the WRS ranging from slow beginnings for the case of Kenya and Tanzania to near failure for the case of Zambia. The factors undermining progress in Kenya and Tanzania are similar to those in Uganda such as the sector being dominated by small scale farmers who do not have enough produce and wish to dispose of the same immediately to address their challenges and obligations.⁸⁹

In addition to the above challenges, Zambia specifically faced other issues such as foreign donors who were funding the project being strongly focused only on smallholder participation, while neglecting other important aspects of the system and the misappropriation of funds.⁹⁰ It is important to note that these challenges notwithstanding, the countries and development partners have continued to invest heavily in the sector given the contribution of the sector to the overall GDPs of the respective countries and the key role it plays in employing most citizens.

Much as Uganda is already on the path to commercialisation of agriculture as seen in the various policies and programmes, for example, under the National Development Plan (NDP 3) under the Agro-industrialisation Programme Interventions and Respective Actors, Objective 4 targets increasing market access and competitiveness of agricultural products in domestic and international markets through developing infrastructure and

⁸⁸Recommendations made to the Commission in a technical stakeholder meeting held on 15/09/2022 at the Commission.

⁸⁹Ones Karuho and Kate Collins, July, 2020, Improving African Grain Markets for Smallholder Farmers, Pp. 24.

⁹⁰Refer to the Power of a Saved Receipt. A study on Warehouse Receipt Systems- Accessed at <https://gro-intelligence.com/insights/the-power-of-a-saved-receipt-a-study-on-warehouse-receipt-systems> on 05/10/2022.

facilities for rural and urban agricultural markets at district and community levels to meet quality standards, developing urban agricultural markets in all districts, revitalising the WRS and the commodity exchange system, the volumes and quality of produce remain low thus rendering the WRS redundant and ineffective.

Issues for consideration

- 1) What factors are preventing the farmers from supplying sufficient quantities and quality to the WRS.**
- 2) What strategies or mechanisms need to be implemented to increase the volumes of commodities deposited in the WRS.**

Limited investment in warehousing by the Government

The Government has overly relied on private players when it comes to warehousing. More than 80% of the warehouses in Uganda are privately owned.⁹¹ This has denied the sector of practical role-modelling and standardisation.

One of the key indicators of a viable WRS is a functional public WRS. This would guide other players in the industry on minimum required capital, minimum storage capacity, performance guarantees or an indemnity scheme, prohibition on warehouse participation in credit or credit guarantees, transparent storage fees and submission of sufficient and real-time information to the regulatory agency.⁹² Public warehouses are open to anyone on a non-qualifying basis. Any person who brings in agricultural goods may store them.

In Uganda, despite the establishment of the WRS in 2006, the investment and the development of the minimum storage capacity has not been very impressive. This has affected the development of the WRS especially in the rural parts of the country where agriculture is practiced. For warehouse facilities to be accepted under the WRS, they should meet the set warehouse and warehousing standards and protocols set at National, Regional and

⁹¹Miriam Katunze, Annette Kuteesa *et al, op. cit.*

⁹²Refer to Briones, Roehlano M.; Tolin, Lovely Ann C., 2016, Warehouse receipts as a system for improving the efficiency of rice and corn marketing in the Philippines, PIDS Discussion Paper Series, No. 2016-45.

International level for storage of commodities to be able to store commodities either for trading or consumption purposes by humans and animals.

Currently, most storage facilities in Uganda under the WRS are owned by the private sector players, that is, companies, farmer groups and associations, and cooperatives. The facilities of varying standards are distributed across the country especially in the rural productive areas.⁹³ This raises concerns of access to appropriate WRS facilities throughout the country.

The limited access to appropriate storage and warehouse facilities often increases the cost of managing produce which most small-scale farmers are unable to meet, leads to absence of adequate PHH technologies such as moisture meters, tarpaulins and seal bags which means that farmers continue to deposit and sell outside the WRS because of the rudimentary mechanisms of handling produce. This is exacerbated by challenges in related infrastructure such as poor road networks, power and irrigation systems. Access to and the cost of power to run grain processing equipment has been a challenge especially in the rural communities that produce grains. Poor rural infrastructure, especially feeder roads, have affected the grain trading mainly during the rainy seasons. Despite the construction of good highways and main roads, and some feeder roads in the rural areas, there are still many impassable feeder roads during the rainy seasons which limit accessibility, thus increasing the cost of doing business and negatively impacting the competitiveness of grain trade.⁹⁴

At the regional and international arena, the limited appropriate facilities have often led to the rejection of Ugandan grains, especially maize due to failure to meet the East African Grain standards. There is therefore a need for a turnaround to enable the promotion of regional trade and complementarities within the framework of regional economic communities such as EAC and COMESA.⁹⁵ This calls for Uganda to match her national and regional value chains with regional and international actors through increasing the organisation and coordination of stakeholders, standardisation of the quality and safety of products to meet consumers' demand.⁹⁶

⁹³Uganda Warehouse Receipt System Authority, <https://www.uwrsa.go.ug/news/>, accessed on 7/10/2022.

⁹⁴Ministry of Trade, Industry and Cooperatives, September, 2015, National Grain Trade Policy.

⁹⁵Eduardo Tugendhat Director Thought Leadership, Palladium, 2017, Transforming the Uganda Maize System- Positive Impact Case Study.

⁹⁶

It is the view of the Commission, that the strategic investment in key storage infrastructure at strategic production and exit trade points will not only spur practical role-modelling and standardisation, but will greatly facilitate the enforcement of standards especially in cases of selling produce to outside countries which affects how much the country and farmers earn from exports. This would also be in line with Government priorities under the NDP III under Agro-industrialisation Programme Interventions and Respective Actors where objective 4 aims to increase market access and competitiveness of agricultural products in domestic and international markets through among others the development infrastructure and facilities for rural and urban agricultural markets at district and community levels to meet quality standards, revitalising the warehouse receipt system; and revitalising the commodity exchange system.

Issues

- 1. Why are farmers not using the current warehouses/ storage facilities effectively.**
- 2. What is the role of Government in the establishment of WRS infrastructure?**
- 3. Whether Government has performed its part in the PPP WRS model envisaged by the applicable policies?**

Inadequate institutionalisation of stakeholders

There is inadequate institutionalisation of the major players for instance cooperatives, traders' associations, small holder farmers, financial institutions and insurers. Institutionalisation essentially requires legislation that clearly identifies who the core players are and their roles. The Act in its current form largely concentrates on the establishment of the Authority and its core administrative structures and when it comes to structures of other players, it only legislates the obligations of warehouse keepers and yet these are only a section of the WRS cycle.⁹⁷ There are other players whose

Jakob Engel, Marie-Agnès Jouanjean and Paul Omanga, 2015, Infrastructure for the participation of smallholders in modern value chains

Lessons from the development of warehouse certification and receipting systems for maize in Kenya

⁹⁷The Warehouse Receipt System act, op. cit, sections 3-51.

obligations and rights need to be spelt out. These are mainly the farmers/ framers cooperatives, the banks/ financial institutions and insurers.

Preliminary consultations by the Commission also revealed that district local governments commercial/ production departments are a core linkage between the local people and the warehouse operators because their intervention would help protect the local farmers from exploitation. This is therefore another important player to be introduced and legislated on.

The law should be reformed to institutionalise these actors by providing for their scope of work, their organisation and activities under the warehouse receipt system. This will allow them benefits such as; effective communication and coordination between actors, strengthening of governing bodies, better decisions on strategies, improved financial reports regarding work done among others.⁹⁸

Institutionalisation of WRS players would also enable small holder farmers to access and work with larger traders or processors further down the value chain enabling them to participate in commodity markets, providing them with the possibility to consolidate their crops in a warehouse and selling jointly for higher prices. This is an important advantage in developing countries where evidence shows that smallholders could benefit from the system especially through participating in marketing groups.⁹⁹

In Vietnam for instance, the best practices regarding warehouse receipt system laws include imposing of legal obligations on issuers, endorsers and endorsees that are enforceable in the courts of the law.¹⁰⁰ With such obligations in place, warehouse receipt system parties like financial institutions, farmers even the small-scale ones are able to eliminate anomalies like price exploitation by unscrupulous middle men.

Issues

- 1. Who are the core players in a functional WRS cycle?**
- 2. What are the rights and obligations of warehouse keepers/ operators in a WRS cycle?**

⁹⁸ Gphadmin, Benefits of institutionalizing your company through the adoption of a corporate governance structure, available at www.gphlegal.mx accessed on 3rd October 2022.

⁹⁹ Coulter and Onumah 2002, The role of Warehouse Receipt Systems in enhanced commodity marketing and rural livelihoods in Africa. Available at www.sciencedirect.com accessed on October 2022.

¹⁰⁰ International finance corporation, " Legal structuring of warehouse finance facilities in Vietnam ",Page 43. Available at www.ifc.org accessed on 3rd October 2022.

3. What are the rights and obligations of farmers/ farmers cooperatives in the WRS cycle?
4. What are the rights and obligations of banks/ financial institutions in the WRS cycle?
5. What are the rights and obligations of insurers in the WRS cycle?
6. What are the rights and obligations of free lancing traders in the WRS cycle?
7. What is the role of district local governments in the WRS cycle?

Gaps in the implementation strategy and policies on WRS in Uganda

The Uganda National Development Plan III (NDP III), The National Trade Policy amongst other policies all have a draft implementation strategy but it is brief and does not provide detailed strategies for WRS.¹⁰¹ While these policies highlight the need for agricultural development in Uganda, they do not provide clarity on strategies which should support the implementation of the relevant policies and law. In terms of practical implementation, the Ministry of Trade, Industry and Cooperatives lacks an updated sector development plan with detailed strategies for a functional WRS.¹⁰²

The Vision 2040 is conceptualised around strengthening the fundamentals of the economy to harness the abundant opportunities around the country and amongst these is agriculture.¹⁰³ It addresses post-harvest infrastructure, cooperatives and standards that are in line with the objectives of WRS. However, it does not specifically prioritise or mention WRS, a gap that the review of the law seeks to address.

The Uganda National Trade Policy, 2007 provides for development of both domestic and international trade and creates opportunities for equal participation in trade through entrepreneurial development giving priority to the socially and economically disadvantaged groups in society.¹⁰⁴ Though some of its provisions constitute elements of WRS such as cooperatives, the policy does not prioritise WRS and the use of receipts as a source of credit

¹⁰¹Economic Policy Research Centre, "what gaps exist in Uganda's warehouse receipt receipt system, available at <https://eprcuug.org/blog/what-gaps-exist-in-Uganda's-warehouse-receipt-system> accessed on 17th august ,2002

¹⁰²*Ibid.* at 10.

¹⁰³National planning authority, Uganda vision 2040 availbale at www.npa.go.ug accessed on 5th October 2022.

¹⁰⁴National trade policy 2007 available at en.unesco.org accessed on 5th October 2022.

to farmers.¹⁰⁵ The Commission is therefore of the view that reviewing the Act will fill this gap by making reform proposals for a more functional WRS.

The National Agricultural Policy, 2013 implemented by the Ministry of Agriculture, Animals, Industries and Fisheries (MAAIF) acknowledges that the policy strategies on production, storage, marketing and quality assurance and control require well developed and maintained agricultural marketing infrastructure that includes, warehouses, silos and cold chain storage systems, among others.¹⁰⁶ The policy also highlights the role of the Ministry of Trade, Industry and Cooperatives to deepen and increase coverage of WRS but does not provide guidance on how to implement laws to prioritise it. The review of the Act is intended to achieve this purpose in order to facilitate a well-structured WRS.

Under the National Grain Trade Policy, 2015, Government focuses on interventions aimed at improving the supply and quality of grain through adoption of post-harvest handling best practices and use of modern storage and value addition facilities¹⁰⁷. The policy acknowledges the issue of inadequate policy, regulatory and institutional framework. It states that the institutional framework to support and enable market access can be developed along the lines of UWRSA¹⁰⁸ and it is for this purpose that the Commission seeks to review the Act.

Under NDP III, Government has laid out interventions and their actors to fulfill the objectives of the policy which include increase in agricultural productivity, improvement of post-harvest handling and storage facilities and technologies, agro-processing and value addition to mention but a few.¹⁰⁹ Under the agro-industrialisation programme, the policy highlights the revitalisation of WRS by the line Ministries and the UWRSA. Similar to the other policies, NDP III has not prioritised the WRS and the use of receipts. The review is intended to review the law to effectively fulfill the objectives of Government.

Despite the above policies, Government has for the last sixteen years not [developed a practical WRS policy implementation strategy. This is because

¹⁰⁵ Miriam katunze et al, Uganda warehousing receipt system: improving market competitiveness and service delivery. Available at <http://ageconsearch.umn.edu/ageconsearch@umn.edu> accessed on 5th october,2022.

¹⁰⁶ National agriculture policy at page 24-25.

¹⁰⁷ Ministry of Trade, Industry and Cooperatives, National Grain Trade Policy 2015 at page 5

¹⁰⁸ Ibid at page 15.

¹⁰⁹ National Planning Authority, Third National Development Plan NPD III 2020/21-2024-2025, at page 69.

all the listed policies were developed after the Act had been passed and it was therefore difficult to reflect the policy aspirations of Government in the law retrospectively. As a result, there appears to be a technical and implementation gap between the Act and the new policies.

Issues

- 1. In the legislation process, between a policy and law what should come first.**
- 2. How do you cure a legislative gap between an old law and a new policy?**
- 3. What gaps, if any, are in the current WRS policy framework?**
- 4. What are the core tenets of a meaningful WRS policy implementation strategy?**

References

Briones, Roehlano M.; Tolin, Lovely Ann C., 2016, Warehouse receipts as a system for improving the efficiency of rice and corn marketing in the Philippines, PIDS Discussion Paper Series, No. 2016-45.

Eduardo Tugendhat Director Thought Leadership, Palladium, 2017, Transforming the Uganda Maize System- Positive Impact Case Study.

Jakob Engel, Marie-Agnès Jouanjean and Paul Omanga, 2015, Infrastructure for the participation of smallholders in modern value chains

Lessons from the development of warehouse certification and receipting systems for maize in Kenya

Kilindu Giattas and Partners, Suitability of Warehouse Receipts as Collateral for Loan Financing Transactions in Tanzania.

Ministry of Trade, Industry and Cooperatives, September, 2015, National Grain Trade Policy.

Miriam Katunze, Annette Kuteesa et al, June 2017, Uganda Warehousing Receipt System: Improving Market Competitiveness and Service Delivery.

Ones Karuho and Kate Collins, July, 2020, Improving African Grain Markets for Smallholder Farmers.

The Agricultural Finance Year Book 2019.

The National Development Plan, Part III, Chapter 5 on Agro-Industrialisation.

The National Planning Authority, 2013, Policy Paper on Transforming Smallholder Farming to Modern Agriculture in Uganda.

Others

The Power of a Saved Receipt. A study on Warehouse Receipt Systems- Accessed at <https://gro-intelligence.com/insights/the-power-of-a-saved-receipt-a-study-on-warehouse-receipt-systems> on 05/10/2022.

The Warehouse Receipts: Financing Agricultural Producers- Technical Note No. 5.

Warehouses Struggle to Attract Farmers' Produce. Accessed at <https://ugandaradionetwork.com/story/warehouses-struggle-to-attract-farmers-produce-1> on 5/10/2022.