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ARE THE VIEWS OF HERNANDO DE SOTO APPLICABLE IN SOUTH AFRICA?

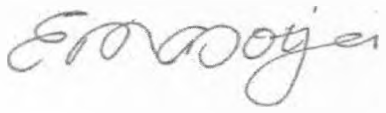
EVELYN MASOTJA

Thesis presented in fulfilment of the requirements for the degree Doctor of Philosophy at the University of the Witwatersrand, Johannesburg, South Africa

PROMOTER: PROFESSOR STEFAN SCHIRMER

Declaration

I, Evelyn Shandokane Masotja, declare that the research work reported in this dissertation is my own, except where otherwise indicated and acknowledged. It is submitted for the degree of Doctor of Philosophy in Economics at the University of the Witwatersrand, Johannesburg. This thesis has not, either in whole or in part, been submitted for a degree or diploma to any other universities.



Signature

Student number: 441349

Abstract

Developing countries have struggled to identify the sources of economic growth for many years. Hernando de Soto has identified the legal system as key to unlocking the potential of economies and making markets inclusive for the poor. He argues that developing countries must establish representational systems that will transform assets into capital and he demonstrates the importance and role of property rights in creating wealth for economic development. These rights facilitate economic exchange, access to credit, transfer of resources and meaningful economic activities. The thesis seeks to determine if the views of De Soto are applicable to South Africa. It argues that traders in Pretoria lack secure and strong property rights. De Soto claims that developing countries have assets and resources and only lack an inclusive legal system. The lessons from De Soto are applied to the situation of street traders in Pretoria.

The thesis focuses on traders in Pretoria in areas that include Sunnyside, Marabastad, Hatfield and various streets in the Pretoria central business district (CBD). In 2014, the traders participated in violent protests due to police harassment and confiscations of their stock. There were tensions and hostility between the traders, the metro police and the municipality. The argument here is that the situation of the traders in Pretoria, the capital city of South Africa, is under-researched and has similar dynamics to those of street traders in Peru, as depicted in the somewhat neglected first book of Hernando De Soto, *The Other Path*, which was written in the 1980s. My study finds that the conditions of traders in Pretoria have improved since late 2014. Traders in Pretoria experience less harassment and crime, and appear to have more rights than the study anticipated based on the reports of the situation in 2014.

What the research in this thesis points to is the role that informal traders' associations can play to strengthen property rights. Associations play a crucial role in countries such as Egypt and India by negotiating property rights for traders. The views of De Soto are applicable to South Africa as far as the importance of securing suitable property rights for the traders is

concerned, and especially in his earlier book, *The Other Path*, he sheds light on the role that traders can play to strengthen their rights vis à vis the state.

Establishing secure, individualised property rights without compromising existing rights is a difficult and lengthy process. The thesis therefore proposes a systematic, gradualist approach to addressing the property rights of traders in the economy. The approach includes identifying ways to bring traders into the economy, gradually and in a sustainable manner. The efforts and success of the Tshwane Barekisi Forum must be strengthened and built on for more conducive and workable engagements between the traders and the Pretoria metro.

In South Africa, the informal sector at least provides some opportunities to move out of unemployment and poverty. Research shows that informal trader associations have played a positive role in improving the position of street traders in Pretoria. However, if this is to be more than a temporary improvement, numerous issues that continue to weaken the property rights of traders have to be addressed over time.

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CHAPTER 1 INTRODUCTION TO THE STUDY AND OUTLINE OF CORE THEMES

This chapter establishes the background of the study, the problem statement and the original contribution. It further outlines the objectives, the methodology, research questions and limitations of the study, and gives an outline of the thesis.

1.1 Introduction

South Africa has experienced high unemployment since 1994, according to Statistics South Africa (Stats SA) Labour Force Surveys. The unemployment rate in Quarter 2 of 2017 stood at 27.7% according to the Stats SA Labour Force Survey. South Africa desperately needs to expand economic opportunities for those who are stuck in unemployment. Increasing the number of small firms in the economy is one way to achieve this.

Traders are important in any economy (Meyer, 2015; Williams, 2011: 148). This is more so in the South African scenario where unemployment is high and has historically been a challenge. The participation of people in street trade may also be an indication of the lack of opportunities in the economy. People with activities in the informal sector operate outside the scope of the main economy for many reasons, which include poor economic opportunities and avoidance of the regulatory burdens (Heistein, 2015).

Why do people resort to the informal economy? According to Stats SA (2013), many people are not able to find employment and are not able to make an income. This sector of the economy offers a security system: it provides options for self-employment and is a way for people with insufficient skills to be employed and to make a livelihood. Another advantage is that goods and services that are affordable and easy to find are provided to local communities (Bhowmik, 2005).

More importantly, people are in the informal economy because they lack property rights. They do not have the rights that enable them to be part of the formal economy. According

to De Soto (2000), the poor have no access to the formal economy because of a lack of representational systems or rights to participate in the economy. The traders are not part of the property rights system because they do not have the resources that are recognised by the economic system. Property rights include the ability to participate meaningfully in the economy, the freedom to employ their economic activities and the ability to enjoy what they do and where they participate.

De Soto (2000:86) argues that because the formal legal system does not welcome traders, they set up their own informal systems. The other rationale that keeps traders in the informal economy is the costs of becoming legal. De Soto (1989) highlights some of those costs that prevent traders from participating in the formal economy.

Regardless of the reasons why traders are in the informal sector, this thesis focuses on the fact that traders in the informal economy by definition lack strong, secure property rights. The emphasis of the thesis is on traders in Pretoria. The traders in this study include those who have legal status and those who are unregistered.

Establishing and securing broad access to secure property rights are issues that have interested governments, academia and others in the global economy, (Locke, 2013: 8; Acemoglu, Johnson and Robinson, 2001: 403). Development economists and other experts have debated extensively about what property rights are, how important they are in promoting development and what are the best ways to strengthen and broaden access to property rights (North, 1981, 1990, 1993, 2005; Shirley, 2003, 2008; Nabli and Nugent, 1989; Bardhan, 1989).

Internationally, it has been the work of Hernando de Soto that, more than any other contribution, has placed property rights at the heart of pro-poor economic development debates. Hernando de Soto is a Peruvian economist whose core intellectual contributions are contained in his books *The Mystery of Capital* (De Soto, 2000) and *The Other Path* (De Soto, 1989). His work addresses issues that impact on poor people in developing countries,

with a special focus on those who operate in the informal sector. He has reflected at length on the nature of property rights in the informal sector, on the inability of the poor to use capital, and the reasons why the poor remain excluded from the legal economy. He has become a champion of the poor and a voice that focuses on an aspect of development that is too frequently perceived as insignificant.

The two books are briefly summarised here to place the issues in context and for better understanding. In *The Mystery of Capital*, De Soto offers an insightful analysis of how capital is formed in the West through the legal system, explains why the poor in developing countries are excluded from the market system and proposes a process to establish inclusive and secure property rights.

In *The Mystery of Capital*, De Soto (2000: 68) illustrates that many capitalist economies in the developing world are like a bell jar that excludes the poor. The select elite are inside the bell jar and benefit from capitalism, while the majority of people in many developing countries look in from the outside.

The Other Path outlines developments in the informal sector in Lima in Peru. De Soto shows how the legal system excludes the poor, and demonstrates the importance of the legal system as well as the conflict and lack of cooperation between the state and informal traders. In this work he also addresses the cost of doing business for traders which he attributes to the ineffective legal system that pushes traders to operate outside the formal economy. In both books he focuses on the institutional framework necessary for the material development of the poor and the role of the legal system in creating economic inclusion of poor people in developing countries.

The purpose of this study is to examine whether the views of Hernando de Soto on property rights are applicable to South Africa. De Soto (1989: 158) defines property rights as the rights that confer on the holders the power to use, enjoy, dispose of and claim a tangible or an intangible asset within the framework of the law. Property rights are the mechanisms

that protect the activities of those active in the economy. They can be in the form of laws, norms, practices, incentives and resources, as well as the recognition of one's efforts or activities by economic institutions.

The two functions that a property right fulfils are protection and participation. The protection function is the one normally emphasised by economists. Property rights are defined by their ability to protect owners from expropriation and interference by others, especially those with political power. This concept also speaks to the security of property rights. The second function is participation, which is the one emphasised by De Soto. He is an advocate for a property rights system from which no one is excluded in the economy. From this perspective the issue is often how to change the system so that it can include those who do not have access to the formal economy. This sometimes means reducing the security of existing property rights to make the system more inclusive. This thesis tackles these conflicting functions and arrives at a property rights system that addresses the questions of the thesis.

The thesis assesses whether strengthening property rights in the ways outlined by De Soto could make a positive contribution in the fight against poverty in South Africa. Further, the thesis attempts to establish how to change the property rights system for traders without significantly undermining the security of existing rights. It is crucial to ensure that both functions of property rights, namely protection and participation, are addressed.

The thesis explores the strength of the property rights of traders in Pretoria with the aims of understanding the security of those rights and investigating the appropriate property rights of traders so as to advance their growth and development in the economy of Pretoria.

Furthermore, the thesis examines how property rights may be used to recognise the economic activities of the poor. It also determines whether there are appropriate institutions for the traders in Pretoria that address their needs. It seeks to identify a suitable process for creating effective property rights. According to De Soto (2000: 50), the process

that the West undertook to develop property rights was a very long and extensive one, which then begs the question of an appropriate property rights process for the traders of Pretoria in South Africa. The situation of traders is critical and may require a more practical and quicker process.

However, the thesis does not take an uncritical view of the writings of De Soto. This analysis of De Soto's work draws attention to contradictions and elements of his proposals that have no practical application in the economy. The study is rather an honest attempt to assess the lessons and experiences drawn from his work by pointing out the shortcomings of some of his views. The study takes a balanced approach by drawing attention to both the positive and negative aspects of the work of De Soto.

Critically, the thesis explores how De Soto's work should be understood in the broad context of development. It points to the additional perspectives required to conceptualise and institute the meaningful institutional reforms that will permit currently excluded individuals to trade on the streets. The approach developed in the thesis is inspired rather than determined by De Soto's work.

The research will inform policy makers of the establishment of suitable property rights of traders in the Pretoria area. It will provide a mechanism of how local government and other political role players can interpret the property rights of the poor, particularly of Pretoria traders. It will enhance the understanding of property rights and the informal sector. Furthermore, it will provide an approach for established, secure and strong individualised property rights.

What sets this research apart is that there has been no other research that tackles processes to establish property rights of the poor except for the work of De Soto in the context of traders in Pretoria. Previous research hardly approaches the poor as self-sufficient and contributors to the economy, but the work of De Soto has done so, and this thesis will take that perspective forward. Furthermore, this research makes an original contribution

because it attempts to answer the question of how to establish secure property rights and retain the existing property rights of traders in Pretoria without compromising them. It draws lessons from Hernando de Soto that have not been fully considered in the context of South Africa.

This study promotes a shift towards a new way of looking at the informal economy from the property rights perspective. The informal economy is usually approached in its own right with details of its nature, the participants, the links with the formal sector, the statistical perspective and its contribution, but rarely from the perspective of property rights. When property rights are assessed, it is as the concept in the context of land and actual property, but not in a specific location and as a group in the economy. The emphasis on traders in Pretoria, as well as the lessons learned and the contradictions in De Soto's work and the property rights that will promote a more inclusive economy in South Africa. Because the core research question is to assess whether the views of De Soto are applicable to South Africa, the economic situation described in his writing is compared to that of traders in Pretoria. Adding a theoretical dimension by drawing on new institutional economics, leads to further insights into the South African situation.

This study is important because South Africa is a developing country affected by poverty, unemployment and inequality. Some parts of the economy are poorly understood. That includes people trading in the streets who may have no property rights or rights to their economic activities. To turn that situation around, the thesis argues for property rights that are secured and inclusive and yet not detrimental to existing property rights.

1.1.1 Research questions

The following are the research questions that the thesis aims to answer:

- Are the views of De Soto applicable to South Africa?
- What are the property rights that are suitable for traders in Pretoria?
    - What kind of protection do street traders have?
    - What kind of protection would they like to have?

- What is being done to accommodate their demands and to make them part of a functional South African property system?

- How can property rights be established without compromising existing property rights?

1.1.2 Comparison between Pretoria and Lima

In this section the two cities focused on in the thesis are described, namely Lima and Pretoria. The reasons for choosing these two cities are discussed. A brief comparison of the two cities is given.

Lima is the capital city of Peru and it was used as a case study in *The Other Path*. De Soto studied and assisted other developing and poor countries with issues of economic development through the establishment of property rights systems. The present thesis chose Lima as the main area of comparison because of the detailed dynamics of the informal economy in that city outlined and analysed in *The Other Path*. De Soto's book provides a detailed case study of a capital city facing the challenges of the informal economy, which provides lessons for South Africa.

Pretoria was chosen because it is the capital city of South Africa, and it has an informal economy with a number of traders who face major challenges regarding property rights. The city has had a fair share of protests by the traders over time, and may provide an example of a city that consists of traders without sufficient property rights.

The City of Tshwane or Pretoria is classified as a metropolitan municipality in South Africa. The city's population in 2014 was 3.1 million.[1] In 2011, the total population of Tshwane was 2.9 million, indicating a growth of around 200 000 people over three years. The employment level in Tshwane increased from about 1.02 million people in 2011 to 1.12 million in 2014. The city achieved an average growth rate of 2.9% over this period. It is among the six largest

[1] http://www.tshwane.gov.za/Documents/Tabling%20of%20the%20City%20of%20Tshwane%20Integrated%20Development%20Plan%20for%202016%202021.pdf

metros in South Africa and the second largest in the province of Gauteng (Stats SA, 2011). Lima's population was estimated to be 9.7 million in 2014. This makes Lima the fifth biggest city in the Americas. The metro area of Lima is ranked as the 27th most populous metro globally.[2]

The unemployment rate in the Tshwane metro in the second quarter of 2017 was 27.2% according to the Stats SA Labour Force Survey for quarter 2. The unemployment rate in Peru in September 2017 was 6.4% (National Institute of Statistics and Informatics, 2017). An estimated figure for Lima was not found, so the country figure provides an indication of the level of unemployment.

Both cities are in developing countries, Peru and South Africa. Both cities' are relevant as their histories are rooted in the struggle and plight of those in the informal economy.

1.2 Terminology

Some of the terms frequently used throughout this thesis are given in Table 1.

Table 1 Terminology

	Description
Informal economy	De Soto (1989) says that the informal economy is usually perceived as a problem – it is clandestine, unregistered, consisting of illegal companies and firms that do not pay taxes, that compete unfairly with companies and firms that comply with the requirements of the law. He disagrees with this view. He instead argues that the state is the problem rather than the traders. He describes the informal economy as the people's spontaneous and creative response to the state's incapacity to satisfy

[2] http://worldpopulationreview.com/world-cities/lima-population/

	the basic needs of the impoverished many (De Soto, 1989: xiv). Keith Hart (Hart, 1973: 84) was one of the first researchers to use the term informal sector. In his research in Accra, Ghana, Hart used the term to describe the low-income activities of poor entrepreneurs who were unable to secure formal employment. Subsequently the International Labour Organization (ILO) adapted the term to refer to the large number of economic activities that fall outside the formal sector in many developing countries. The World Bank also began to use this term around 1972 and identifies the characteristics of this sector to include ease of entry, consisting of small firms operating on the periphery and not regulated.[3] There are many definitions of the informal sector and they have led to debates on what exactly defines the firms in the sector. However, despite the various debates on what the sector actually constitutes, these are some of its common characteristics: • The activities are small with low levels of productivity. • It is outside the formal legal system, for instance licensing and taxation frameworks. • It is underground and hidden and not part of the formal economy. Martha Chen (Chen, 2012: 4-6) argues that historically, debate about the informal sector has reflected four main perspectives: • The dualistic perspective which defines the informal sector as involving minor economic activities that permit poor individuals to earn a low income and offer a safety net during times of crisis. The informal sector is perceived as entirely separate from the

[3] http://lnweb90.worldbank.org/eca/eca.nsf/1f3aa35cab9dea4f85256a77004e4ef4/2e4ede543787a0c085256a940073f4e4

	formal sector. • The structuralist perspective which sees the informal sector as a system of microbusinesses and individual workers that is secondary to the major 'capitalist' companies and whose role is to keep labour costs low. • The legalistic view sees the informal sector as the sum of all the small entrepreneurs who are excluded from the formal sector because of excessive regulatory costs and bureaucratic barriers. This view is similar to that of De Soto (1989). • The voluntarist perspective attributes the decision of small business owners to operate informally to a cost/benefit analysis. O'Driscoll and Hoskins (2003: 33) define the informal sector as a platform for entrepreneurial activity in poor economies and that serves as security and an opportunity for the poor and those economically disadvantaged. Hart (1973), Chen (2012) and O'Driscoll and Hoskins (2003) define the informal economy as that sector of the economy outside the formal economy. They emphasise different elements. Hart's definition is basic, Chen's approach characterises the sector in terms of its features such as legalistic and voluntary, and O'Driscoll sees it as an entrepreneurial opportunity for the poor. All the definitions share a common thread of recognising the legal system. De Soto's view is different in that he sees the state as the cause of the informal economy and focuses on the masses and how unfairly they are treated by the economic system. The informal economy is the key environment of this research – it is important to understand its concept.

Street traders	The Oxford dictionary defines traders as persons who sell something in the street, either from a stall or van or with their goods laid out on the pavement. The Tshwane metro by-law defines a street trader as follows: • A trader is an individual who sells goods or provides a service on the street. This can be a seller or vendor. • Any person who carries on the activity of street trade as owner, representative, assistant or employee. • A person who has been provided or leased a trading stall for the duration the person is selling on the streets. • De Soto (1989: 59) defines street trading as selling goods and services for economic benefit without complying with the legal requirements that include obtaining licenses and paying taxes. These are informal traders because they function without paying for permits or paying taxes. Traders selling on the streets are common to all definitions, with the Tshwane metro also focusing on the different categories of street traders. De Soto adds the legal perspective to the definition. This entire thesis is about street traders and their rights. It is therefore very relevant.
The poor **Poverty**	Simone Schotte, Rocco Zizzamia and Murray Leibbrandt (2017) of SALDRU describe the poor as those who are in an economically precarious situation in the present period, which does not allow them to satisfy their basic needs. They are those who fall below some commodity-based poverty line reflecting the cost of a consumption basket that is deemed to be adequate, with respect to both food and non-food components. "The European Commission defines the poor as persons, families and

groups of persons whose resources (material, cultural and social) are so limited as to exclude them from the minimum acceptable way of life in the Member State in which they live" (EEC, 1985).

Both definitions of the poor incorporate those with the inability to meet basic needs, with the first definition also focusing on a measurement tool to measure the poor. The EEC focuses on the inability to meet the minimum standard of life. The definition of the poor is relevant for this study because the traders on the streets fall into this category.

Stats SA (2012: 54) describes poverty as being widely regarded as an undesirable manifestation of poor living conditions, and it adds that the definition and measurement of poverty remain the subject of international debate. Bhorat, Van der Berg and Van Aardt (2003: 4) find the same. According to De Vos and Garner (1991:267), each definition of poverty partly depends on the social, political, cultural and historical contexts of a given society. It is therefore difficult to develop a universal criterion of how poverty should be defined. According to them, poverty is about deprivation and lack of basic needs. They also define it as absolute and relative and depending on contexts such as country, culture, etc.

Stats SA found that in a review of more than 40 national poverty studies undertaken in developing and transitional economies, a mix of three approaches was commonly used when trying to operationalise poverty definitions:

Poverty is conceptualised as the inability to attain a minimum standard of living reflected by a measurable and real indicator applied to a constant threshold such as a minimum income line that separates the

	poor from the non-poor; poverty is described as the lack of resources that would enable acceptable living conditions; they are the cause of exclusion and limited choices. The United Nations defines poverty as a deprivation of choices and opportunities, which could be seen as detrimental to human dignity.[4] Poverty is evidenced by lack of basic services, food, clothing, access to health facilities, land to grow food, employment, and access to finance. Poverty is characterised by insecurity, powerlessness and economic exclusion of people and communities.[5] According to the World Bank (2015), the new global poverty line is set at $1.90 at 2011 prices. Over 900 million people around the world lived below the poverty line in 2012 according to the World Bank (2015) figures. It was expected that about 700 million people would be living in extreme poverty by 2015. As the cost of living changes across the world, the global poverty line is periodically updated to reflect these changes. Updated price data is used to enable the global poverty line to give an accurate perspective of the costs of clothing, shelter and basic food globally. The definition of the poor denotes lack of resources and limited means of survival. All the definitions reflect an inability to be active in the economy. However poverty is measured, it is a serious economic challenge. This thesis focuses on street traders as the poor and the conditions of poverty they are exposed to, and it explores ways to help them escape from poverty.
Market economy	MacMillan's Dictionary defines the market economy as "an economic

[4] http://www.un.org

[5] http://www.tolerance.org/sites/default/files/general/tt_poverty_h1.pdf

	system in which prices, salaries, and the supply of goods are controlled by what and how much people buy, not by the government".[6] The Cambridge Dictionary defines the market economy as an economic system of goods and services with prices informed by demand and supply.[7] The definition by Macmillan addresses an economic system and prices, while Cambridge emphasises goods and services and prices informed by demand and supply. They all look at various elements of the market. The market economy is the mainstream economy that the majority of the population is excluded from. The thesis looks at ways to include the poor in this part of the economy.
Economic inclusion	The Department for International Development (DFID) is a United Kingdom government department responsible for administering overseas aid with the goal of eradicating global poverty.[8] The DFID defines economic inclusion as many public and private initiatives with the objective of bringing disadvantaged individuals into the market economy. In the US there are a number of organisations and programmes that strive not only to provide secure, reasonable, accessible financial products, but to educate consumers on how to be fully integrated into the banking system. Bettcher and Mihaylova (2015) define economic inclusion as a fair economic playing field where everyone has an equal chance to contribute to the economy in various capacities as businesses, consumers, members of society, workers and employers. Their definition suggests the need for a balance between promoting economic participation and generating increased economic growth. Bettcher and Mihaylova (2015) also claim that economic inclusion is effective when marginalised social groups are involved in the development and implementation of policies and programmes.

[6] http://www.macmillandictionary.com/thesaurus-category/british/economic-systems

[7] http://dictionary.cambridge.org/dictionary/english/market-economy

[8] http://www.dfid.gov

	The two definitions by the DFID and Bettcher and Mihaylova both focus on economic inclusion, but the DFID's definition is at the programme level, which initiates activities to encourage economic inclusion, whereas the other definition is at a micro level of an individual's participation in the economy as consumers, businesses, members of society, workers and employers. The challenge of economic exclusion is emphasised in the thesis as well as measures to assist traders.

1.3 Problem statement

When one discusses the work of De Soto, issues of economic inclusion, economic participation and development arise. Before moving into key literature discussions, the thesis investigates the level of economic exclusion in South Africa. This will provide a sense of direction in the following sections regarding some of the challenges the thesis hopes to address. South Africa has a history of economic exclusion which was structurally designed prior to 1994. Since the advent of full democracy in 1994, the levels of economic exclusion have remained high, even though significant overall progress has been made in the economy. Twenty-two years into democracy, it appears that the dynamics which De Soto highlighted remain, namely weak property rights, economic exclusion and assets that are not usable within the economic system. This section focuses on economic indicators that reflect economic exclusion, such as inequality, unemployment and poverty levels.

Economic inequality in South Africa is one of the highest in the world, with one of the upper-most Gini coefficients in the world (Bhorat, Van Der Berg and Van Aardt, 2003: 3). The Millennium Development Goals set a target of a Gini coefficient of 0.3 for 2015. South Africa's National Development Plan has a target of 0.6, to be achieved by 2030.[9]

[9]The Millennium Development Goals (MDGs) are the world's time-bound and quantified targets for addressing extreme poverty in its many dimensions - income poverty, hunger, disease, lack of adequate shelter and exclusion - while promoting gender equality, education and environmental sustainability (http://www.unmillenniumproject.org/goals/). South Africa's National Development Plan is a detailed blueprint of how the country can eliminate poverty and reduce inequality by 2030 (https://www.brandsouthafrica.com/governance/ndp/the-national-development-plan-a-vision-for-2030).

Unfortunately, according to Van der Berg (2010:12), the Gini coefficient has increased over time. The Gini coefficient for 2015 was 0.65 according to World Bank statistics.[10] The Gini based on income per capita was 0.68 in 2015 according to Stats SA data. Meanwhile, the Gini based on expenditure was 0.64 in 2015 using the Stats SA data.

According to the World Bank (2015), the poverty rate in South Africa for 2015 was 39%, which dropped from 46.2% because of social grants, free basic services and taxes in favour of the poor. Van der Berg (2010:19) in his paper also finds that fiscal redistribution that came about because of the social grant system has contributed towards reducing poverty, although this is high and may undermine social spending as a percentage of GDP compared to the other areas that require spending such as infrastructure. Finn and Leibrandt (2017) for SALDRU find that state support for households has reduced the extent of poverty. Recent data from Stats SA (2017) has found that when the upper-bound poverty line (R992 per person per month) is applied using 2015 prices, more than one out of two people in South Africa were poor in 2015, with the poverty headcount increasing to 55.5% from 53.1% in 2011, but decreasing from 66% in 2006. The data shows that 30.4 million South Africans lived in poverty in 2015.

According to Finn and Leibrandt (2017), the National Income Dynamics Study (NIDS), which is described as a national representative longitudinal data set of individuals, found that studies of patterns of poverty over time show a degree of severe poverty, which is described as living in a household with income per capita of less than half the poverty line in South Africa. This study was carried out in phases or categories referred to as waves which show trends in poverty by interviewing a panel of respondents over time. Finn and Leibrandt (2017) argue that the entry to and exits from poverty have shifted, which means that there are more exits from than entry to poverty because of the government social grant support system, particularly the child support grant which has provided income relief for the poor. Other forms of social grants play an important role as well, which include the pension and

[10]There is no clarity on the exact figure between 0.65, 0.77 or 0.59 for 2015 and other figures, but it is within this range.

disability grants. It is interesting how social grants have influenced and alleviated the poverty dynamic in South Africa. Their study highlights further observations, including the fact that the most significant income effect which leads to moving into poverty is loss of employment by the household head, while the main event for transitioning out of poverty is another household member finding employment. This is tricky in the current economic climate given the high levels of unemployment in South Africa. Finn and Leibrandt (2017) also found that between the latter waves (2 and 3), a large percentage of the South African population was trapped in severe poverty. The proportion of respondents who were in severe poverty was in the range of 29%. 55.3% of respondents experienced severe poverty in at least half the waves in which they were. The study also found that the largest group was 46.67% of panel members who were poor in all four waves. Severe poverty is a concern and is a factor which supports the reason why the informal sector should be viewed in a positive light and as a way for the poor to move out of poverty.

According to Finn and Leibrandt (2017), there are five different types of poverty. The first group is the always poor, where the household income per capita measures are below the poverty line in all four waves of NIDS. Then the second one is the usually poor, in which the household income per capita over the four waves of NIDS is below the poverty line, but the panel member is not poor in every phase. The churning poor is the third group in which household income per capita over the four waves of NIDS is in the neighbourhood of the poverty line but the panel member is sometimes poor and sometimes non-poor in different periods. Occasionally poor is another level of poverty, in which household income per capita over the four waves of NIDS is above the poverty line, but the respondent is poor in at least one wave. The last category is the never poor, in which the household income per capita is above the poverty line in all waves of NIDS. This is important as it illustrates the patterns of poverty in the group that was studied over time across the four different periods (waves). Many households and individuals are in the always poor group. This shows that the extent of poverty, although lower than in the past, is still unacceptably high, with many people locked in and over long periods of time. Such a bleak picture of poverty gives greater

credence to the possibility that De Soto's views on the poor may be able to influence change for traders in South Africa to a greater extent.

Van der Berg (2014) links poverty and inequality. He argues that policy priority must be given to poverty more than to inequality. He further questions the various efforts by government to reduce inequality, such as welfare redistribution through the social grants system, affirmative action and the black economic empowerment policy. According to him, inequality is based less on race rather than on income class, and he views the growth of the middle class as having the potential to assist the economy. He argues that education and addressing the wage differentials is the way to address inequality in South Africa. The various policy options, which do not seem to work effectively, indicate the policy dilemmas facing the government in addressing poverty. This also indicates why it is important for government to ensure that traders have property rights because they are already doing something to sustain themselves and contribute to the economy.

Although this point has been made before in the study, it must be emphasised that the unemployment rate is rising. The official statistic is 27.7% for quarter 2 of 2017, and the unofficial statistics which include those who have given up searching for work ranges in the upper 30% as per the Stats SA data.[11] This is another indicator that shows that many people do not have access to the economy.

Many South Africans do not have access to the banking system. A study by the World Bank cited access to infrastructure, the cost of banking and lack of education as some of the barriers.[12] The poor fail to meet the criteria of the banks. The World Bank reported in 2013 that there were 12 million South African adults without bank accounts and millions more with limited access to financial services. The Finscope survey of 2016 found that 11% of the adult population had no access to financial facilities, estimated to be R4.3 million adults. This means that almost half of the 9 million estimated unemployed South Africans have

[11] Unemployment was 25.5% in 2015, and 25.1% in 2014.

[12] http://www.iveri.com/papers/Accessing%20the%20Unbanked%20English.pdf

bank accounts. When comparing South Africa with other countries, the World Bank Financial Inclusion Database of 2015 found that South Africa had 69% of people with bank accounts, Nigeria 44%, Indonesia 36%, Colombia 38%, Peru 29% and the Philippines 28%. This data indicates that South Africa is doing well compared to other developing countries when it comes to access to banks. De Soto (2000) argues that the poor are not part of the property rights system and the lack of access to the economic system confirms the lack of property rights. The lack of property rights means they have no access to collateral.

There are many South Africans who lack physical and postal addresses, meaning that many live in areas that are not listed and have no access to registered property. In the last local government elections in 2016, the Independent Electoral Commission (IEC) reported that 6.92 million voters on the voter's roll had no address details.[13] This affects their ability to engage meaningfully in the economy and other democratic processes such as voting.

In the context of these statistics it seems clear that there is economic exclusion in South Africa. Many people are poor, living in poverty, and are excluded from the economic system. De Soto (1989, 2000) raises important issues concerning economic inclusion. He clearly exposes how the poor are excluded from the economy, and one of the best ways in which he has illustrated this is though the bell jar analogy. He writes that the elite are inside this "jar" and take advantage of the blessings of capitalism, while the poor, who are "outside the jar" are left out. Nattrass and Seekings (2001, 2005) illustrate the class and inequality struggle South Africa faces. In the article *Two Nations, Race and Earnings Inequality in South Africa Today*, they distinguish inequality according to race class as described by the then Deputy President of South Africa, Thabo Mbeki, and the British Prime Minister Disraeli, who described the two nations as two classes of people who operate differently within the same economy and to whom laws apply differently. Nattrass and Seekings (2001) describe Mbeki's view of the two nations as consisting of white and black people living under completely different economic circumstances. According to Mbeki, the white people were prosperous, had access to a developed economic system which included education and

[13] http://www.iol.co.za/capetimes/news/update-address-to-vote-in-elections-2006704

infrastructure, and had rights to equal opportunities. The blacks, on the other hand, lived under grossly underdeveloped economic conditions with poor infrastructure, education and other factors, and had no way to exercise their rights. They disagree with Mbeki's racial focus on the inequalities, but emphasise the class differences. In their book *Class, Race and Inequality*, Nattrass and Seekings (2005) expose the economic exclusions according to class and access to the economy. They demonstrate how inequality and poverty evolved from apartheid to post-democratic South Africa within the class differences which reflect economic exclusion beyond racial and gender lines. Their work describes the dynamics of the bell jar by De Soto. People in South Africa are classed as the rich, the middle class and the poor, and they experience the economy according to their class status with completely different rights and benefits. The poor do not have access to the economic freedoms that the rich have. A gap clearly exists between those who are in the economy and those who are poor and outside the economic system.

According to the thesis the traders are outside the bell jar. They exist without property rights. They do not have representational systems that are accepted by the economic system. They face economic exclusion and their efforts are not recognised by the current legal frameworks and economic system. De Soto (2000: 66-68) explains the situation in Peru as a bell jar, which acts as a capitalist club that excludes the poor. The traders are outside the bell jar and formal businesses that are able to participate meaningfully in the economy, who have access to the economic system and can obtain collateral are inside the bell jar.

De Soto (2000: 66-68) argues that the minority in developing countries can afford lawyers and have connections and networks that enable them to navigate red tape. These few people he calls local and foreign investors have capital and the capital is well integrated into the economic system. He argues that the assets are integrated, fungible, networked and protected by formal property rights systems. The vast majority cannot enjoy the fruits of their contribution and employment because of the lack of access to the economic system. De Soto describes the poor as being outside the system and outside the bell jar. He further argues that the bell jar makes the capitalist system a private club for a privileged few, and it

does not bode well for the billions around the world standing outside the bell jar looking in. He calls this capitalistic apartheid which will continue around the world until many countries come to terms with the flaw in the property rights system which excludes the poor. His other argument was that it was an opportune time to start understanding why many people in the world do not have property rights, and that it was time to lift the bell jar. His book explored why governments were slow to lift the bell jar and the constraints to creating property rights systems for the majority around the world.

There is a definite need to address the property rights of the poor and to ask which rights will ensure a well-established, secure, individualised property rights system that would benefit the poor, one that would not compromise or destabilise existing property rights. De Soto (2000) argues that the poor need a representational system so as to be recognised in the economy. He argues that they mostly need property rights, whereas it is generally argued the poor need income and assets. Both assets and property rights, this thesis will argue, are important. In addition, it would be meaningless to redistribute property rights in a context where the existing property rights system as a whole ceases to function.

1.4 The informal traders of South Africa

The previous section focused on the problem statement. In this section the focus is on the informal economy and the economic exclusion from the mainstream economy. The following are addressed: the landscape of the informal economy, property rights in Pretoria and the dynamics of the informal economy of Peru.

1.4.1 The landscape of the informal economy

This section offers a view (see Figure 1) of the various role players and organisations in the environment of the informal economy. It is an abstract landscape of the traders of Pretoria, consisting of the demand and supply side as well as the institutions and organisational establishments affecting traders. These are the role players in the informal economy of South Africa.

Figure 1 shows the informal economy market. The traders operate in an economic environment that consists of suppliers, buyers, government institutions and other organisations as well as legal frameworks. Although the traders do not form part of the formal economy, they operate within the market economy. They buy products from wholesalers and other retailers. They function within a legal framework even if they may not comply with it. They operate in a location that is administered by the local government. Provincial and national government departments are the other role players in the economic system. This diagram depicts the framework of the informal economy which operates outside the formal economy and yet depends on it. There are interrelationships between property rights, organisations such as government departments at all levels, economic agencies, traders' associations as well as between the traders and the formal economic sectors through wholesalers, retailers and others. A direct link also exists between traders and consumers. All these links form part of the market economy. The thesis argues that exclusion of the traders exists within this market economy. It further argues that the traders do not have property rights that create an inclusive economic environment because of legislative and structural barriers.

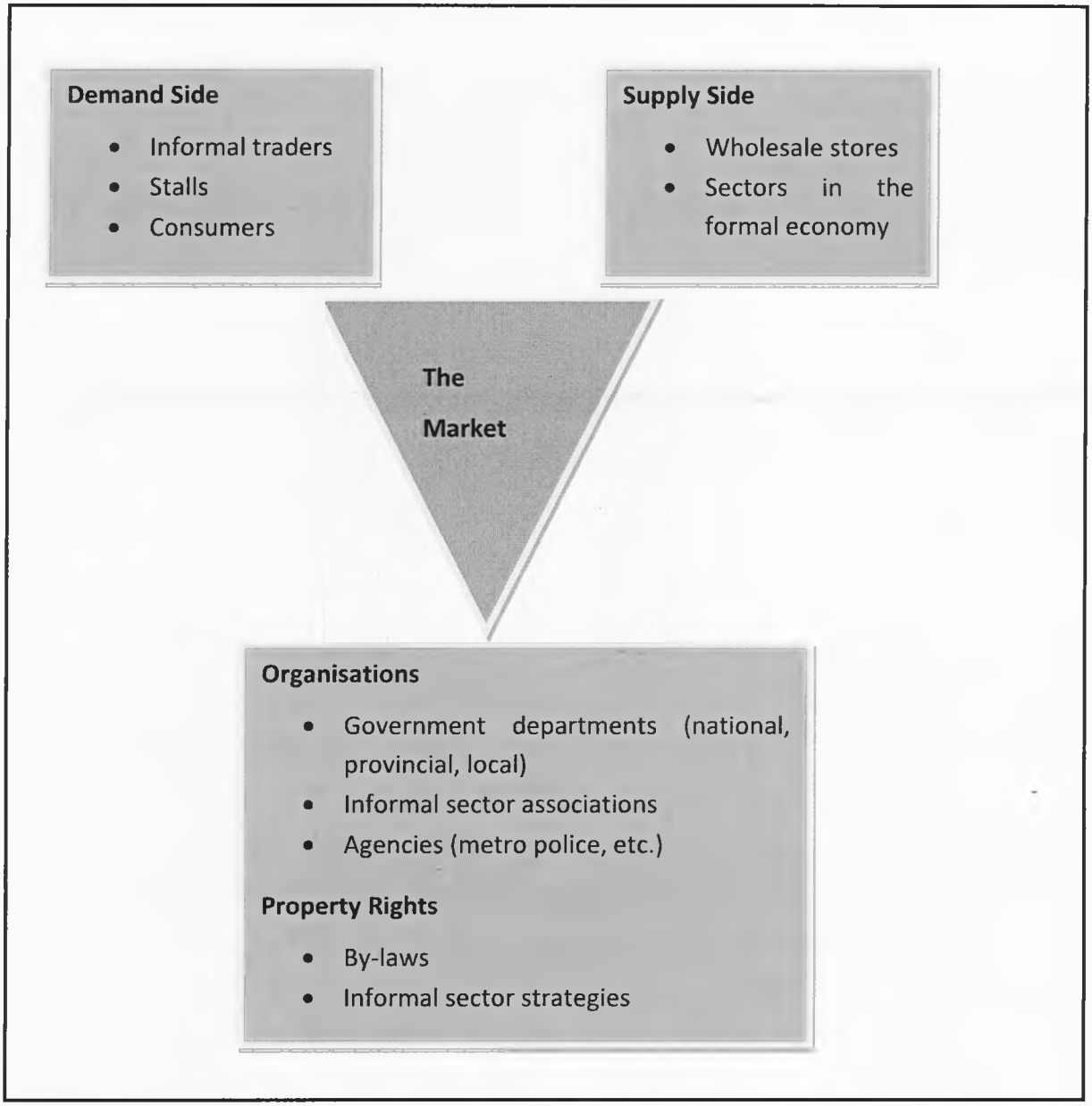


Figure 1 The informal economy environment

1.4.2 The dynamics of South Africa's informal economy: Indicator of economic exclusion

The informal economy contributes significantly to the GDP of South Africa, an estimated contribution of 7–20% each year by various economists (Business Report, 2013; Maynard, 2016).[14] This sector continues to accommodate many people without economic opportunities. The number of people running informal enterprises decreased from 2.3 million in 2001 to 1.1 million in 2009 and increased to 1.5 million in 2013 according to a survey by Stats SA (Survey of Employers and the Self-Employed (SESE)). According to Stats SA, the sector has been affected by the negative effects of the global recession. The informal economy is an important part of the economy. These numbers indicate that there is a large informal economy that plays a role in the economy as it creates employment and participation in economic activities. These statistics are concerning in the context of property rights, as many traders lack property rights, and this means that there are many traders who are excluded from the economic system. The large numbers make a case for improving the property rights of traders.

The informal economy includes spazas, tuck shops, hawkers and vendors, shebeens, street traders, car watchers, kiosks, take-aways and fast foods. Street traders or hawkers are our main focus. In this thesis, informal traders are classified as people selling on the streets; they may be registered with permits or unregistered without permits. Street traders are classified in this way because of the nature of their economic activities, the scale of their activities and the conditions and locations within which they operate.

Tissington (2010: 14) lists goods and services sold in the informal economy to include cellphone accessories and airtime; public phone and hair braiding services, fruits and vegetables, headache pills and toiletries, pillows and shoes; sweets, chips and cigarettes; miscellaneous household items like toilet paper; and cooked food such as pap and meat. Tissington (2010: 14) argues that the traders choose to have small quantities of products

[14] http://www.timeslive.co.za/thetimes/2016/01/11/Informal-sector-is-saving-millions-from-poverty. Adcorp Economist Loane Sharp estimates SA's informal economy at 18% of GDP.

because when the metro police approach them, they can easily pick up their products and run. This is a classic example of the costs imposed by the absence of property rights.

The informal sector is also a significant employer. According to the Labour Force Survey quarterly statistics of 2012, 2.1 million people were employed in the informal economy and 857 000 of them were women.

Stats SA maintains that the informal sector is employing an increasing number of people as evidenced by the 273 000 jobs created in the informal economy as opposed to only 19 000 jobs generated in the formal economy in the first three quarters of 2015.[15]

It is true that many of these enterprises are survivalist, and the traders would probably prefer to have formal sector jobs. The primary cause of poverty and exclusion in South Africa is definitely the fact that the economy does not generate sufficient numbers of formal sector jobs that the poor can access. There is a need for a concerted effort to turn this situation around. However, at the same time, this reality in no way justifies the exclusion of traders by denying them access to property rights. This amounts to a form of double exclusion and prevents traders from accessing economic opportunities and expanding their businesses.

1.4.3 Property rights in the informal economy of Pretoria

There is a concern that traders in Pretoria do not have sufficient property rights and are excluded from the mainstream economy. It has been widely reported in the media that traders in Pretoria have experienced harsh intimidation by the local government authorities and that they do not participate freely in the economy. A study conducted on the informal sector of Ethiopia recognised the following traits of the people operating in the informal sector (Sibhat, 2014: 6).[16] These characteristics may apply to the South African situation:

[15] http://www.treasury.gov.za/documents/national%20budget/2016/review/chapter%202.pdf
[16] https://brage.bibsys.no/xmlui/bitstream/id/247783/Sibhat.pdf

- Lack of security and acknowledgement of efforts
- No protection by formal regulatory frameworks (e.g. labour laws and social security structure
- Self-employment
- Operating outside the labour market legislation and union movement
- Insufficient salary and incomes
- Minimum employment safety
- No incentives from formal established institutions.

Shirley (2008:14) finds that informality is costly to firms – they exist in continual uncertainty, struggle to do business with government or large business, they cannot export through formal means or raise finance through the banking system. She further states that informal firms are more vulnerable to police harassment and bribes, and struggle to enforce contracts through the courts or other formal systems.

Economic exclusion persists and the need to establish appropriate property rights exists in South Africa. Schneider and Nega (2016: 437) found that in South Africa the allocation of property in terms of ownership has improved slightly since the end of apartheid. However, as the benefits have accrued to a very small select black group, there is a risk that any policies that might restrict property rights in their current state could generate widespread unrest and destabilise the economy.

According to the LED Network, the street trading by-laws in Pretoria are punitive. They lead to the goods of traders being removed from the streets as well as hefty fines being imposed. This is concerning because the traders are already vulnerable and the situation worsens when their economic activities are threatened by government laws and officials (LED Network).[17]

[17]The South African LED Network is an open online platform for learning, www.led.co.za

In Pretoria there is a history of conflict between local government, including law enforcement agencies, and traders. For many years traders were ruthlessly harassed and their stock frequently confiscated. This creates enormous costs for traders as they spend up to 48 hours or more to claim back their stock and they invariably have to pay fines.

Pretoria city was characterised by regular marches and frequent violent protests as traders sought to demand a better business environment in which to pursue a livelihood. There were constant battles between the metro police and the traders. The traders' main complaint was harassment by the metro police. The protests stretched over many years and involved many parts of Pretoria where traders are located (Ngoepe, 2012; Evans, 2014). One trader was killed during a protest in January 2014.

Further, research on the informal sector by Mary Masonganye (2010: 21), a researcher for Urban Landmark, found that 60% of the informal traders in Pretoria did not have licences to trade on their particular trading spaces. These traders entered the market without licences and experienced harassment even before they could apply for licences. According to Masonganye (2010: 22), foreign traders consist of a relatively large proportion of traders without licences. It was found that the number of illegal traders actually exceeded legal traders.

In 2014 an attempt was made by the municipality to improve the situation.[18] A moratorium on the issuing of trading licences was initiated in order to clean up the licensing system. The system was deemed corrupt and flooded with fraudulent and duplicate licences, making it difficult for the city to monitor the number of traders it allows to trade. The fear of the municipality was that the city would be vulnerable to lawsuits from big businesses competing directly with traders. The city undertook the verification of licences which was interrupted by protests. The traders continued to protest against the limited number of licences available and the location of the allocated spaces, which were not conducive for business. Another reason for the suspension of the licensing process was the licence limits

[18] http://mg.co.za/article/2014-06-18-tshwane-there is no widespread harassment.

reached in some areas. The traders' organisations, together with the municipality, have appealed to traders to form cooperatives in order to accommodate traders without permits in areas where licences are oversubscribed.

Peron (2002: 2) argues that the community of street traders in Pretoria lacks property rights. They have no rights to their stands and they may be evicted at any moment. He states that periodically the police confiscate their goods and their stands. Because of this, he argues, traders never bother to invest in decent trading stands. For instance, "Any old piece of cardboard on the ground will do", is their attitude to their economic activities (Peron, 2002: 2).

Peron (2002: 2) adds that the threat of eviction always hangs over street vendors, particularly with traffic congestion or pressure from the people. It is argued these are the conditions that prevent governments from long-term investment in improving the location because they do not encourage informal activities. The concern is that the more infrastructure that is provided for informal traders by government, the more it may be construed as encouraging informal activities and exacerbating administrative challenges related to traders, for example causing congestion. Street trading is often perceived as dirty and a nuisance; something that makes cities unattractive, hence the reluctance of governments to invest resources in this part of the economy (Roever and Skinner, 2016: 5).

Instead, Peron (2002: 2) argues, governments opt for harsh enforcement measures rather than making stalls with proper building materials and equipped with running water, toilets, electricity, storage, display space or any facilities that permit the steady volume of merchandise. Authoritarian measures such as police enforcement, fines and confiscations are applied. This leads directly to insecure property rights for the poor.

Another constraint that can affect traders is zoning. Zoning affects traders because of the limited availability of space for trading purposes and provides basic infrastructure that determines how traders work in a space (Roever & Skinner, 2016:2). The local government

allocates space for traders. Unfortunately, traders are often designated spaces that are not suitable for their economic activities. They then end up moving themselves to street sites that have a strong customer base. This is one of the challenges De Soto (1989) raises in *The Other Path*. There are several areas in Pretoria that have been designated for traders, some with stalls installed such as the Sunnyside and the Paul Kruger Street area. There are stalls in the CBD that traders refuse to use because of their lack of appeal to customers and this has led to incidents of vandalism and the non-use of the stalls. In the CBD, a few areas are zoned for traders, but these become saturated as people without permission to use the space also occupy it. There are zoning issues that affect the security of the traders.

All these challenges identified above warranted a thorough research study.

1.4.4 Profile of the informal economy of Peru

This section deals with developments in Peru's informal sector, mainly as described by De Soto in his seminal work *The Other Path*. This aspect of the thesis is foundational in that the analysis of Peru is the basis for the comparative view of property rights of Pretoria that will be developed subsequently. In order to assess whether the views of De Soto are applicable in South Africa, we need to understand his analysis of the informal economy of Peru.

Research has found that Peru has a large informal economy estimated in recent years to contribute between 35% and 60% to the growth rate of the country. It is estimated that the informal economy of Peru employs 70% of the economically active population (Machado, 2014). Roever and Skinner (2016:12) estimate the number of people in Lima's informal economy at 280 000 organised mainly at the street block or market level.[19]

According to De Soto (1989), the poor of Peru migrated to the cities, driven by drought, floods, overpopulation and a decrease in agricultural activities. When they arrived in the

[19] https://en.portal.santandertrade.com/analyse-markets/peru/economic-outline?actualiser_id_banque=oui&id_banque=11.
http://revistas.up.edu.pe/index.php/apuntes/article/viewFile/229/251

city, they found a legal system which excluded them. The poor who migrated failed to find entry into formal employment and were forced into informal activities. Three of the main sectors of the informal economy that emerged in Peru were housing, transport and trade. The thesis will only focus on the trade sector because of the nature of the research.

1.4.4.1 Street trading in Peru

In this section of the report, the thesis draws on the work of De Soto in Lima in the 1980s. Data from subsequent years will also be used, but the context is mainly data from the early 1980s as outlined in *The Other Path* (De Soto, 1989). Informal street trading in Peru was split into individual traders and informal markets. Informal markets is the second type of informal trade in Peru which is conducted in markets built illegally by traders who want to leave the streets due to limitations of street vending. In 2008, around 200 informal markets were given legal status in Lima.

Informal trading took three different forms: street vending, roving vending and vending from a fixed location. Itinerant vendors are mobile merchants who trade small quantities of goods to individuals they come into contact with while on the move. It is mainly an individual endeavour with no great physical capital and mostly self-financed through cash transactions. Itinerant vendors create circuit trade routes which they frequent, and they generate a reputation with other vendors, customers and suppliers. Almost all of the itinerant vendors aspired to gain a fixed business location. To achieve this, a number of them would invade land and set up shop together in areas of successful business ventures to complement each other's goods and services. The vast majority of street vending takes place in poor neighbourhoods.

Other characteristics of informal trade in Peru as outlined in *The Other Path* are as follows:

- Informal markets were formed by traders aiming to end insecurity. Traders began to build their own markets without adherence to the regulatory frameworks that applied to them.

- Government realised it was undesirable to leave traders on pavements and sidewalks because they obstructed traffic, threatened public health and were an eyesore. The traders were seen to compete unfairly with formal traders.
- During the later stages informal traders were determined to stay on the streets without political support for their activities.
- Areas occupied by informal traders that were declared free zones were recognised as a structural problem which could be solved by structural changes which were never defined.
- The Commission, an institution in Peru, submitted a written report which concluded that street vending as a structural problem could be solved only in the long term and that for the time being it must be regulated and controlled in order to reduce its adverse effects. A set of regulations which recognised street vending as a temporary trading firm was put in place. The vendors resisted the law.
- The vendors chose public pavements and sidewalks and set the boundaries of their self-imposed special rights of ownership and started to improve and clean up those areas.
- In the process, some traders became politicised. The politicised vendors made their first attempt to become lawmakers. Municipal government realised that it was impossible to remove the vendors from the entire city and decided to confine its efforts by coming up with ways of accommodating them by allowing them free zones in which to operate and leaving them to trade in the city centre and introduce policies (ordinances) to change their actions.
- The traders ended up by rising to executive positions in the municipal government.

1.4.4.2 Challenges in the street trading sector

The street traders of Peru faced many challenges. They were outlawed and operated under tense and difficult circumstances. The challenges were as follows:

- The street traders were inefficient because they offered only a minimum variety of goods and services.

- The traders lived under the constant risk of eviction as their activities were not legal and paid between 98% and 495% more per square meter than formal merchants (De Soto, 1989: 68-69).
- It was difficult for informal traders to obtain credit due to the uncertainty surrounding their legality.
- The traders were unable to use the regulatory system because it was costly for them to access the economy according to the research conducted by the Institute of Liberty and Democracy (ILD), an institution led by Hernando De Soto to study and support the informal economy in Peru. De Soto (1989:164) found that enforcing contractual arrangements with the traders was difficult for the courts system because the traders did not have organised systems. For instance, there was no clear evidence of transactions, existing contracts were verbal and the fact that the traders were operating illegally made it difficult to detect their economic activities. The traders lived in constant fear of being found not paying taxes or not having a permit or not having permission to sell where they were trading. The traders wanted the freedom to sell, but the fact that they were operating illegally made it difficult to avoid the penalties that come with illegality (De Soto, 1989). The cost of avoiding taxes and labour laws was a result of the absence of an appropriate legal system that guaranteed and promoted their productivity (De Soto, 1989: 158).
- It was difficult to grow and avoid detection and subsequent penalties.
- The traders were not part of a legal system, and this undermined contracts, whether long or short term, and because of the void in the legal framework, obtaining credit became a challenge. The traders therefore struggled to increase their assets.
- The traders did not have title deeds, which made it difficult to access credit due to lack of property that could serve as a guarantee.
- The businesses existed without proper storage mechanisms or safety systems.
- The traders faced many restrictions, among others on the locations where they could trade and the routes they could use. These restrictions led to the establishment of informal markets: in order to carry out business in a conducive environment, the street traders created informal markets.

- The street traders operated at a disadvantage owing to minimum resources that included money, no technical training, no prospects for credit, lack of insurance and no protection from the police or the judicial systems. According to De Soto, traders in Peru have an entrepreneurial spirit and the will and desire to work.
- *The Other Path* shows how the traders lacked protection. The lack of protection included safety and security.

This summary of the experiences of traders in Peru is important for comparison with the circumstances affecting traders in Pretoria. It also gives a sense of the challenges facing traders from the perspective of another country.

1.5 Scope of the study

The thesis consists of an extensive literature review as well as an empirical component. The literature review consists of a detailed and critical review of Hernando de Soto's work, a review of works that assess the dynamics of property rights, and an overview of new institutional economics (NIE) and how it relates to De Soto's arguments. The literature review forms the basis on which the research design can be developed. The research consists of a case study of street traders in Pretoria, in which the insights derived from De Soto's and other relevant works are applied and tested.

1.6 The field of the study

The study focuses on the informal economy and specifically on the Pretoria traders who may or not be registered. Although the strict definition of the informal sector refers to those who do not adhere to the law, this study focuses on all traders on the streets, whether they abide by the law or not. The property rights of these traders will be analysed from the perspective of new institutional economics. De Soto's writing addresses property rights, which are an institution (Rodrik, 2000: 5). NIE will be approached from various perspectives and De Soto's work will be fitted into that context.

Another dimension of the study is economic development. According to the World Bank, South Africa is classified as an upper-middle income country that urgently needs to address major challenges relating to poverty, inequality and unemployment. De Soto's work forms part of development economics. A link will be established between the work by De Soto, new institutional economics and the development challenges faced by South Africa.

1.7 The objectives of the study

This section addresses the objectives of the thesis, which are divided into a primary objective and secondary objectives.

1.7.1 Primary objective

The primary objective of the study is to establish the appropriate property rights framework for the traders of Pretoria. These rights should promote economic inclusion but should not compromise existing property rights. The aim of the new property rights framework should be to ensure that traders can participate in an inclusive manner in the modern economy.

The results of the study will be used to inform property rights processes and the challenges affecting the traders. The recommendations of the study will inform policy makers of the initiatives that are suitable for the traders.

1.7.2 Secondary objectives

The following secondary objectives will be pursued in order to achieve the primary objective.

- Identify and analyse the key developmental views of De Soto on property rights and their implication for traders in Pretoria, South Africa. The study focuses on interpreting De Soto in the context of the new institutional economics (NIE) which goes beyond the common interpretations of De Soto, and which are usually the basis of criticisms of De Soto's work.
- Conduct an empirical survey and in-depth interviews with traders in Pretoria to understand the state of property rights, especially from their point of view.

- Make recommendations.

1.8 Methodology

The research takes the form of explorative research. Brian van Wyk (Van Wyk, 2012: 8) of the Western Cape University describes explorative research as the most useful (and suitable) research method for projects that have high levels of uncertainty, where much is unknown about the subject and when the problem is not very well understood. The Harvard resource describes exploratory research as a tool that may involve examining the literature or conducting focus group interviews.[20] The exploration of the subject may assist the researcher with greater understanding of the topic, assess the possibility of a bigger and more detailed research project and find the optimal method to use in the following study. All the factors mentioned make this type of research broad without definite answers to focused research issues.

The methodology that was followed includes the qualitative method of research.

1.8.1 An extensive literature review was undertaken. The literature review concentrates on the work by De Soto (1989, 2000), especially *The Mystery of Capital* and *The Other Path*, and literature on institutional economics as well as other literature on property rights. The process of the literature review is described below.

1.8.2 The study is suggestive and not definitive as it is based on the personal experiences of the traders interviewed. The purpose of the open-ended, in-depth interviews was to understand the challenges and experiences of traders in Pretoria, to examine how they view property rights and how they have been affected by property rights in their economic activities.

1.8.3 Field work (in-depth discussions) consisted of interviews with traders in Pretoria: a total of 100 traders across Pretoria were targeted.

[20] https://isites.harvard.edu/fs/docs/icb.topic851950.files/Research%20Methods_Some%20Notes.pdf

1.9 Limitations of the study

The limitations of the study are that it focuses only on traders in Pretoria from an empirical perspective. It does not address other suburban areas such as Johannesburg. Another limitation is that only 100 traders selected randomly were considered for the sample. The study does not include variables in the research instrument with monetary values such as turnover, profits, wages and property values.

1.10 Research outline

The thesis is divided into the following seven chapters:

Chapter 1 consists of the introduction and problem statement of the thesis.

Chapter 2 focuses on the work of De Soto, discusses views about the work of De Soto by other scholars and compares De Soto's work to the work of Douglas North. The chapter outlines the capitalisation process according to De Soto. It also discusses the critique of De Soto's work by other scholars.

Chapter 3 focuses on the new institutional economics theory as a theoretical framework to unpack property rights. The chapter also reflects the alignment of property rights and the views of De Soto to new institutional economics.

Chapter 4 outlines the nature of property rights, different types of property rights as well as the consequence of the lack of good and secure property rights.

Chapter 5 addresses the methodology and research design. The research design was developed to assist with the data manipulation. The research methodology used in this study is explained. This chapter marks the start of the empirical research. The questionnaire design, identification of the population, sampling methodology and data collection methods are discussed in depth.

Chapter 6 presents the results of the research. The statistical analysis as well as the qualitative analysis of the data is presented with a discussion of the findings.

Chapter 7 provides conclusions based on the research and makes recommendations. The achievement of the research objectives is considered. The limitations of the study are discussed and recommendations are made for future research studies.

CHAPTER 2 THE VIEWS OF DE SOTO AND PROPERTY RIGHTS IN SOUTH AFRICA

2.1 Understanding De Soto

This is the first chapter on the literature review. It gives an in-depth outline of De Soto's writings concerning property rights, economic exclusion, growth, capitalism and the legal system. The work of De Soto (1989, 2000) is pioneering – it has raised issues and provided insights into the contribution of poor countries and the poor to the mainstream economic debate. Because of the significance of his observations and approach, and the fact that these views inspired this thesis, this section outlines De Soto's perspectives to provide context to the entire study.

This chapter highlights the views of De Soto from his writing and outlines the capitalisation process. A short section on North's work begins to compare the work of De Soto and the work on property rights and development by one of the founders of New Institutional economic, Douglass North.

Hernando de Soto, in his *The Mystery of Capital* (2000) and *The Other Path* (1989), has had a strong influence on economists and policy makers globally, in the manner in which he articulated economic development from a property rights perspective as well as poverty alleviation of the poor.[21] The Economist hails *The Mystery of Capital* as the most intelligent book yet written about the current challenge of establishing capitalism in the developing world. Ronald Coase praises *The Mystery of Capital* as "A very great book ... powerful and completely convincing". Margaret Thatcher stated that *The Mystery of Capital* has the potential to create a new, enormously beneficial revolution, for it addresses the single greatest source of failure in the Third World and ex-communist countries. Javier Pérez de Cuéllar (a Peruvian diplomat who served as the fifth Secretary-General of the United Nations from 1 January 1982 to 31 December 1991) says *The Mystery of Capital* is a crucial

[21]Some of the comments on the book are listed in the site: http://www.ild.org.pe/the-mystery-of-capital-reviews

contribution, a new proposal for change that is valid for the whole world. Milton Friedman also cites *The Mystery of Capital* as a great book that contributes to economic development, is politically satisfying and adds to the welfare of the people. Forbes said of *The Other Path*, "it is a major work, one destined to change the way the world understands wealth and poverty. Beyond Keynes, beyond Marx, it gets to the heart of the economic paradox of spreading poverty in an increasingly rich world".

The work of De Soto on property rights is the main foundation underpinning the arguments of this thesis. The concept of property rights also lies at the heart of new institutional economics, an approach that has essentially built on the work of Douglas North and other scholars such as Ronald Coase and Oliver Williamson. This body of work has also influenced the approach adopted here.

The thesis does not claim that De Soto is a new institutional economist. His work on property rights, which is one of the branches of new institutional economics, although unique and bringing a different dynamic of the poor and economic exclusion, is aligned to the work of Olivier Williamson and Douglas North on the legal framework as one of the determinants of economic growth and the role of institutions in contributing to the economy. This makes his views complementary to new institutional economics, and it is possible to combine insights relevant for this study from both bodies of work.

One of De Soto's most important contributions was to go beyond studying the poor as merely passive objects or victims. Instead, he advances their role as equal participants with a real contribution to make to the economy. The challenge that De Soto's work poses in the sphere of economic development is how countries could make property rights more inclusive without extensively compromising the protective functions that private property rights provide.

2.1.1 The views of De Soto

De Soto worked extensively on property rights and the need for a property rights system to address the plight of the poor. He suggests that developing countries require a representational legal system that recognises the assets of the poor so that they can transform their assets into capital. The poor must be acknowledged by the capitalist economic system for a meaningful economic exchange to take place. Fundamentally, he suggests that the legal system is a source of economic development.

This thesis argues that the views of De Soto, if perceived in a broader context, are applicable to South Africa and that strong, secure and individualised property rights can be established without undermining the existing property rights. De Soto's contribution has been criticised by those who question his solution to economic development through property and land titling. While some of these criticisms are valid, they do not invalidate the broader approach which this thesis takes is his contribution to the debate on economic development, the importance of property rights for poverty alleviation, economic inclusion and the important questions he raises to incorporate the poor into the main market economy. The criticisms of De Soto's work are assessed in the section that follows.

In *The Mystery of Capital*, De Soto highlights the importance of the inclusion of the poor in the economy and securing property rights for the poor. De Soto defines property rights as all the rights, both personal and real, which confer on their owners indisputable and exclusive entitlement to them. These rights include free use, free enjoyment and use to the exclusion of all others and to dispose of them (De Soto, 1989: 159). He saw them beyond their movable and immovable attributes, but based on their broader economic importance. Property rights relate to houses, cars, machinery, merchandise, lease contracts, money certificates and their free convertibility, different types of credit (De Soto, 1989: 159). In *The Mystery of Capital* he refers to property records as titles, deeds, securities and contracts that describe the important qualities of an asset (De Soto, 2000: 60).

He argues that Third World countries and the poor who live in them do not have sufficient property rights. He emphasises the lack of sufficient rights as follows: "The poor inhabitants of these nations – the overwhelming majority – do have things, but they lack the process to represent their property and create capital. They have houses but not titles, crops but not deeds, businesses but not statutes of incorporation" (De Soto, 2000: 7). De Soto never argued that 'Third World' countries do not have property rights but that the rights are not sufficient, secured and private. In his view, secure property rights encourage those who hold them to invest in their property because of certainty that the property will not be taken. Private or personal rights give inalienable and exclusive entitlement to the rights. Likewise, Coase (1992), Williamson (2011: 101) and Gelaw (2014: 84) claim that developing countries fail to set up and retain well-defined and secure property rights. Similarly, Shirley (2008: 2) concludes that the mass of humans live in countries that have been unsuccessful in creating or sustaining strong institutions and protected property rights.

De Soto reveals how Third World countries have assets but no access to representational systems to create capital. Capital is the potential an asset holds to deploy new production. This potential must be processed and standardised before it can be of value (De Soto, 2000: 40). In *The Mystery of Capital*, De Soto (2000: 27-33) argues that the concept of value from assets is not prevalent in developing economies, hence his reference to the concept of dead capital. Dead capital is an asset that cannot easily be bought, sold, valued or used as an investment (De Soto, 2000). He asserts that the poor in developing countries have assets, but those assets do not have representational systems and therefore cannot be recognised legally. He argues that the West has succeeded in standardising their representational systems. As a result their assets are recognised by their legal systems. As a solution to this failing in developing economies, he proposes a legal system through the capitalisation process that will transform dead capital into recorded or documented property rights, which would enable the poor to trade in the economy.

According to De Soto (1989: 132), poor or bad law is law that impedes or disrupts economic efficiency and leads to the absence of secure property rights that are reliable. The lack of

the rights causes informal participants in the economy not to preserve and invest in their resources due to fear of detection, confiscation and appropriation. The other cost is that informal traders cannot transfer their property easily and it cannot be used as collateral or for more valuable purposes. In order to protect their possessions, informal traders establish and operate informal mechanisms that are costly (De Soto, 1989: 159-160). Shirley (2008: 14) finds that when small firms face high costs and unfair competition, they do not enter the market but instead prefer to operate in the informal sector. In her view this explains why many underdeveloped countries have large informal sectors.

De Soto (1989) consistently understands and demonstrates the entrepreneurial capability of the poor to participate in the economy in their own right. Woodruff (2001: 1216) agrees with De Soto on the entrepreneurial nature of informal traders. This implies that De Soto's work brings a bottom-up approach that is often lacking in developmental and economic literature which sees value in the input of those at the grassroots or periphery of society.

De Soto believes that the lack of property rights affect profitable contract arrangements with strangers, access to credit or insurance or utilities. This takes away their power to transact with others except family members, (De Soto, 2000: 55).

De Soto (1989: 177-186) claims that the legal system is a determinant of economic performance, firstly by providing a system that can create the value of the unrecognised assets and secondly by providing the necessary security and protection of rights that would enable innovation and investment in property owned. The cross-country analyses of Torstensson (1994), Barro (1996: 2) and Acemoglu and Johnson (2005: 955) show that economic growth is connected with the rule of law. Similarly Ho (2005) claims that there are strong indications that the legal systems and legal property rights matter for growth.

De Soto (2000: 48-49) suggests the provision of property titles and tenure as a means to create wealth and economic participation. According to this thesis, the emphasis on property titles and title deeds as well as issues of land does not limit the scope of what

constitutes property rights to mere titles and land tenure but also includes market transfers and value that can be acquired from assets. De Soto (1989: 159) did highlight that property rights are broad and encompass more than titles and deeds; it is unfortunate that this element of titles is the main thrust that economists have taken from his work.

De Soto (2000: 66-68) views the gap between the poor and the well established in the economy as a bell jar. He argues that without representational systems, the poor remain excluded from the bell jar which is for the rich, who benefit exclusively from the legal system. He calls this a capitalist social club for the minority. Only a few whose assets are recognised in the economy are within the bell jar, with everyone else looking in.

The institutions responsible for property rights were seen as disconnected from the social contract of the people and from the concerns affecting them. De Soto (2000: 171, 241) defines the social contract as the activities and efforts of the poor. For instance, he demonstrates in *The Other Path* that the lawmakers treated the poor traders as criminals, harassing them and removing them from economic activities in a harsh manner.

Throughout his work, De Soto (1989, 2000) recognises the role of politics, organisations and the state in establishing a sound property rights system.

He, in fact, advocates for the top-down and bottom-up approaches to create property rights. The approaches include the social contract of the poor and the establishment of representational systems through a legal system. The bottom-up approach recognises the ability and efforts of the poor and they form part of addressing the legal system. The top-down approach occurs when policy makers, politicians and leaders identify programmes and policies to address the needs of the poor.

Crescenzi and Rodríguez-Pose (2011:1) describe top-down policies as firmly grounded in micro and macroeconomic theories, but requiring adequate elasticity and 'place-awareness' to respond to local dynamics. These are high-level interventions driven from the top with

leaders setting the tone and deciding for other people without taking their concerns into account, while bottom-up local and regional development policies empower local actors and make them accountable for coming up with own solutions to emerging challenges. Bottom-up policies have often been regarded as an effective alternative to traditional approaches to development. While the political and government system can define and establish property rights, the needs and activities of the poor have to be taken into consideration.

2.1.2 International and local critiques of De Soto

There is no doubt that the work of De Soto outlined above raises very important questions in addressing poverty, economic inclusion and economic development for the poor. His work has brought attention to the often neglected area of ensuring or facilitating the economic participation of the poor. However, there are also a number of gaps in the assertions of De Soto and his work raises many questions. This section addresses the following issues which are discussed below in more detail:

- The overall economic system change required
- The legal system as determinant of growth
- Neglect of the role of culture
- The assets of the poor
- The fallacy of property titling programmes

2.1.2.1 The overall system change required

While his solution to establishing efficient property rights gave hope to the potential of developing countries, his recommendation of a property rights system has mostly been limited to paperised titling and title deeds programmes. This over-simplifies the problem of development. The area of land and property titling remains highly contested with less evidence of success after it was introduced (Woodruff, 2001: 1219; Gilbert, 2002; Ahiakpor, 2008: 58).The thesis argues that like the other proponents such as Williamson and Kerekes (2011), Woodruff (2001) finds titling on its own cannot give rise to property rights, and the foundation of calculating and weighing the efforts of the poor remain a gap in development

theory. Much has to be done to make certain that the poor participate in the economy and this may include an overhaul of the economic system that goes beyond introducing a property rights system. Woodruff (2001: 1222) concludes that De Soto's involvement in Peru proves that land titling does not have much of an effect. More profound is Woodruff's (2001: 1223) view that titling must be accompanied by a series of politically difficult reforms that include changing the overall economic, political, legal and social system, addressing the judicial system, redrafting main laws, restructuring financial market regulations and other reforms over and above the titling programme. Trebilcock and Erik-Veel (2008: 479) argue that property formalisation programmes must not be considered as isolated economic development projects in the way that one might consider certain physical infrastructure projects. Rather, such programmes must be considered as part of a general programme of structural change to promote economic development. This will typically include a wider set of reforms aimed at the promotion of the rule of law. Manders (2004: 198) argues that making property rights the determinants of growth exaggerates their importance and ignores the role of national politics, national culture and national legal systems and the fact that property rights can only be formalised when numerous other factors are present. Hodgson (2014: 15) argues that it is more important that political, legal and financial institutions should be sufficiently well developed before registration of legal titles and individual identification can be effective.

While Schneider and Nega (2016: 437) note that a property rights focus may be applicable to some countries at various periods, they question whether property rights are the most applicable institution for developing countries, particularly Sub-Saharan African countries. This they find debatable. According to Schneider and Nega (2016: 437), the property rights approach to development does not take into account unique dynamics in various locations and is therefore prone to misjudgements. They argue that approaching property rights in a uniform manner fails to address the rights of women and others when taking traditional land tenure rights into consideration (see also Platteau, 1996:40). In Sub-Saharan African countries formal property rights systems are so stringent that they fail to assign fair, secure and equitable rights, which leaves some members of society disadvantaged or worse off if

they are forced to work within these systems. The main problem, therefore, could be that external experts cannot easily and equitably create new, secure property rights. It is more complex to achieve secure property rights than De Soto thinks.

Schneider and Nega (2016: 442) advocate for studies of property rights that take culture into account and for a system that will recognise developmental initiatives aimed at addressing economic disparities and poverty. They encourage government-led development.

Gravois (2005: 3) adds that there is a need for a focus beyond property titles by suggesting upgrading neighbourhoods and shanties in order for them to become attractive economic assets. His view is that property titles are insufficient without taking 'incremental steps that would shelter the poor' from high expectations of being in the market economy. Gravois (2005: 2) points out that capital cannot be accumulated if there is no market to trade the assets owned. His point is that the assets of the poor may not be acceptable to the market in their current form, which renders meaningless De Soto's idea that assets will be recognised because of title deeds. This is the kind of approach De Soto argues against as it undermines the poor and fails to recognise their efforts in the economy.

The emphasis De Soto placed on the legal system and documentation through titling and other representational mechanisms has led to limited benefits because it has not sufficiently embedded these changes within the overall economic system, including the culture, belief system and mind sets of various market role players for an inclusive economic system.

2.1.2.2 The legal system as a determinant of growth

In *The Mystery of Capital* (2000) and *The Other Path* (1989), the legal system is an enabler to economic growth as it allows the poor access to the capital market system. De Soto also demonstrated how the legal system can determine the economic prosperity of those trading on the streets.

Menard and Shirley (2011: 15) point out that many underdeveloped countries fail to grow their economies and they suggest the efforts to change laws and norms have been unsuccessful. Their argument is that countries that have changed laws and norms have not necessarily grown economically or performed better. Contrary to De Soto, they do not consider economic growth as attributable to the legal system. According to them beliefs have had a much bigger influence than the law. Williamson (2011) suggests that many studies point to the importance of informal property rights institutions such as those completed without government or where societies respect one another's property. Gelaw (2014: 81) claims that in Sub-Saharan African countries with poor property rights, etiquette, social custom and collective action play an important role in facilitating transactions. These etiquettes apply even where property rights are well developed.

Williamson (2009: 372) studied the determinants of development, and found that economic development is informed by well-established informal institutions and that formal institutions could be useful, but only if they are rooted in already existing informal arrangements. Overall, this suggests that formal rules and constraints do not necessarily promote economic development. Putnam (1993) acknowledges social capital which includes norms, values and culture. Furthermore, Gravois (2005) and Ahiakpor (2008: 59) criticise the argument of property rights as key to economic development; they instead view savings by the poor as key to participation in the economy.

Although this section of the thesis focuses on the critique against De Soto pertaining to law as a determinant of growth, it is important to draw on the work that supports the role of institutions in economic growth. Acemoglu, Johnson and Robinson (2001: 1369) investigated why some countries have higher per capita incomes than others. They found that there are sufficient indications that institutions are key causes of economic and financial results in many countries globally (Acemoglu and Robinson, 2005: 988). They found that countries that have strong and effective institutions enable better investment in physical and human capital. Acemoglu and Robinson (2005) studied the differences in institutions of countries with different colonialisation experiences. They state that European countries implemented

very different colonisation approaches with different related institutions. They found that in poorer countries such as the Congo, the colonisers set up exploitative states with the intention of transferring resources rapidly to the elites based in urban centres. The extractive institutions were unfavourable to investment and economic growth. Acemoglu and Robinson (2012) in their book *Why Nations Fail* analyse the different choices that countries make in having inclusive institutions and at the opposite end of the scale, the institutions that hamper growth. They look at countries such as South Korea and North Korea which have different economic outcomes based on the institutional choices made. They find what differentiates successful countries from those that do not succeed is the difference between inclusive and extractive institutions. Extractive institutions must create wealth so that it can be extracted – they have a tendency to exploit the population within which they lead. A ruler unilaterally controls political power, and when the country is in control of a centralised government some degree of law and order and a system of rules can begin and economic activity can be stimulated in order to use it for personal gain. This occurs in some African countries, Congo being one such example (Acemoglu and Robinson, 2012).

Even if the findings of Acemoglu and Robinson on the link between institutions and growth are not entirely persuasive, they are good examples that indicate that law can improve the economic conditions of a society and create an environment for economic growth that will create opportunities for economic inclusion. Property rights may not necessarily be determinants of economic growth but they facilitate access to the economy. This makes it important to initiate efforts to establish property rights that bring the poor into the mainstream economy, even if we agree that this is not necessarily an all-encompassing solution to general poverty.

2.1.2.3 The neglect of the role of culture

In *The Mystery of Capital* (2000: 240) De Soto downplays the role of culture in economic development, saying that law supersedes culture. This is contrary to North's arguments which over time have increasingly emphasised the role of beliefs and culture in determining

economic performance (North, 1990; 2005). De Soto is not alone in the view that the legal system is more important than culture. Acemoglu, Johnson and Robinson (2001) claim that culture is not an important factor in influencing economic growth. They disregard culture as a key variable by discrediting it. They consider culture as a stereotype and argue for the pre-eminence of institutions over culture. Acemoglu, Johnson and Robinson (2001) give several examples of institutions that stimulate growth across the world. They are critical of the cultural analysis that claims that Africans are poor because of a lack of work ethic and that Africans believe in the supernatural and magic, or even the view that they resist Western technology (Acemoglu and Robinson, 2012: 57). Their argument is that differences in culture do not explain differences in development. Although they do not regard culture as a factor of growth, there are elements of culture they recognise such as trust and cooperation, but these elements are seen as a result of institutions, rather than stemming from an independent cause.

Schneider and Nega (2016: 439) argue that in the absence of secure economic and political institutions the roles of culture, traditional relations and kinships have strengthened rather than decreased in importance in Sub-Saharan Africa. Trulsson (1997) argues that in Ghana ethnicity is so important and common to the extent that firms are selected by employees based on a common ethnic identity. Trulsson (1997) argues further that it is the norm in Tanzania to employ family members. Fafchamps (2004: 8-9) finds that family and kinship relationship serve as security in transactions. These relationships facilitate economic exchange and create capital. Business is based on personal relationships rather than formal agreements. Fafchamps (2004) also finds that because of support for expectations from family relationships it is difficult for Africans to have business transactions with those not from the same family (Fafchamps, 2004: 305). This indicates the significance of close family relationships for economic decisions when it comes to trade, investment and employment.

Fafchamps (2004) also finds that in Sub-Saharan Africa culture has a strong influence on the economy and affects considerations such as the allocation of land. Platteau (1996) finds that cultural views on the allocation of land based on relationships and the application of land is

perceived as a source of identity and a form of economic security. Fafchamps (2004) finds that cultural patterns are detrimental to the working of a good property rights market for land. Because of the strong cultural practices, even with secure property rights, many in Sub-Saharan African countries may reject formal markets for land with formal property rights and opt for cultural systems which will cause conflict and complications in the economy.

2.1.2.4 The assets of the poor

The third contradiction is that the statistics which De Soto points out in his writing may not be a true reflection of the assets of the poor in poor countries. De Soto claims that the assets or dead capital of the poor in Third World countries combined is $9.3 trillion De Soto (2000: 37). The poor may not have sufficient assets to qualify as dead capital, which might be an overestimation by De Soto of the assets of the poor in many poor countries. Meinzen-Dick (2009:1) argues that poor people lack both the income and assets that can create wealth. Ahiakpor (2008:57) asserts that De Soto gives an impression that the assets of the poor can easily be translated into the economy, whereas the poor do not have assets and their absence affects the ability to borrow funds. Woodruff (2001: 1221) argues that the assets at the disposal to the poor are only a small fraction of the $9.3 trillion figure suggested by De Soto (2000), and his view is that De Soto exaggerated the size of the assets owned by the poor. These assets have no substantial value according to him (Woodruff, 2001: 1221). De Soto (2000) says that once people have rights they can access loans. Ahiakpor (2008: 58), on the other hand, says the poor do not have enough assets that can be recognised by a system of property rights to enable them to access loans. De Soto starts from the premise that people have assets, while Ahiakpor (2008) argues that they do not have assets. Gravois (2005) argues that the properties of the poor communities need upgrading, which challenges their values. He argues that there is no value the banks can acquire from attaching the poorly maintained properties of the poor in shabby locations; in fact a bank would prefer employment to a poor person's property title. The poor may not have the assets as De Soto pronounced; also the value of the assets may be overestimated given the poor quality of the assets such as the shanties and slums.

2.1.2.5 The fallacy of property titling programmes

De Soto suggests that establishing property titling programmes is instrumental in economic development. Trebilcock and Erik-Veel (2008: 479) suggest that contrary to the optimistic rhetoric of De Soto's work, property formalisation programmes are not by themselves the key to unlocking the potential of developing countries.

Trebilcock and Erik-Veel (2008: 479) warn that property rights regimes should be approached with caution and that drastic, uniform top-down property changes should be avoided. Contrary to conservative economic rationale, the formalisation of property rights is not necessarily desirable at all stages of development or for all property owners. They argue that formalisation programmes can have far-reaching social and economic consequences, and under certain conditions formalisation can have insignificant or harmful impacts. Meinzen-Dick (2009: 1) and Gravois (2005) similarly found that the land titles programmes that failed to take the challenging dynamics of property rights affecting the poor into account have at times failed and affected the poor negatively with the unintended consequence of making the poor worse off by reducing their security of tenure. The analysis by Woodruff (2001) also views property titles as limited and adds that De Soto's own experience in Peru suggests that land titling by itself is not likely to have much effect. This was also found by Woodruff (2001), Field (2004) and Gravois (2005). Williamson and Kerekes (2010: 2) argue that Peru lacks secure property rights. The International Property Rights Index score for Peru was only 3.7 in the world average of 5.3 out of a total of 10 in 2007. According to them, this puts Peru in the lower range with nations that have the lowest protected property rights. In 2016, Peru ranked 76 out of 128 countries on property rights index and 9 out of 22 in the region. [22] As shown in Table 2, property rights registering in Peru ranked 18th out of 127 countries but 1st in the region and in terms of access to credit, they ranked 42nd out of 128 countries. This shows that although there were reforms, there is still a way to go to achieve property rights.

[22] http://internationalpropertyrightsindex.org/country?c=PERU. Peru falls under the Latin America and Caribbean countries.

Table 2 Peru Global Property Rights ranking

	Score	Globally	Regionally
Overall	6.0	49 of 128	3 of 22
Protection of physical property	4.6	97 of 128	14 of 22
Registering property	9.8	18 of 127	1 of 22
Access to loans	3.7	42 of 128	6 of 22

Source: International Property Rights Index (2016)

Williamson and Kerekes (2010: 2) further argue that for 25 years many attempts had been made by the Peruvian government to increase property rights for the poor and to initiate land titling programmes. They state that the programmes were implemented using the ideas by De Soto, yet unfortunately these efforts have had a very little impact. Van der Molen (2012: 7) conducted a study that reviewed the work of De Soto over 10 years, and he also questions the validity of De Soto's claims in Peru. He raised the concern that if this programme had failed to work in Peru, why would it work elsewhere?

Williamson (2011: 104) argues that a paperised title deed does not automatically translate into achieving the economic benefits of secure property rights that include access to credit and effective enforcement. Williamson (2011) also argues that the legal system is accessible to the more affluent in society, which then leaves the poor with the option of depending on informal institutional mechanisms such as customary rules and religious affiliation to access to their resources. She argues that in African countries many women lose their customary rights when property is registered in the name of the man because many land titling programmes fail to take these factors into consideration. Women lack property rights in these land titling programmes. Similarly, Schneider and Nega (2016: 437) find that well-meaning property rights programmes have undesirable effects on women as they are not included in government initiatives to establish property rights to land, which is unfortunate as women in African rural areas are competent and good farmers. Government-led property rights systems end up undermining these women's access to land. This is a serious challenge that affects development.

Although De Soto makes a case for property rights and a representational system that takes the poor into consideration, the options he proposes do not make a strong case for economic participation and do not guarantee that poverty will be addressed. In fact, there is evidence that property titles, although they give access to the formal economic system, have created more barriers for the poor. The need for an overhaul of the economic system that takes the poor into account in a sustainable manner is a gap that has so far eluded economists. Poverty is a threat to the wellbeing of people which is not always addressed despite the programmes put in place. The more the poor participate in the economy, the less poverty will be experienced. De Soto's (2000) capitalisation process addresses the systematic changes needed which will ensure greater economic participation by the poor and ultimately reduce poverty. The process has various steps which are part of a gradual process over time. There is an inverse relationship between poverty and participation. The capitalisation process proposed by De Soto (2000) should ensure strengthened economic participation and reduced poverty for street traders. However, there is general consensus that the proposals by De Soto to address the needs of the poor are something like drifting smoke without much practical substance.

De Soto raises important questions regarding economic development that economists are still grappling with. Questions De Soto asks include how to ensure economic inclusion, how to establish secure property rights and how to bring the poor into the market economy. Criticisms of his work should make us cautious about how easy it is to include the poor in the legal system and how transformative such processes can be, at least over the short term, but they do not invalidate De Soto's contribution to how we should think about economic development. What he has done is to point to the potential of informal traders and the positive economic contribution they would be able to make if they were effectively included in an inclusive, functional legal system.

2.1.2.5.1 How successful were the land titling programmes?

Ever since De Soto revealed the importance for economic development of the use of the legal system to develop property rights from dead capital, many governments in developed countries applied the reform to assist poor countries, and developing countries embarked

upon processes to reform their economies by establishing property rights titling processes. Many countries including Peru and Colombia instituted land titling programmes as prescribed by De Soto.

The criteria for measuring the success of a property titling programme is outlined in *The Mystery of Capital*. In this work De Soto identified indicators which include access to credit as an outcome of access to property rights. He argues that when people have title deeds they have access to credit, which in turn can lead to access to capital. In his view, a representational system that recognises an individual's assets is a mark of success. Therefore access to credit shows the success of property rights. In De Soto's *The Other Path* the indicators of property titling are different as it addresses the plight of street traders facing the constraints of the lack of permits to trade and the space in which to trade, and police harassment and other restrictions that result from the lack of property rights of traders. Success would include the right to trade freely without fear of detection, and when traders have access to credit and their economic activities can be recognised by the economic system (De Soto 1989: 159).

Investigation has found that the system developed by De Soto, while clear on paper, has proved difficult to implement. This system has not proved to bring about better performance, and as a result communities in developing countries have ended up with titles on paper but no real rights leading to economic progress. The difficulty is that a paperised title has not met with institutional shifts that were wide enough to accept the contribution of poor communities. It should be explained that not all scholars share a similar view about the failure of titling programmes. Scholars who include Feder (1985) and Besley (1995) agree that land titles have a positive relationship with access to credit. They argue that lenders are encouraged to use land title deeds as collateral as they lower the risk of loss, therefore decreasing the risk of exchange, and this increases the disposable value of land because of the collateral. Besley (1995) argues that the lack of formal titles impedes the use of land as collateral to access the credit markets, which means that formal titles are a

prerequisite to obtaining credit. Besley (1995) also argues that titling impacts the transferability of property, making investments in untitled properties highly inflexible.

Thus one area which property titles were meant to deal with was access to credit. However, property titles did not prove to bring about changes in this area. Other research has not found a correlation between property titles and access to credit. The following studies paint a largely negative picture:

Miranda (2002) found the same result for the approximately 1 million land titles in Peru. Gilbert (2002) found that the titles granted in Bogota in Colombia made a minimum impact on access to credit. Gravois (2005), Field and Torrero (2004), Lastaria-Cornhiel and Barnes (1999: 2) and Williamson (2010) did not find a connection between land titling and access to formal credit. In fact, Lastaria-Cornhiel and Barnes (1999: 42) found that only 4.2% of urban families whose land was registered had access to credit.

2.1.3 Critiques of De Soto by South African researchers

This section addresses the critiques of De Soto by South African researchers. It is important for the purposes of this thesis to understand how De Soto is perceived by many researchers in South Africa.

Cousins et al. (2005), Hassen (2007), Tomlinson (2005; 2007), Kingwill et al. (2007) and Royston (2007) all find in their various assessments that the views of De Soto on property rights do not apply in South Africa. Tomlinson (2007; 2005) disputes the ability of property titles to assist the poor to obtain access to credit. According to her assessment, there is no evidence that points to the poor having access to credit due to property titles in South Africa as the banks are unwilling to lend to the poor, regardless of their property title deeds, because of poor earnings and the inability to make sustained repayments. In her view, property titles do not guarantee economic participation within the financial system, which is key for enterprises to ensure entry and sustainability in the economy. Furthermore, she argues that many poor people are informally employed and this does not bode well for

bringing them into the mainstream economy. She also finds that there is a financial risk for black households of losing homes due to their inability to meet financial obligations. In her view, the poor will be worse off if they were to use their property titles as collateral in the case of possible default.

Rust (2006) highlights that the property market of South Africa is not developed to effectively recognise the property titles of the poor. De Soto's argument would apply if the poor could afford collateral, if the property market were functional in townships and rural areas, if there were available mortgage finance and if banks were willing to lend to the poor. The market, however, does not willingly recognise properties that are owned by the poor as collateral. The property markets in townships and rural areas are not yet commonly recognised, which makes it difficult for the poor to utilise them when it comes to leveraging the economy to carry out economic exchanges. De Soto's views therefore do not apply to South Africa, according to her.

She also finds, as does Tomlinson (2007: 21), that housing finance is far too risky for banks to provide to the poor. The poor instead rely on informal credit.

Kingwill et al. (2007: 61) find that property titles may reduce security of tenure, and as found by Tomlinson (2007), do not increase lending to the poor. In their view, titling of property may also undermine the rental property market undertaken by poor households to make extra income if the poor were to lose their property due to default of payment. According to them, security of tenure is more important for the poor than title deeds. The poor benefit by using their land and property as business premises rather than using them to obtain micro loans and mortgage finance from institutions. Property titling does not guarantee ownership because the poor often sell their land for immediate cash flow (Thwala, 2006). Access to a title deed does not guarantee economic freedom. Ownership cannot be approached on its own merit without taking into account changing societal trends, socioeconomic pressures, rural urban dynamics and how people perceive property and ownership, for instance land.

Royston (2007: 41), similar to Rust (2007: 48-49), argues that housing strategies are not accurately targeted. According to her, the poor need to be more differentiated than De Soto has determined, and that without differentiation of the poorest people, the poor will not benefit from the titling of property. As Rust (2007) sees it, De Soto's property titles need certain conditions to succeed and these do not exist in South Africa. She does concede that the proposal by De Soto may be appropriate for those in the gap market. The gap market consists of all those who cannot gain access to affordable housing and where supply does not match demand.[23] The households in the gap market are those who earn sufficient income that disqualifies them from receiving government housing subsidies, but not adequate income to secure housing finance.

Hassen (2007: 81) suggests that poverty and inequality are of a structural nature in South Africa, and that reducing poverty requires far more than formalising property titles – a broad approach is needed to assist the poor to build assets such as housing. Cousins et al. (2005) also find that the property titling approach has been tried and has not worked in developing countries. His argument is that having a title deed does not guarantee economic prosperity. The poor have title deeds in the form of paper, but without the other reforms that allow the paper to be converted into real value, title deeds do not work.

2.2 The capitalisation process: Recommendations by De Soto

This section probably addresses the most important part of De Soto's work because it shows how he proposes that dead capital should be transformed into capital and the legal processes required to formalise property rights.

Most of this section is taken from *The Mystery of Capital* and summarises how De Soto views the transformation of dead capital to real capital, as well as the integration of communities into the mainstream economy. It is important that the issues are captured as directly as possible because of their specificity and impact.

[23] http://rozenbergquarterly.com/city-of-cape-town-what-is-gap-housing/.

2.2.1 The capitalisation process

In order to convert dead capital to real capital, De Soto proposed a process called the capitalisation process. It was this process that served as the fundamental foundation and a basis for how property rights can be developed. This is an important part of the thesis because it lays the foundation for the property rights that the study proposes over and above the existing property rights system in Pretoria.

De Soto's (2000: 178-179) capitalisation process consists of four main categories which include the detection, the political and legal, the operational and the commercial strategies. In these categories De Soto proposes many steps. To shed light on the main categories, the thesis delves into their details so as to be able to identify the tangible areas to be addressed when establishing a property rights system.

The following **steps are the processes that must be followed in the capitalisation process:**

- The first step is **the diagnosis stage**.
    - This step is an identification process where the economic activities and assets of the poor are identified, as well as the reasons why the poor chose the activities, and where the activities are recorded and placed within a location. This is the step where baseline information about the extra-legal activity is established.
    - Diagnosis is an intensive process because it quantifies the value of the assets. Measurement tools to assess the value of dead capital are developed. This includes the development of criteria to determine the value of the assets of the poor.
    - In establishing the extra-legal activities of the poor, including discussions about legality and extra-legality, the link between the formal and informal economy is important. In this step it is important to establish the quality of the relationships with various role players in society.

- The development of the legal process takes place. The development of a system to decode and detect extra-legal activities also addresses the process of establishing a legal system.
- The last part of this process is to determine the cost burden of informality on the country. These costs include the costs to the extra-legal sector, to the legal commercial sector and to the state.

- The second major step in the capitalisation process is *the establishment of legal systems and putting organisations in place.*
  - This is an intense process where organisations come into the picture. This process requires political buy-in and the establishment of an organisation that will be responsible for the capitalisation process. This is an agency that will implement the process. Generally, this is the process that is difficult to achieve, as in developing countries it is often difficult to establish valid institutions and to have political will and buy-in, and the poor are not prioritised. Although this process is ideal, practically it is not clear how possible it is.
  - The second step is the removal of administrative and legal bottlenecks. This includes the calculation of the costs of capitalising extra-legal assets. These requirements include the cost of licences at all levels of government, the fees charged for the licences, the amount of documentation required, impractical requirements and any other transactions, including the length of time it takes to obtain a licence. In this step, De Soto advocates for the removal of the constraints that could be administrative and legal in nature by finding and changing the institutions, legal mechanisms and norms that create regulatory burdens.
  - This category also involves creating consensus between the legal and extra-legal sectors. The first step here is to establish a link between the legal and extra-legal sectors and how they relate to the law to be able to draft statutes that recognise acceptable extra-legal proof of ownership with the support of extra-legal communities. In this process, the draft legal norms incorporate

extra-legal property without compromising the level of security that the existing legal order now provides for property that has been duly recorded and effectively controlled so as to obtain the acquiescence of the legal sector.

- This is the step where property rights are established and laws are drafted to create a bridge between the formal and informal sectors. These norms must be acceptable and drafted with the communities. This process is meant to be both a top-down and bottom-up approach.

Streamlining the legal processes as outlined above must be the most difficult process. The activities and processes of the poor are included in the system and the formal legal costs reduced to make the process attractive for those in the extra-legal economy to form part of the formal system.

- The next step is the **implementation process**
  - This is the step where the system is implemented. In this stage the communities submit their proofs and are trained to know how the system works. This includes the manuals, training, resources needed and the proofs required for the communities to participate in the economy. The process seem cumbersome and it is not clear how such a system can be accepted by all in order for it to be rolled out successfully.
  - In this process, communicating the strategy is critical. The strategy includes campaigns and ensuring that a similar message is sent across. This is after the systems have been put in place and are being rolled out.
- The next step is **the integrative process**
  - This process is complex. It requires the data on the capital from the extra-legal sector to be absorbed in the economy. It is about including the representational systems of the poor and their proof to be absorbed in the system. This process includes the registration process and proof of registration, use of systems and ensuring that the system is functional.
- This is the **other implementation process** that aligns to the market

- The extra-legal representational activities are incorporated in the system. The communities are able to use their assets and capital to participate in the economy because the systems have been adjusted to recognise their activities and the means of exchange have been simplified and aligned. The work of the poor is part of the economy and their activities are recognised.

This model is closely linked to both North's and Williamson's views given its legal approach to economic development. It also has some elements of governance through role players such as government.

2.3 The link between North and De Soto

This section explores how De Soto has similar views to the new institutional economics, particularly of Douglas North, and why De Soto's work extends beyond what North has completed. Furthermore, this section of the chapter also indicates why some of the views of North and De Soto are complementary and why De Soto has expanded the existing literature of NIE. It links with the next chapter on NIE which unpacks the theory of NIE.

The reason why the thesis identifies North as the key institutional economist is that he studied the link between institutions and economic growth and development (Alston, Mueller & Nonnenmacher, 2016: 1). Additionally, North attempted to outline the role of the rule of law in economic development in more detail. This thesis acknowledges North as the key NIE economist and his work is aligned most closely to that of De Soto in trying to answer tough questions in economic development. The complementary views are discussed in this section.

Firstly, De Soto (1989, 2000) advocates for a legal framework that will enable poor countries as well as those operating in the informal economy to participate in the economy. His argument that dead capital can be developed through a legal system attests to the importance of a regulatory framework to foster development. This view is confirmed by

North when he argues that the rise of institutions that created legalised property rights have created the productive efficiency of the West (North, 2005). The legal framework forms part of formal rules in North's definition of institutions, which explains how institutions evolve over time. North (2005) further stressed the need of a legal system to make capitalism work, and he focused on the link between capitalism and the development and maintenance of political and economic institutions. Faundez (2016: 404) suggests that law features prominently in North's theory, which is the main source of the formal rules of the game and plays a crucial role in supporting market exchange. He further argues that law is also the standard used to identify political regimes and in its appearance as the rule of law provides the institutional mechanism that facilitates the transition of natural states to open access orders.

Secondly, North (1990) makes property rights the central explanation of economic performance and the enforcement of property rights as central to credible commitment.[24] This is one of the main themes of De Soto (2000) who sees property rights as key to the development of the poor countries and the poor. According to De Soto (2000), the reason why developed nations are rich is because of their ability to recognise property rights for all through the legal system.

Thirdly, North (1993) similar to De Soto, recognises that different incentives and constraints have to be put in place in a form of a process in order to effect change in the economy. Unlike the neoclassical view, which makes an assumption of rational behaviour and no costs, certain processes have to take place in order for the economy to perform effectively. These changes include the process of capitalisation that De Soto (2000) proposes in *The Mystery of Capital*. This implies that a deliberate effort has to be made to establish property rights. De Soto went further to demonstrate how North's approach remains mainly conceptual, especially in his very empirical first book, *The Other Path*, which outlines the challenges and possible solutions to extending property rights within the specific context of Lima, Peru.

[24]To be truly credible, the commitment must be irreversible: very costly to stop or reverse. Source: http://www.agsm.edu.au/bobm/teaching/SET/week8.pdf

Fourthly, North (1986, 1989, 1994) uses the concept of transaction costs to address the question of why some countries are rich and some are poor. He wanted to understand what determines growth in one country as compared to another. He views beliefs and institutions as key to helping understand why underdevelopment has been persistent in most parts of the world and why reforms have been unsuccessful. De Soto grappled with a similar question, namely why some countries are rich and others poor and through his response touched on the legalisation process that creates capital. The lack of a wealth-creation mechanism explained this dilemma for De Soto. De Soto sees the lack of secure property rights as costly because the poor cannot obtain the benefits from trade which come with an acceptable means of exchange. In *The Other Path,* De Soto (1989: 131-176) enumerates the different costs that emanate from a bad, restricted legal system.

Furthermore, North asks questions regarding why a political market does not function like an economic market. A question he asked was, under which circumstances do states protect property rights even when they have unchallenged power to expropriate property and subjugate individuals? This question is echoed in the work of De Soto as he grappled with the role of the state in protecting and securing property rights of the poor in Lima (De Soto, 1989). In the capitalisation process described in *The Mystery of Capital*, one notices the role that the political organisations and the state have to play to ensure the existence of property rights.

Additionally, according to North (2005), property rights and their enforcement affect how societies develop and differ. He compares the property rights of powerful elites with the vulnerable rights of non-elites in societies where non-elites have little access to legal or political remedies. Similarly De Soto (2000) explains this using the metaphor of the bell jar, where the rich have access to the legal system and their rights are secured and the poor in countries without these rights because of the poor regulatory systems that do not recognise their rights. De Soto is not saying that property rights are absent in the developing world, just that it is only the rich who can access them.

North (1995) argues that economic development is spurred on by a dynamic process of institutional change rather than capital accumulation and technology. De Soto proposed a process of institutional change, where a deliberate effort is made to incorporate the rights of those excluded from the economic system. He acknowledges that such a process takes time and involves much effort and negotiation.

North (1993) argues that economic development depends on economic organisations and credible enforcement of property rights and other contractual commitments. He also argues for political development through the rule of law in a constitutional setting in which all major role players accept changes of power and effective legal recognition of organisational rights. In the recommended capitalisation process, De Soto demonstrates the importance of organisations and processes to ensure commitment to the process for secure property rights to be established.

North had views about institutional analysis and ailing economies. Along similar lines to De Soto, North recommended a process to restructure property rights. He advocates for the restructuring of property rights to provide correct incentives in order to restructure an economy. North (1993: 21) proposes the restructuring of property rights by creating and implementing a judicial system that will partially enforce the rules. The emphasis on the formal rules and establishing a judicial system resonates with the proposals made by De Soto in this area because he recommends the establishment of systems as well as the organisations to oversee those systems through the capitalisation process.

De Soto's views have their basis in the new school of institutional economics as demonstrated by arguments in this section. He is concerned about appropriate property rights of the poor and how to make the legal system appropriate to the existing circumstances of the poor. He extends the theory further than the new institutional economics by proposing a practical process of capitalisation. The thesis explains this process in the next section.

This chapter has discussed the views of De Soto in depth and highlighted the link between De Soto and North. It has also outlined the critical capitalisation process as set out by De Soto in *The Mystery of Capital.*

De Soto (2000) has taken the debate to another level by looking at ways to establish property rights for the poor in order to ensure that they form part of the mainstream economy. This is an important milestone, and although it has limitations, developing countries can learn from and build on it. The contribution of this thesis is to integrate the work of North and De Soto and to identify the approach that will work for the street traders of Pretoria.

2.4 Summary and conclusion

The work of De Soto was presented and his views and the views of those who have critiqued him were discussed. The capitalisation process provides a basis of how to look at proposed interventions to develop property rights for the poor. An important theoretical foundation for thinking about property rights has been laid by the new institutional economics. However, the new institutional economics literature does not clearly answer the question of how to establish a secure, individualised and strong property rights system where it does not exist and where no one has provided a concrete model to ensure the protection and the inclusive sustainability of existing property rights of the poor. Hence a huge gap in the literature can be observed. Clearly, from different perspectives economists have provided a better understanding of property rights and their importance as well as the dynamics of the broader institutional system. The capitalisation process is a significant milestone catering for the poor.

CHAPTER 3 REFLECTING ON THE NEW INSTITUTIONAL ECONOMICS

3.1 Introduction

This second chapter of the literature review focuses on the theoretical framework of new institutional economics (NIE).[25]

The contributions by the key economists discussed in this chapter are significant because of how they align with the topic of property rights.

3.2 What is the new institutional economics (NIE)?

To gain a full understanding of property rights, it is important to fit them within a theoretical framework. The theoretical framework this section will tackle is the new institutional economics (NIE). Coase (1998: 1) explains that the term new institutional economics was coined by Williamson in 1975 and that it was meant to distinguish the subject from the "old institutional economics." This brings us to the discussion of what differentiates the new from the old institutional economic theory. Coase (1998: 1) maintains that those associated with the old institutional theory were great intellectuals but lacked a sound theoretical context to explain their facts and how they understand institutions – they had no theoretical framework and attributed economic growth to automatic market forces.

Table 3 Difference between the old and new institutional economics theories

New institutional economics	Old institutional theory
Theoretical foundation	Lack of rigorous systematic theoretical

[25] This chapter exclude the imperfect information and collective action theory in the new institutional economics and gives no in-depth analysis of the literature in these two areas. There are other economists who have contributed to the theory, such as Cheung (1983), who studied institutions and the various inputs of a product, and Ostrom (1990), who analysed institutions and collective action. Stiglitz (1986) addresses the imperfect information paradigm. Although the literature does not invalidate their work on property rights, their contributions do not align with the kind of contribution made by De Soto.

	foundations (Groenewegen, 2005; Joskow, 2008)
Explains the determinants of institutions	Concerned with description of institutions
Protests against methodological approach of neoclassical theory	Accepted neoclassical foundations
Assesses impact on productivity and allocation as well as changes in institutions.	No concern for institutional change as it viewed the mainstream economy as proceeding without significant change

Table 3 summarises the difference between the old and the new institutional theories. Coase (1998) explains that the new institutional theory differs from the traditional institutionalist theory because it started as the rejection of the methodology of neoclassical economics. The old institutionalists emphasised the significance of institutions; however, they did not provide a sound and solid theoretical basis and practical support. Often it was country specific or even case specific, concerned more with the description of institutions. NIE differs also in that it explains the determinants of institutions and analyses the institutional change as well as evaluates the impact on productivity and allocation (Coase, 1998).

Rutherford (2012) explains that the old institutional school incorporates other fields such as psychology and sociology. Rational, individual utility maximising in the old institutional theory is not viewed as sufficient, which is one of the features of new institutional economics. According to Rutherford (2012), individuals are shaped by institutions and cultural changes. In old institutions, human preferences are shaped by institutions and institutions are shaped by human behaviour. According to the old institutional theory, institutions are the driving force in the economy and the economy should study institutional change and progress. The new institutional economic theory has an appreciation of the economy and market forces and how they affect the institutions.

Joskow (2008: 6) argues that much of what passed as institutional economics lacked rigorous and systematic theoretical foundations. He adds that this was accompanied by a lack of comprehensive supporting empirical analysis. Furthermore, the analysis was often country specific or even case specific and not enough effort was made to approach it from a general perspective beyond its actual condition. The new institutional economics are rich in theoretical foundations that seek to explain how the economy, institutions and the world evolve. The old institutional school argued that institutions were a key factor in explaining and influencing economic behaviour. Brock (2002) and Kherallah and Kirsten 2002: 111) put forward the same argument. The old institutional perspective functions outside the framework of neoclassical economics. Neoclassical economics, however, did not take into account the role of institutions, and economic agents were assumed to operate almost independently (Kherallah and Kirsten, 2002).

Langlois (1986: 5) captures one of the fundamental differences between new institutional economics and old institutional school of thought by saying, "The problem with many of the early institutionalists is that they wanted an economics with institutions but without theory; the problem with many neo-classicists is that they want economic theory without institutions; what the New Institutional Economics tries to do is provide an economics with both theory and institutions".

Menard and Shirley (2005: 1) define new institutional economics as the study of institutions and how they interact with organisational arrangements. Subsequently, Menard and Shirley (2011: 3) argue that new institutional economics emphasises rules and norms and allows other fields of study and methods. Menard and Shirley (2005: 7) acknowledge the importance of regulations in NIE that play a role in the development and wellbeing of a market economy. Menard and Shirley (2005: 7) focus on the role of legal institutions in protecting private property from exploitation by implementing contractual agreements which contribute to the economy.

Klein (1999: 1) and Kherallah and Kirsten (2001: 6) describe NIE as a multidisciplinary field linking economics, law, organisation theory, political science, sociology and anthropology to

comprehend the institutions of social, political and commercial life. Its main emphasis is economics, although it borrows from other social science disciplines. It aims to explain what institutions are, how they arise, what purpose they serve, how they change and how they should be reformed.

Williamson (1995: 173) argues that new institutional economics not only looks at the ideal set of institutions that institutional change can create, but also analyses the existing institutions to understand what drives them. The institutional environment consists of a set of political, social and legal ground rules that establishes the basis for production, exchange and distribution. This includes the rules governing elections, property rights and the right of contract (Williamson, 1995: 174).

According to Richter (2005: 166), new institutional economics constitute the following:

1. Property rights method
2. Transaction cost method
3. Evolutionary economics
4. Constitutional choice
5. Communal action theory
6. Public choice theory
7. Economic agreement theory
8. New institutional method to economic history
9. Contemporary Austrian economics.

Kherallah and Kirsten (2001:5) list all of the items above in Richter's (2005) list, but add political economy, new social economics, social capital, law of economics, property rights and economics of information as branches of NIE. From reading Richter's and Kherallah and Kirsten's writings one gets the sense that there is no common approach to the branches of NIE.

Menard and Shirley (2005: 2) and Nabli and Nugent (1989: 1335) argue that NIE has emerged to address the shortfall in economic theory, which has neglected the analysis of institutions from both a theoretical and an economics perspective. NIE's perspective is that markets are imperfect with imperfect information and other limitations that focus on prices and outcomes which cause high transaction costs. They suggest that the purpose of NIE is to give an understanding of the causes of institutions and how they evolve over time, and to assess their impact on economic development with the focus on economic performance, productivity and allocations. This school of thought is concerned with answering new questions about the characteristics and nature of institutions. It answers the questions missing from the neoclassical school by introducing such concepts as property rights, transaction costs and agreements.

Coase, Williamson, Menard and Shirley and Kherallah and Kirsten highlight the many facets of new institutional economics and its economic analysis emphasis which aims to understand how institutions contribute to economic performance. Although the description of NIE is conceptual and does not elaborate on how these institutions emerge and are established and how they tie in with economic development, there is a link to the literature of De Soto through the emphasis on institutions and property rights.

3.2.1 Understanding institutions

Since new institutional economics is about the economics of institutions, it is important to understand institutions. North (1990), Matthews (1986: 903) and Williamson (1995: 176) agree that institutions matter. Rodrik (2000: 4) argues that the issue is the types of institutions that matter and how to create the institutions and not so much about whether institutions matter. He defines institutions as a set of behavioural rules that govern and shape the behaviour of human beings by helping them to shape expectations of what others will do.

Rodrik (2000: 5) identifies five institutions needed for markets to perform, namely property rights; regulatory frameworks; macroeconomic stability institutions; institutions for social

protection; and institutions for conflict management. These elements of institutions are similar to those identified by McMillan, (McMillan, 2002).[26] Acemoglu, Johnson and Robinson (2005: 403) suggest that the primary institution of concern within NIE is property rights, because NIE economists believe that historical data reveal that countries with more secure property rights such as better economic institutions, have higher average incomes.

Rodrik's, McMillan's and Acemoglu, Johnson and Robinson's understanding of property rights places them squarely within this field because of their emphasis on institutions and property rights.

There is no uniform definition of institutions; rather there are many definitions of institutions. Angeles (2011: 4) sums it up by saying that the word institutions is a dangerous one, the more so because the meaning varies according to the circumstances and the theoretical discipline being applied. Aoki (2011: 20) acknowledges that there does not seem to be agreement on what institutions actually are.

North (1990: 3) defines institutions as the rules of the game in a society, or more formally, the human-devised constraints that shape people's interactions. These include both formal and informal constraints such as conventions, customs, traditions and codes of behaviour. Informal institutions such as culture, family, structures and general social norms are perceived to play an important role. Greif (2006: 30) similarly argues that an institution is a system of rules, beliefs, norms and organisations that together generate a regularity of (social) behaviour. On the other hand, Shirley (2003:1) views institutions as falling into two categories. The first category includes agreements and agreement enforcement mechanisms, business norms and rules, customs and principles, and accumulation of human capital. The second category include laws, rules and constitutions. These institutions can hinder or help development and can work against human rights.

[26]The elements are: information that flows smoothly; property rights that are protected; people must be able to be trusted to fulfil their promises; side effects on 3rd parties are curtailed; and competition in the market is fostered.

Nabli and Nugent (1989: 1334) emphasise that institutions have different characteristics. They recognise institutions as organisational and formal, created at a specific time and place by a specific means, or having evolved from many widely spread sources from within already existing institutions.

Menard and Shirley (2005:1) define institutions as the transcribed and oral guidelines, standards and restrictions that humans develop to reduce uncertainty and to control their environment. These include: (i) written guidelines and contracts that rule prescribed relations and corporate governance; (ii) laws and rules that govern politics, government, finance and society at large; and (iii) unwritten codes of conduct, norms of behaviour and beliefs. Organisational arrangements are the different modes of governance that agents implement to support production and exchange. Menard and Shirley (2005:1) address organisations to include (i) markets, businesses and the various combinations of forms that economic actors develop to facilitate transactions; (ii) contractual agreements that provide a framework for organising activities; and (iii) the behavioural traits that underlie the arrangements chosen. The interaction between institutions and organisations has necessitated the building of the institutional environment (North, 1990: 3-6, Williamson, 2000).

Acemoglu and Robinson (2012) differentiate economic and political institutions. They view economic institutions as those institutions that include property rights, the law and the freedom to contract and exchange. Besley and Persson (2011) view institutions as fiscal, government or legal capacity and harmony.

It should be clarified that institutions are not organisations and in this thesis when reference is made to institutions, it goes beyond organisations. North (1990: 5) argues that organisations are crucial if one is to get a handle on the dynamics of institutional change. An organisation is a group of people bound by a shared purpose of achieving objectives. Organisations include political, economic, social and educational bodies. According to North

(1990: 3-5), the term institution refers to the guidelines of the game, whereas organisation refers to actors in the game.

The approaches by the scholars listed above are complementary. The influence that the work of North had on institutions and development literature in attempting to understand how institutions emerge through the formal rule of law and to some extent informal constraints is highlighted. Nabli and Nugent's approach also aligns with the work of North on organisations and the history of economics, and address the way in which institutions are formed and evolve over time. The same can be claimed for the work of Acemoglu and Robinson, Rodrik, Greif and Besley and Persson. This is crucial and ties in perfectly with the work of De Soto who argues for a regulatory system as a source of economic development and the role of organisations and various role players in creating a legal system that accommodates the poor. All the definitions and descriptions including that of North are broad, conceptual and with no direct link to how institutions work, let alone for the poor in developing countries.

3.2.2 The contribution of new institutional economists to property rights theory

This section focuses on property rights from a new institutional economists' perspective. Some of the key literature on institutions that established this field is outlined here. The main contributors to NIE are among others Coase, Demsetz, Oliver Williamson, Alchian and North. Coase, North and Williamson won Nobel prizes for their contributions to institutional economic theory.

In *The Nature of the Firm* Coase (1937) explains how firms and their structures are organised and highlights the application of contracts and transaction costs in the firm. In another work, *The Problem of Social Cost,* Coase (1960) tackles the way in which externalities can be resolved by negotiating without government involvement in an environment of zero transaction costs. In later work, Coase (1991) demonstrates the role of other costs to

contract and manage organisations.[27] These costs affect transactions and how the economic system works. He highlights the role of the right to use goods and services and factors of production beyond just the use of those factors of production. According to Coase (1991), these property rights may comprise full ownership, different usership rights and disposal rights defined by clauses in contracts or by internal rules. Coase's view is that the availability of property rights influences one's control of outcomes in the presence of circumstances outside one's control such as prices and demand and supply factors. In the initial stages of the theory, his focus was on the firm dynamics and how firms were structured. The concern with Coase's theory is the assumption of zero transaction costs. In *The Nature of the Firm*, he never explains how firms evolve; his approach is rather conceptual. Coase's theory is referred to in this thesis because of its foundational contribution to NIE. His work on transaction costs is applicable to De Soto's approach as it reinforces the use of legal tools such as contracts to obtain the rights to resources in a secure manner.

Williamson's work (1975; 1985) expands on the work of Coase by arguing that market exchange is costly, and firms arise to benefit from transaction costs and that the limits of the firms are determined by the nature and extent of transaction costs. He focuses on the structure of the firm rather than on the production function of a firm the way Coase (1937) did. Williamson (1975) asserts that institutions matter. His study, *Markets and Hierarchies*, proposes a framework that consists of four levels: norms, contracts, incentives and markets. Williamson's contribution to contracts illustrates that property rights are susceptible to opportunistic abuse and that private protection of rights is more affordable than the legal system in enforcing rights. In his later work, Williamson (1996; 2000) develops the concepts of restricted reasonableness, moral hazard and adverse selection to explain contracts and the ownership structure of firms and institutions and transactions costs that evolve over time. Williamson (1995) asserts that institutions are important and also that the institutional environment consists of a set of political, social and legal ground rules that establishes the basis for production, exchange and distribution. This includes the rules governing elections,

[27] Externalities are the costs or benefits that affect a party who did not choose to incur those costs or benefits. They can be positive or negative.(www.investopedia.com).

property rights and the right to contract. Williamson (1995) argues that getting property rights right was a narrow conceptualisation of what institutional economics is all about. His view is that the primary concern is to get the institutions right. He argues that the development of policies that create and enforce efficient property rights is what is essential to development. Although he devoted most of his work to contracts, transaction costs and governance, Williamson noted the relevance of property rights although to a limited extent, and the importance of governance structures. His work also suffered from a similar limitation of practical applicability and an explanation of how the property rights come about. The approach that this thesis aims to explore can be linked to his basis where he acknowledges norms and the political and legal system but in a limited manner. This shows that some of De Soto's (1989, 2000) concepts have reference to Williamson's work, although to varying degrees.

North (1990) also established that institutions matter, and he linked economic growth and development to institutions. He is the economist who extended the concept of transaction costs to explain the role of government and its features. For more than a decade North (1981; 1986; 1989; 1994) continued to add to institutional economics literature to advance the idea that transaction costs are significant to economic performance. His work includes the study of inefficient institutions, how societies evolve, using economic history to check institutional change, and the implications of poor enforcement of contracts. North's other major work included *Understanding the Process of Economic Change (2005)*, and his contribution is very significant to how he elevated the role of institutions and organisations and the role of the state and institutional change. In his book, *Structure and Change in Economic History*, North (1981) considers the fact that institutions may be inefficient and focused on ideologies that hinder or foster change. He is the economist who asked why some nations prosper and others struggle in work such as *Institutions, Institutional Change and Economic Performance* (North, 1990). The interesting thing about North (1993) is that he moved away from his uncritical support of neoclassical economics, and eventually concluded that the tools applied by neoclassical economics were not able to explain fundamental societal changes that were experienced in the economies of Europe from

medieval times. In his earlier perception of neoclassical theory, North (1981: 20) argues that neoclassical economic theory is a powerful analytical tool which can be applied to various political questions.

He also collaborated with other scholars including Robert Paul Thomas (1973) on the *Rise of the Western World*, which addresses a theory of institutional change. They argue that institutional and organisational change are the centre of economic performance and that property rights and mechanisms such as written contracts enforced by the courts are largely responsible for successful European economies. North and Weingast (1989) highlight the risk of state abuse and the importance of respecting private property rights. North further finds that economic growth has in the past been linked with the evolution of representative government and secure property rights with the rule of law. North's work is considered as a practical step which applies NIE theory developed by earlier contributors. In his writing the role of politics and organisations emerged. Additionally, it was North (1990; 1994) who went further to acknowledge the role of beliefs and culture in influencing institutions. On beliefs, he argues that they help to explain why underdevelopment persisted in most of the world and why efforts of reform by importing rules and laws failed. Political institutions remained his focus in later years (North, 2009). For example, he distinguished between the high cost of private protection of property using private mechanisms versus state protection of property; the latter might be the more costly option (North, 2009). It is his work that has the closest link to De Soto's (1989; 2000) with a proposal to use the legal system to contribute to economic growth.

North studied institutions and found that they evolve through the application of the legal, organisational and political systems. It is his work that is most useful for this thesis because of how he describes institutions and the importance he places on the legal system. He also asks valid questions about developing countries to try and explain their performance. His recognition of the role of organisations, the state and political role players also ties in well with what De Soto advocates for when it comes to property rights in his capitalisation process.

All these economists acknowledged the role of institutions, the legal system, transaction costs and property rights. This shows that some of the views of De Soto (1989; 2000), although to varying degrees, have much in common with the views of the original contributors to new institutional economics.

A shortcoming, however, is that none of them address the poor and the property rights dynamics of developing countries. In addition, they seem to focus on conceptualisation rather than on explaining how property rights can be made to come about.

3.2.3 Transactions costs theory and property rights

As discussed, transaction costs theory is important in new institutional economics. In this section transaction costs and the link with property rights are discussed. Coase (1960: 114) argues that transaction costs include communications, bargaining, contract drafting and contract monitoring. Hobbs (1996) classifies transaction costs into three categories, namely: information costs related to information about products, prices, inputs and buyers and sellers; negotiation costs arising from the physical act of the transaction especially in writing of contracts, and monitoring costs which arise after an exchange has been negotiated.

Arrow (1969) defines transaction costs as the costs of running the economic system. North (1993: 15) suggests that transaction costs are the costs linked to measurement and enforcement agreements. They consist of physical dimensions and standard legal terms. He suggests that when it is costly to transact then institutions matter, and in his view it is always costly to transact (North, 1993: Part II). Williamson (1996; 2000) advocates for governance structures (contracts and ownership structures) because economic exchange has costs for contracting parties and he is concerned about opportunistic behaviour and bounded rationality.[28] Klein (1999: 466) argues that transaction costs economics is about the study of institutional arrangements that govern transactions. According to Eggertsson

[28]The theory that people can understand only a limited amount of information within a limited amount of time, and for this reason they do not always make the best decisions, especially in complicated situations. Cambridge Dictionary. http://dictionary.cambridge.org/dictionary/english/bounded-rationality

(1990) and Barzel (1997), transaction costs serve as the resources spent to define, defend and gain control over resources in use and in exchange. Wanjiru and Makori (2016: 45) refer to transaction costs as the costs of carrying out any exchange, whether between firms in a market place or by transfer of resources between stages in a vertically integrated form. Kherallah and Kirsten (2001: 24) define transaction costs as the costs of screening and selecting a buyer or seller, of obtaining information on the good or service, of bargaining and negotiating a contract and the cost of monitoring and enforcing the contract. In all these approaches institutions are the mechanism through which transaction costs can be reduced.

Menard and Shirley (2005) make clear the link between transaction costs and institutions. Williamson (1985: 16) affirms that transaction cost economics forms part of the new institutional economic research practice, in his case in the context of capitalism, firms, markets and contracts. They argue that transaction costs occur because people face unforeseen circumstances. This is exacerbated by incomplete information and limited mental ability. They suggest that people establish institutions in order to reduce risk and transaction costs. These are written and enforced formal institutions in the form of regulatory measures (laws, contracts, regulations and informal rules such as norms of conduct, beliefs and habits of thought and behaviour). New institutional economists view the performance of a market economy as depending upon the formal and informal institutions and modes of organisation that facilitate private transactions and cooperative behaviour.

Menard and Shirley (2005) agree with North about the role political institutions play to reduce transaction costs by strengthening the security of property rights and enforcing agreements (North 1997: 150). However, they note that governments fail to play this role and instead violate the security of property rights and do not adhere to contractual agreements. Menard and Shirley (2005) maintain that it is an important task for NIE researchers to understand how rules affect the transactional environment, the interaction

of economic and political markets, and how, when and why governments enforce or abuse property rights.

According to Menard and Shirley (2005), contractual agreements can be enforced in many ways, but many forms of enforcement are not acceptable to all parties or have high costs. In their view, when enforcement is not acceptable or is too costly, many otherwise lucrative transactions will not occur and economic performance will suffer.

Property rights are closely aligned to transaction costs theory. Coase (1960) argues that transaction costs are zero and any allocation of property rights results in the same pattern of economic activities under which maximum value is created from the use of resources. Shirley (2003) suggests that institutions determine whether transaction costs are low or high. Shirley (2008: 20) also argues that institutions that lower transaction costs also need institutions that influence the state and other powerful role players to protect private property. Eggertsson (1990) argues that different property rights affect transaction costs and economic growth or unproductivity. Nabli and Nugent (1989: 1336) argue that because costs cannot be avoided in any transaction, property rights are there to minimise the costs and ensure economic efficiency. Geraldi (2007: 3) argues that transaction costs are costs incurred in the determination, transference and carrying out of property rights. It is clear from these economists that transaction costs are minimised by sound institutions and that good institutions lower transaction costs.

The above discussion shows that different transaction costs have an effect on the economy. Property rights create a mechanism to minimise transactions costs. Where transaction costs are high that is where property rights are ineffective. Nubli and Nugent (1989) find that in the presence of transaction costs, various systems of property rights achieve different results of efficiency. For the purposes of this thesis, the transaction costs affecting the traders, if minimised through an effective and sustainable property rights system that takes their needs and activities into consideration, will result in higher economic growth. The opposite will occur if effective property rights are not in place, which will result in

unproductivity and high costs for the poor. This may keep them locked in the informal economy.

The literature on transaction costs discussed above does not address how transaction costs work and how they can be translated for the poor. It focuses on how they work at the firm level. Transaction costs must be lowered in order for the poor to reap the benefits of the economy. Effective property rights will lower transaction costs. The street traders of Pretoria would benefit from lower transaction costs. De Soto's (1989; 2000) work has raised concern about the cost of the legal system for poor street traders. Seen in another light, the lack of representational systems or access to property rights makes it difficult for street traders to be part of the economy as this introduces a cost to traders. Street traders face costs in the informal economy. The lack of property rights is costly for them as it leads to the loss of their economic activities as well as insufficient support from government. De Soto (1989: 85) argues that the costs of avoiding penalties, making transfers outside the legal system and operating without credit makes their operations more costly.

3.2.3.1 Transactions costs in developing countries

Transaction costs are important to economic development. Shirley (2008:20) argues that transactions costs are high in developing countries and therefore economic opportunities are unexploited. North (1992) confirms this: because the property rights systems tend to be poor in developing countries, economic growth tends to be constrained. The establishment of an appropriate property rights system will ensure lower transactions costs and maximum benefits in the market exchanges for all economic agents in the economy.

Painter and Young (1989: 8) prepared a report for the Bureau for Private Enterprise, a U.S. agency for international development, and found that in many developing countries, laws may be incoherent, inefficient, and may or may not be enforced.[29] They argue that in some countries the proliferation of often differing laws is also a problem because laws may be

[29] http://pdf.usaid.gov/pdf_docs/PNABE377.pdf

influenced by special interest groups. Due to this, property owners may be forced to resort to informal contractual arrangements to protect their property rights. Such informal or extra-legal contracts or norms are clearly not administered by the formal legal system. Such contracts are often formulated and self-policed by homogeneous groups in order to lower the cost of transactions that arise from economic exchange. They found in other work in the literature that informal contracts are made within ethnic, kinship or other social groups.

According to Painter and Young (1989: 8), these contracts are based on mutual trust and cooperation among members of the same kinship or ethnic group. In their view, these informal contracts have important implications for the study of transaction costs and the efficiency with which the resources are allocated in an economy. Painter and Young (1989: 9) refer to a study that found that informal contractual arrangements result in low transaction costs within these informal groups, which permit a high degree of distributional efficiency within segments of the "unorganised" markets. From the study they found this is possible because within segments positive externalities are generated by maintaining a desired pattern of behavioural relations without transaction costs.

The aspect brought to the fore by Painter and Young (1989: 9) is that there is an important link between transaction costs and informal institutions in developing countries. Transaction costs may undermine the formal rules of law where informal arrangements are made in an attempt to lower transaction costs.

3.2.4 Frameworks and approaches in new institutional economics

It has been argued that NIE has not been able to establish frameworks or models of the risks and uncertainties highlighted by this school of thought. Another critique is that it is vague about how to build appropriate institutions. Williamson (1975) established the four levels of institutions and pointed out where property rights fitted within those levels.

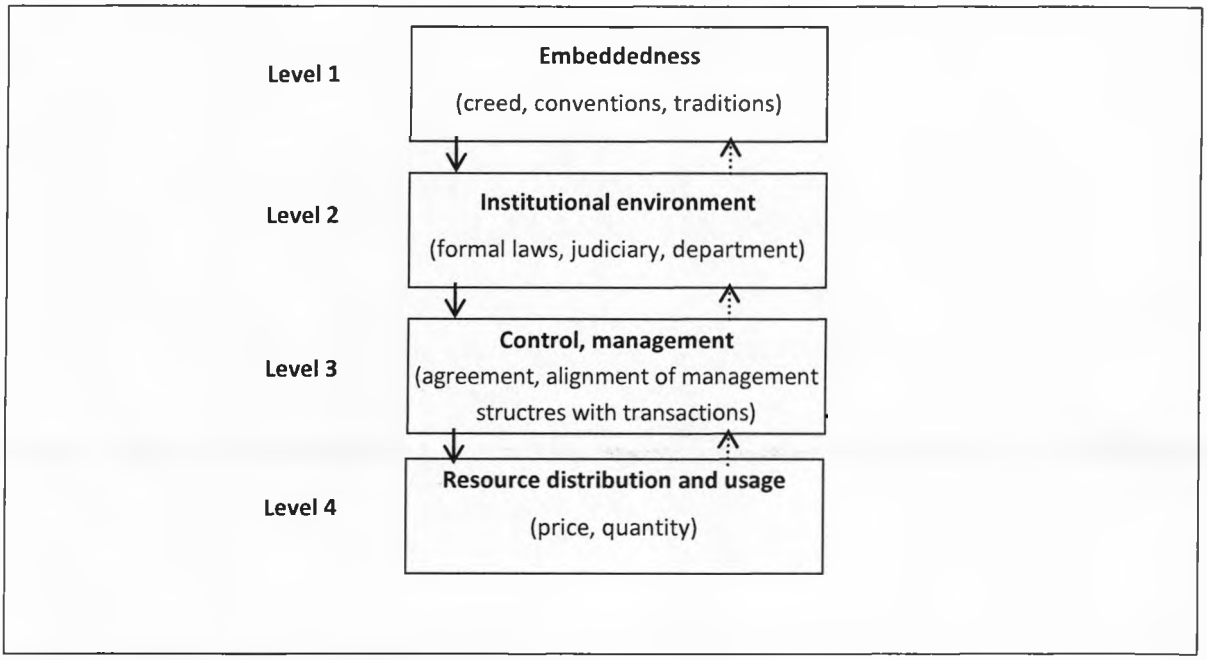


Figure 2 Williamson Institutional Model

Source: Williamson (1975)

This model explains new institutional economics in its entirety. Williamson's model ranges from formal to informal institutions, and includes contracts and organisations as well as economic inputs such as prices and wages. It encapsulates the entire economic system. Institutional change is a process and changing certain behaviours or patterns takes time. Williamson's model is applicable to the thesis because it addresses all the aspects of NIE and also includes property rights.

Figure 2 shows the Williamson model. The model consists of four levels. Level 1 institutions address informal institutions, religion, customs and ethics, and these are regarded as the highest level of institutional hierarchy. Level 1 is labelled embeddedness or cultural foundations. This level provides the basic foundation of institutions. According to Williamson (1975), these institutions take a long time to develop, a period of about a thousand years and not less than a 100 years.

Level 2 is the basic institutional level. In this level, Williamson refers to formal rules such as property rights, constitutions, formal laws and norms, political systems and related enforcement institutions, and mechanisms that facilitate change. This process is slow but faster than Level 1. It incorporates the basic foundations of formal laws. It takes longer than 10 years to develop and not more than a 100 years. This level is impacted by a steady pace of social and cultural changes, and ties in very well with the work of North whose emphasis is on formal rules and laws.

In Level 3 the focus is on institutions of governance. In this level the emphasis is on governance structures. The institutional environment is informed by resource endowments and economic conditions. The relationships are governed through mechanisms such as contracts. This level focuses on structures of governance and contracts that enable institutions to transact. This process of change can take from one year up to 10 years. Changes in governance structures are quicker than changes in basic institutional structures.

Level 4 consists of short-term resource allocation. It addresses the short-term market determinants. In this level, prices, market competitive structures, costs and wages are connected to the institutions. Level 3 institutions are closely related to Level 4 institutions.

There is an alignment between North's theory and Williamson's model. North's theory centres around Level 2 mainly because he argues for institutions as the rule of the game in the form of laws and norms. In recent years, North's theory has focused on Level 1, which is about informal institutions which take the longest to change but which, if changed, can have far-reaching consequences for bringing about institutional change. Williamson (2000) confirms some of the similar questions North has pondered on concerning the informal constraints in Level 1 of his model and how to develop effective policies.

Similarly, North (1993: 21) in his paper *Institutions and Credible Commitment* proposes the restructuring of property rights by creating formal rules and implementing a judicial system that will partially enforce the rules. The emphasis is on the formal rules and establishing an

appropriate judicial system. In this paper one of North's criticisms is that new institutional economics has not succeeded in coming up with a process of establishing property rights and other institutions. Matthews (1986: 904) develops the four-fold taxonomy of NIE in which institutions are deemed property rights, as contracts of sorts, resolutions and governance mechanisms. None of these models explain how property rights come about, and none of the models were devised in the context of the poor. They are abstract and theoretical and do not go as far as to outline how to incorporate the poor into the economy.

Most critics agree that it would be better to design political and legal institutions suited to current developing country realities rather than adapting institutions from developed countries or trying to build institutions from problematic backward societies (Azfar, 2006: 977). North in his various works has championed views on the role the political and economic institutions can play to foster growth. This links with the view of De Soto of aligning the legal system and political leadership to understanding the property rights system and taking into consideration the existing processes and efforts of the poor. Rodrik (2000: 4) agrees that developing countries should develop their own solutions without taking them from other countries. Shirley (2008) holds a similar view.

De Soto (2000: 168-169) introduced the capitalisation process which outlines how the poor can have access to property rights. The capitalisation process is discussed in Chapter 2 of this thesis where it is discussed in depth. This model is closely linked to both North's theory and Williamson's model given its legal approach to economic development and also as it has some elements of governance through role players such as government.

De Soto in some ways stands alone in focusing his efforts on advocating for the processes that recognise the efforts of the poor. There is a link between De Soto and some of the approaches in the frameworks of North and Williamson because of the use of the regulatory system, but the lack of focus on the poor and how to form applicable institutions for the poor remains a gap that De Soto has only partially filled.

3.2.5 The gaps in the methodologies of new institutional economics

Schneider and Nega (2016: 440) find that broadly speaking, when it comes to the methodology in the literature of NIE, the literature tends to be conceptual and ideological rather than addressing the key issues of how organisations are formed or how institutions work in a developing world. New institutional economists have not sufficiently demonstrated how property rights and other institutions come about, more so for the poor in developing countries. Schneider and Nega (2016: 436) point out that NIE is an improvement in the study of economic development compared with previous mainstream neoclassical approaches because it has brought the importance of institutions to the fore in development policy circles. However, they argue further that there are significant limitations to this approach, which become particularly glaringly apparent when applied to Sub-Saharan Africa. Moreover, NIE theories have been applied in a very narrow, market-oriented fashion by international financial and development institutions, which has resulted in the continued application of inappropriate policies in Sub-Saharan Africa.

Still on the subject of methodologies, some of the criticism of NIE from a transaction costs perspective is that NIE is better at describing behaviour and identifying challenges than proposing solutions. Kherallah and Kirsten (2001: 24) argue that transaction costs are difficult to measure, have no coherent theoretical framework, lack clarity about institutions and have poor abilities to model risks and manage uncertainties. Menard (2001: 4) also studied the weaknesses in the transaction cost theory particularly when it comes to innovation. It has been difficult to move beyond conceptualising transaction costs and to measure them. This can also be explained by the dearth of practical approaches and models in NIE.

Another limitation of NIE is its general neglect of the role of government. Exceptionally, North (1990, 2005) recognises the role of organisations and role players such as government and political institutions. Herath (2005: 887) argues that the role of government has not been defined. The recognition of government and other organisations has not translated to

property rights for the poor in developing countries as governments are still grappling with the problem of identifying property rights that are suitable for the poor.

3.3 Summary and conclusion

In conclusion, this chapter focused on the theoretical framework of new institutional economics theory, its characteristics and parameters. It also addressed the question of what is meant by property rights and elaborated on those rights. An important theoretical foundation for thinking about property rights has been laid by NIE. However, the literature does not clearly answer the question of how to establish a secure, individualised and strong property rights system where it does not exist, and no one has provided a concrete model to ensure the protection and inclusive sustainability of existing property rights of the poor. Hence one observes a huge gap in the literature. Clearly however, from different perspectives, economists have provided a better understanding of property rights and their importance as well as the dynamics of the broader institutional system.

CHAPTER 4 WHAT ARE PROPERTY RIGHTS AND HOW IMPORTANT ARE THEY IN PROMOTING ECONOMIC INCLUSION?

This chapter focuses on the theoretical framework needed to make sense of property rights. It discusses what property rights are, the different types of property rights, including secure and private property rights, and points out the consequences of the lack of good property rights for economic inclusion. Secondly, the chapter illustrates the link of property rights to the theory of new institutional economics (NIE) as well as to the work of De Soto.

The thesis examines in detail the property rights that exist in informal economies across the world, drawing mainly on De Soto's work, and looks in detail at the historical situation in Lima, Peru. The thesis then compares this to the situation confronted by present-day traders in Pretoria. While forms of property rights do exist among these traders, they may not be secure and may exist outside of the South African legal system. As a result the traders lack the security and the assets they require, they are subject to harassment and confiscation of their goods and they are unable to trade without prejudice and intimidation. Furthermore, the traders lack access to institutional support such as access to credit or financial institutions. This thesis seeks to bring to light the effects of these challenges and the policies required to turn the situation around.

4.1 Defining property rights

This section aims to define property rights. This is the first point because the main focus of the thesis is on establishing secure, individualised and strong property rights for the street traders. It is significant to unpack the concept of property rights before moving to other aspects of institutions.

Alchian (1965) defines property rights as a set of rights to take allowable actions to use, transfer, or otherwise exploit or enjoy property. In later work, Alchian (2008) defines property rights as theoretical socially enforced constructs in economics for determining how a resource or economic good is used and owned.[30] Hodgson (2014: 5) defines property as the right of the owner or owners, formally acknowledged by public authority.

Similarly Eggertsson (1990: 34) defines property rights as the rights of people to use resources. Geraldi (2007:3) similarly find that property is attributable to the following rights:

- The right to utilise the product
- The right to make revenue from the product
- The right to cede the products to others
- The right to implement property rights.

According to North (1990: 1), property rights are a type of institution that includes laws, norms, practices and incentives. Property rights create the incentives for economic activity (North, 1981). Rodrik (2000: 5) and Williamson and Kerekes (2011: 5) also argue that property rights are a type of strong institution.

Additionally, scholars such as Williamson (2005) define property rights as a system that determines the realisation of an economy by stimulating specialisation and the division of labour through voluntary cooperation. She claims that property rights and personal rights must be protected and enforced. More practically, Schirmer (2007: 68) states that property rights must be those rules, agreements and practices that allow people to engage in the following activities:

- The buying and selling of property that is relatively easy
- Putting capital and resources in their own enterprises and getting others to invest in them as well

[30] http://www.econlib.org/library/Enc/PropertyRights.html.

- Using properties as a basis for obtaining credit from a variety of institutions
- Responding with legal action against those hindering property rights
- Getting support from government when property is threatened
- Participating in contracts that are obligatory and enforceable.

The definition of property rights is a debatable matter. Cole and Grossman (2002: 317) argue that property rights are fundamental in economics but highlight the difficulty in getting consensus of the definition of property rights. There is a distinction between the economic and legal aspects. The authors argue that first-year law students are taught that property rights are relations between people regarding things. Defining the property relations between owners and non-owners and among claimants to disputed titles has been a basic task of both property theorists and common-law judges throughout American history. To the extent that economists' definitions of property rights differ from predominant legal conceptions, they make cross-disciplinary exchange of ideas difficult (Cole and Grossman, 2002: 325). Whatever the explanation, they argue that it is crucial that property rights be clearly defined and understood because those rights impact on so many questions in the economics literature. Sheehan and Small (2002: 21) hold a similar view.

Eggertsson's, Alchian's and Geraldi's definitions view property rights as a resource with the rights to use. The focus is on utility. The definition by Schirmer is in a broader context that recognises the goods and services and the right to participate in the economy. Cole and Grossman, on the other hand, question the lack of a clear definition of property rights. Property rights must be well articulated in order for them to achieve the security and protection they can offer. This is critical for the poor as well.

The definitions chosen are significant. Alchian was one of the first new institutional economists to lay a foundation of what constitutes property rights. Over time, other definitions that followed were not far from his understanding. Douglas North is another pioneer of new institutional economics who has shaped the way institutional economics has evolved and is perceived as pertaining to property rights. If one looks at the view of Cole

and Grossman (2002), their definitions of property rights are wide and there are different views of them. These few definitions capture the broader view of what constitutes property rights, and that suffices.

4.2 The elements of property rights

In order to understand property rights, it is crucial to understand their different aspects. Eggertsson (1990: 34-35) and O'Driscoll (2003: 23) state that the two essential elements of property rights are:

- The exclusive right of individuals to use their resources as they see fit as long as they do not violate someone else's rights
- The ability of individuals to transfer or exchange those rights on a voluntary basis.

These elements are not actual types of property rights, but represent characteristics of a property right. The main emphasis of the elements is on the exclusive use and the ability to transfer the rights for a meaningful economic contribution.

Scott (1986: 52) and Sheehan and Small (2002: 19-21) describe a widespread description of the essential features of property rights appropriate to be included in a developed nation's market exchange. Scott (1986: 52-53) lists the characteristics that should be present in any property right. They are:

- Duration – a characteristic indicating the time, usually in years, that the property right is held and hence represents a profit or saving for the holder
- Flexibility – closely related to divisibility, highlighting that a property right should be susceptible to adjustments and/or modifications
- Exclusivity – accessible to the property right holder only (North, 1981:36)
- Quality – the property right is secure and has a value

- Transferability – the ability of the property right to be transferred from one person to another. It serves as a measurement of the market for the sale or leasing of the particular property right
- Divisibility – sharing of the property right between various role players over one territory, or the territory itself may be subdivided.

The approaches of Eggertsson, O'Driscoll, Hoskins, Scott and Sheehan and Small are complementary when it comes to the exclusivity and transfer of rights. However, Scott and Sheehan and Small go further and maintain that a property right must have duration, flexibility, quality and divisibility. These elements can make property rights stronger and more far reaching.

4.3 The classification of property rights

As is the case with the many definitions of property rights, the classification of what constitutes property rights is also open to debate. In the previous section the focus was on the elements of property rights, and it became clear that property rights can be stronger or weaker depending on their elements. It is therefore important to classify property rights. Yongjian, Ning and Xiaofang (2005: 19) and Libecap (1986: 235) explain that there are five different types of property rights ownership:

(1) A common property right is open access and all the people can use this property and share its benefits.
(2) Communal ownership involves community control of availability to and possession of the property by discounting those who are not part of the community and controlling its use by insiders (Eggertsson, 1990: 37).
(3) State property rights are rights specified by statutes and rules within government. However, this concept is ambiguous because some state property rights may be similar to those of common property.
(4) Private property rights are exclusive rights of the specific owner and are unrestricted (Cole, 1999: 226).

(5) Mixed property rights are state ownership, private ownership or communal ownership and share part of property rights at the same time according to (Pejovich, 1995).

Williamson (1985: 27) argues that property ownership matters. According to him, ownership take the form of the use of the asset, the right to appropriate gains from the asset and the right to change the form or substance on an asset.

Table 4 Types of property rights regimes

Regime type	Owner	Owner rights	Owner duties
Private property	Individual	Socially acceptable uses, control of assets	Avoidance of socially unacceptable uses
Common property	Collective	Exclusion of non-owners	Maintenance, constrain rate of use
State property	Citizens	Determine rules	Maintain social objectives
Open access	None	Capture	None

Source: Hanna, 1996.

Table 4 gives a summary of the ownership, rights and duties of owners according to property rights regimes.

Other economists classify property rights according to absolute and relative property rights. Charan (2011) refers to absolute, qualified, corporeal (tangible) and incorporeal (intangible) property rights. He defines absolute property rights as that which belongs to us without any conditions, for instance when a woman is the owner of a dress or a bracelet. Absolute property rights can also be described as unrestricted and restricted property rights to things. They can also be intangible property rights in the form of intellectual property, copyright, brand names and patents (Merges, 2000: 1876). Human rights are also perceived as absolute rights. Furubotn and Richter (2000) explain that absolute rights are directed against all other rights in terms of land or other intangibles such as copyrights and patents.

Relative property rights are established between specific persons through contractual obligations. These contractual obligations can include rental, labour, borrowing and contract of association, liability claims such as contract law and law of accidents or community law.

4.4 The importance of secure property rights

Having explained the nature and the types of property rights, secure property rights are examined in detail in this section. Secure and well-defined property rights are the most crucial of the institutional structures underpinning development according to (North, 1990). Locke (2013: 1) argues that secure property rights are necessary for development because they bring about inclusive growth, household wellbeing, and social and political debate. These descriptions are complementary and affirm the role of secure property rights in economic development.

Lindner and Strulik (2004: 143) find that the establishment of property rights that are secured influences the level and growth of consumption. They further state that with an increasing number of social groups, property rights are necessary in order for economic progress to occur. This indicates the importance of secure property rights for economic growth.

According to De Soto (2000: 37), property rights secured through titling would allow property holdings to serve as surety for credit and allow enforcement of the rights; Kerekes and Williamson (2011: 2) have the same view. They maintain that secure property rights are associated with access to credit. Property rights that are not secured lead to the use of short-term inventories rather than savings and investment of capital in the long term. In addition, Williamson (2011) finds, as does De Soto (2000), that property rights secure the strength of the assets and coordinates information into one system, which makes individuals liable and assets movable, and ensures secure transactions.

Meinzen-Dick (2009: 5) argues that property rights are important to improve the social status and dignity of the owners of the rights over and above growing economic productivity. She adds that poverty can be reduced by affirming the property rights of poor people. Angeles (2011: 6) affirms that property rights contribute to economic growth through capital and ideas. Property rights have been used widely as an explanation of why nations in the West have become industrialised and developing nations have remained behind when it comes to economic development.

Mernard and Shirley (2005: 5) also argue that investment increases when property rights are protected. Williamson (2011), Smith (1776) and Mises (1920) emphasise the importance of secure property rights and claim that these rights must exist for investment and for markets to function effectively.

The benefits outlined above do not accrue in the absence of a secure property rights system. This is why this thesis regards it as important to ensure a secure property rights system is in place for the benefit of Pretoria's street traders.

4.5 The challenge of insecure property rights

What are some of the problems that arise as a result of weak or non-existent property rights? In this section the negative consequences of insecure property rights are discussed. The thesis argues that without secure property rights, there is no fair exchange, assets are not recognised, there is no protection of property, and insecurity and uncertainty prevail. The thesis further argues that when economic actors do not have property rights, it impacts on the level of economic development, poverty is not addressed and the economy suffers. Individually, those without rights face various challenges that exclude them from effectively participating in the economy, and this could lead to unfair treatment as well as loss of property.

There are economic consequences if there are no strong property rights. North (1990) confirms that in order to secure property rights, some citizens must be barred from seizing

or expropriating the property of others. He argues that weak property rights lead to enforcement through informal mechanisms. These could include ethnic or other networks, and threats to reputation. Williamson and Kerekes (2011) state that the reasons for insecurity of property rights include direct confiscation of property, which could be land or capital, by government officials.

De Soto (1989, 2000) in both his books argues that economic development is suppressed by insecure and poorly defined property rights. Williamson (2005) argues that insecure property rights weaken the incentives for owners to make long-term capital investments and hinder the ability of owners to use their property to secure loans to finance capital investment. Shirley (2008:32) similarly says that with more property rights investors are willing to put capital into larger, long-term fixed assets, generating more opportunities to use capital efficiently. This implies that the lack of credit and investment hinders capital formation and economic growth, because access to credit is associated with secure property rights.

Angeles (2011: 7) argues that the most immediate effect of weak property rights is on the accumulation of physical capital. Poor property rights signal high transaction costs, which imply low trade, fewer firms, minimum specialisation, less investment and lower productivity. Similarly Williamson (2011: 99) finds that in the absence of property rights individuals prefer to hold short-term inventories rather than savings and investment in long-term fixed capital.

All the authors highlight the challenges of the lack of property rights; their views are complementary. The challenges of insecure property rights impacting the poor require that the gap should be addressed by research. The thesis argues that the traders in Pretoria do not have sufficient property rights, and without these rights economic participation is constrained. The proposed property rights system should be able to address these challenges.

4.6 Property rights in informal economies

This section addresses property rights around the world. It highlights the policies and laws countries follow to control the informal economy. The section also showcases experiences of other countries.

Schuck and Litan (1986: 1) argue that it is in poor countries that the consequences of excessive or inappropriate government regulations are most tragically illustrated. As a result, poverty, corruption and violence are part of daily life and reveal deeply flawed political and legal institutions.

Roever and Skinner (2016: 1) conducted a study on exclusionary practices in the informal sector in many developing countries. They found that there are dominant practices that exclude traders. The exclusionary practices include violent evictions where street traders are simply removed from public space. Some or all traders are relocated, often to more marginal locations with low pedestrian traffic and/or inadequate facilities (Roever and Skinner, 2016: 2). There is also on-going harassment of traders by greedy state officials, often facilitated by legislation. The cities discussed below have practices that are embedded in formal laws and policies that are enforced with far-reaching implications for street traders. The evictions, harassments and relocations must be seen as property rights issues.

Roever and Skinner (2016: 4) found that in the past three years, more than 50 important eviction cases of street traders were reported in cities including Bogotá, Buenos Aires, Cairo, Dhaka, Harare, Jakarta, Johannesburg, Kathmandu, Kingston, Lagos, Luanda, Manila, Medellín, Mexico City, Mumbai, San Pedro Sula, San Salvador and Tegucigalpa. According to their research, the news coverage suggests high levels of violence in some of these cases, most notably in Cairo, Harare, Luanda and San Salvador. Cases of relocation occurred in Latin America, and traders frequently complained about the viability of these alternative locations, predominantly in Lima and Mexico City (Roever and Skinner, 2016: 4). In Lima, although De Soto has done much work on reforms, Peru is still considered to have insufficient property rights and it ranks among the countries with low institutional

mechanisms of property rights. In addition, studies have confirmed that the reforms in Peru have not yielded the expected results.[31] Constant harassment of traders was reported in China, Angola, Egypt and Zimbabwe (Roever and Skinner, 2016: 4), and human rights abuses were investigated in Bangladesh, China, Rwanda, Egypt, Angola and Mexico (Roever and Skinner, (2016: 5). All these situations point to a hostile regulatory environment and an absence of property rights for informal traders.

According to Roever and Skinner (2016: 5), new laws banning street trading were reported from Angola, Jordan, Mali, Malawi, Nigeria, Zambia and the Philippines. It was also found that some countries in Africa are declaring purchasing from street traders as a criminal offense, this is on top of the ban on street trading. Instances of this have been reported in Malawi, Nigeria and Zambia as well as in Indonesia (Roever and Skinner, 2016: 5).

Recent research provides some insight into the logic behind policy choices for outright evictions, relocations to marginal trading sites and ongoing harassment. In the case of evictions, one prevalent motivation is the pursuit of the modern, ideal, clean city. The assumption is that street trading is indicative of backwardness and causes dirt to be harboured, and is therefore an obstruction to attracting both domestic and international investors and tourists (Roever and Skinner, 2016: 6). This is the dominant explanation not only for specific evictions, including the government ban on street trading in Hanoi, the removal of street traders from Mexico City's historic centre, and the displacement of informal traders from city centre streets in Cusco, Peru, but also for relocations in Brazil. It also accounts for the general ongoing hostility in China and Mumbai. According to Roever and Skinner's (2016) research, this is not what would be expected from a country such as India which is perceived to have a high tolerance towards street trading. There have been newspaper reports on raids, evictions and tensions between traders and law enforcement officers.[32] Preparations for mega events can also lead to wide-scale evictions, as was the

[31] http://www.peruthisweek.com/news-castaneda-to-relocate-street-vendors-by-migrant-park-106336.
[32] https://www.theguardian.com/cities/2014/nov/28/mumbai-street-vendors-cops-bribery.

case in 2014 in Brazil's FIFA World Cup and the 2010 Delhi Commonwealth Games (Roever and Skinner, 2016: 5).[33]

Roever and Skinner (2016) have documented inadequate number of licences as one of the challenges facing traders around the world. Inadequate in this context refers to the limited number of licences allocated compared to the actual numbers in demand. Studies have shown that the number of traders in many cities considerably exceeds the number of available licences. One of the studies showed that in Nairobi, Kenya, 7 000 licences and formal sites were provided for approximately 500 000 street traders. Similarly it was found that 2 200 licences were held although there were an estimated 100 000 traders in São Paulo, Brazil, in 2009.

Roever and Skinner (2016: 6) studied cases of harassment, hostile legislation and inadequate licensing systems, which are processes and infrastructure used to address licensing. The evidence also suggests that food vendors are subject to particularly complex licensing regimes that can create openings for street-level bureaucrats to extract side payments. It was found, for example, that a licence for vegetable vendors in Ahmedabad, India, specifies 21 restrictions on when, where and how they can sell (Roever and Skinner, 2016: 6).

The indicators of weak property rights presented by Roever and Skinner (2016) include evictions, harassment by the police, banning of trading activities, access to licences and relocation to other sites. These are indicators that reflect problems with property rights which the present study will build on regarding the traders of Pretoria.

[33] http://www.thepolisblog.org/2011/12/resisting-evictions-before-brazil-world.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+thepolisblog%2FpBWc+%28polis%29.

4.6.1 Examples of property rights interventions in cities in different countries

The section below highlights the property rights in cities in different countries in greater depth than in the previous section. The selection of countries and cities below is based on available literature at the time of writing the thesis, and the list is not exhaustive. A few diverse examples are given, and they include Lima, Ahmedabad and Egypt.

- **Lima**

The study of Lima forms the backdrop to this thesis. According to the Centre for International Private Enterprise (CIPE), metro-wide street vending federations have formed a joint platform to identify common needs and engage in policymaking forums as a united front more than before.[34] The federations have also engaged in multi-sector dialogues with federations of other worker groups. This has overcome a divisive policy and regulatory framework and enabled the participation of several street vending federations in multi-sectoral dialogues with the Ministry of Labour to develop a new law for self-employed workers: the Ministry of Development and Social Inclusion, for the inclusion of self-employed street vendors in social programmes; the Metropolitan Lima government, for the development of a new city-wide street vending ordinance to replace one that was three decades old; and other social systems for which informal workers qualify.

According to Bettcher, Friedl and Marini (2009: 3), one of the interventions they brought on board was the Institute of Liberty and Democracy's (ILD) strategy which consisted of the following actions:

- Analysis of legal challenges and informal practices
- Outlining institutional changes
- Writing legal proposals
- Undertaking cost-benefit analyses of proposals
- Building consent; communicating the benefits of the reform

[34]CIPE is the Centre for International Private Enterprise. It is responsible for institutional reforms and economic development initiatives globally. This is a think tank responsible for property rights reforms in Peru and many countries in the world.

- Gaining response from stakeholders: publishing draft laws and regulations
- Facilitating public hearings
- Correcting the draft laws and regulations
- Campaigning for the approval of the reform structure
- Developing an action plan for implementing reforms.

Bettcher, Friedl and Marini (2009: 3) explain that the reform process meant tackling institutional challenges and obtaining public support through elections. By following this method, the ILD managed to address several constraints in Peru, including the street traders' need of access to formal markets. Through the assistance of CIPE, the ILD was able to develop an agenda with a focus on economic reform and come up with an advocacy campaign that was informed by improved citizen contribution to decision making.

The ILD facilitated the entry of businesses into the market economy by simplifying the business registration process. In 1990, government established the Unified Business Registry after the ILD had made the recommendation. The ILD played an advisory role to the committee, representing nine government agencies implementing the registry. In addition, because of its initiative, the new registry synchronised the processes of the agencies under one umbrella and considerably decreased national registration requirements:

- From 289 days to one day
- One approval from the initial nine approvals
- Offices involved were reduced from six to one
- One application from 34 applications
- Payment of costs was reduced to $174 from $1 200.

Reducing red tape that emerges from processes can reduce the cost of doing business and this is important for the economy. Processes can be costly and time consuming. The fewer the processes required for a business, the better prospects there are for the ease of doing business and its potential for growth. When the number of days or approvals required and

the number of staff a business has to receive approval for as well as the reduction of the actual costs incurred are reduced, the better it is for business. The above processes that were instituted in Lima contributed to the ease of doing business. This can also encourage those to contribute who aim to be part of formal business.

- **Ahmedabad**

Mahadevia and Vyas (2012) found that in India the institutional structure for informal activities including street traders has been hostile. They argue that local authorities in India are a major hindrance to the development of informal sector activities. Most of them utilise punitive policies and by-laws. The laws are restrictive and were intended for controlling old businesses, and these regulations push people into the informal sector.

Roever and Skinner (2016) found that in Ahmedabad the organisations grew out of a trade union model which is more proactive in informing institutional alliances and engaging in international networks; these strategies found to be significant among informal workers in Africa as well.

According to Bhowmik (2006), traders organise themselves into local associations in order to succeed in the trading activities despite the limitations of the informal trading laws. These organisations are mainly localised bodies representing traders in specific areas of the city. Most of the unions or organisations are autonomous, although some of the unions are affiliates of the larger trade union federations. Because most trading on the streets is illegal, the key role of the trading organisations is to bargain with local government officials and the police for inhabiting public space. Generally it is found that the level of unionisation is weak.

One of the organisations is the Employed Women's Association (SEWA). Ahmedabad is estimated to have 40% of women traders, and due to the efforts of SEWA, the traders are

unionised. Poor women from urban areas became street traders because of the existence of SEWA.[35]

According to Mahadevia and Vyas (2012), SEWA built multiple membership-based organisations to deal with members' daily issues. The challenges SEWA addresses are:

- Trader displacement due to city development
- Bribes, harassment and confiscations
- Difficulties securing licences
- Irregular income
- Lack of inclusion in development plans and decision-making bodies
- Lack of social security and basic services
- Occupational health hazards
- Unfavourable entry conditions for new (women) entrants.[36]

Traders find ways to carry out their economic activities. The traders associations collect membership fees from the traders. It is important to understand that these associations are formed by the traders themselves. They assist the traders by intervening between the traders and local government officials and the police, but unfortunately the traders are forced to pay bribes to avoid eviction or to receive warnings whenever raids are planned by the authorities.

The Ahmedabad case illustrates the role of collective action in new institutional economics in addressing property rights. The organisations advocate for the specific interests of traders. This illustrates the power of a common purpose in addressing challenges facing the traders. The role of collective action for property rights has been seen to be instrumental in addressing issues traders would otherwise be unable to address individually. Collective action structures contribute to the security of property rights as these structures have the

[35] http://www.india-seminar.com/2006/568/568_sharit_k_bhowmik.htm.

[36] http://www.worldurbancampaign.org/street-vendors-ahmedabad-organising-job-security

power to advance issues of traders on key platforms such as government structures where policies and programmes are developed that could facilitate property rights for traders.

According to Mahadevia and Vyas (2012:11-17), in Ahmedabad street trade is overseen by several regulations, which are described briefly below:

Bombay Provincial Municipal Corporation Act, 1949

Section 229 of the Act focuses on the prohibition of structure or fixtures which cause obstruction in streets. Sections 226 and 229 of the Act prohibit the building of any structure or tall stands on the streets that will hinder the passage of the public or obstruct the functioning of a drain or open waterway. Such a building maybe removed by the local government commissioner and the person who erected the structure will receive a penalty fine for its removal.

The legislation is applicable to property rights in an economic sense because it is a law that governs the activities of the traders on the streets. The traders are prohibited from carrying out certain acts that include the building of any structure or stands on the streets. This is an economics-related piece of legislation because traders are part of the economy and their activities contribute to the economy.

Indian Penal Code, 1860

Section 283 of the Code allows a fine to be imposed on anyone who causes a hazard, obstacle or harm in a public way. This law, although may seem broad, affects traders because their activities are perceived in a negative way generally and they are seen as causing obstacles and harm in public ways. The implication is that traders will receive fines if they are found in certain restricted areas or are arranged in a manner that is perceived to cause harm either by the way they are located or by what they are actually selling. This

example of a piece of legislation is highly applicable to the thesis and can be related to the challenges facing traders in Pretoria.

Bombay Police Act, 1951

Traders are evicted mainly under Sections 67 and 102 of the Bombay Police Act. The Act stipulates that anyone who prevents the easy flow of traffic can be detained and removed. The Bombay Police Act, although its name has a focus on the police, is highly applicable to the economic situation of traders. Traders carrying out their activities can obstruct traffic and the economic activities are affected when they are evicted. This is an economics-related piece of legislation given its actual impact on traders who end up without a livelihood and pay fines out of their limited resources.

In all of the above legislation traders are seen as having to be controlled, or as an annoyance or obstacle rather than as enterprises that contribute to the urban economy. Traders often experience harassment and confiscation of their stock from local government officials and the police because they lack formal status and are not acknowledged.

- **Egypt**

CIPE partnered with the Federation of Economic Development Associations (FEDA), a grass roots organisation of small and micro enterprises (SMEs) in Egypt. They coordinated the traders' inputs and submitted draft legislation in support of the millions of street traders to enable them to form part of the mainstream economy in July 2011 to Egypt's Supreme Council of the Armed Forces (SCAF). The law aims to effectively regulate vending, clarify zoning, simplify licensing and make vending accessible to the average Egyptian. FEDA worked to spark debate on traders among the public and brought hundreds of traders together to identify challenges and develop recommendations that would address them.[37]

[37] http://cipe.org

According to reports, this draft law has the support of street traders because they were involved with its development. During FEDA's dialogue events, the traders indicated that they were willing to pay licence fees as long as the zoning created was respected and they could operate in their designated spaces without interference. This means that the traders were willing to pay a fee to guarantee a more predictable and fair environment for business. It is argued that if FEDA's proposed trader law eventually gets passed, it might improve the traffic flow in Cairo which is a challenge attributed to traders.[38]

Unfortunately even after this effort to regulate the informal trade in Egypt by the proposed law, no recent information was found that the law had been passed, so it may still be pending. The unfortunate thing is that reports in recent years up to November 2016 for example, indicate a hostile environment for traders caused by tension between the traders and local authorities through the police. Various media reports point to evictions, arrests, relocations, violent handling by the police and restrictions on areas of operation. One report in late 2016 was of a trader who was killed by the police.[39]

The case studies above give an indication that governments in different parts of the world are grappling with ways to address the informal economy. There are those that seem to have embraced it and are looking for ways to maximise its efforts, such as the case of Lima in Peru. Other countries still apply the firm hand of the law by imposing restrictions that impede the development and sustainability of the traders. One can observe different levels of efforts such as in the case of Egypt. What is clear is that this part of the economy is not easy to ignore.

An interesting trend in all the cases is the emergence of the association movements that represent traders in the various countries. There is a move towards organisations representing traders and this is an institutional arrangement which is playing an important

[38] http://www.cipe.org/blog/2012/09/12/how-improving-egypts-business-environment-could-reduce-traffic-in-cairo/#.WKh2GLX-ffY

[39] http://english.ahram.org.eg/NewsContent/1/151/110895/Egypt/Features/Cairos-downtown-street-vendors-question-new-home.aspx

role in bridging the gap between traders and governments that individual traders would not be able to do by themselves.

4.6.2 Current property rights in South Africa for traders

In the next section the study explores the extent of the property rights of traders in Pretoria, understand the strength and security of the rights and determine how to apply the views of De Soto to Pretoria.

While there is notable economic exclusion in South Africa, there are existing property rights aimed at traders on the streets. The Pretoria traders operate within a set of rules and institutional mechanisms. Snapshots of some of these institutions are provided below in the form of municipal laws and the informal trader strategy.

4.6.3 City of Tshwane metropolitan municipality street trading by-laws

The street traders of Pretoria are legislatively provided for in the Tshwane street trading by-laws as provided by the Businesses Act 71 of 1991. This is the legislation that represents the institutional framework governing informal traders. This document facilitates the property rights of traders.

The by-laws provide for the selling or offering for sale of goods or rendering of services in a public road or public place. The law prohibits carrying out of business in certain areas. Areas prohibited include public amenities, public parks and gardens except when access is approved by an authorised officer; within the region close to a public facility, a premise that belongs to or that is occupied by government except at educational institutions and in compliance with health regulations that may be enforced; places of worship including a church; or a premise known as a heritage resource in terms of the National Heritage Resources Act 25 of 1999; a banking facility such as an auto teller bank machine except if permitted by the municipality or by a sign created; or in an area declared as a prohibited or

restricted area by the municipality in terms of section 6A (2) of the Act with the exception of a stand rented by virtue of a lease contract.

The by-laws also guide traders on general conduct, cleanliness, the lease or allocation of stands, impoundment and removal, the vicarious liability of persons trading, children not being permitted to trade and offenses and penalties.

The by-laws were criticised for being punitive rather than developmental by not coming up with policies that create an enabling environment and that are inclusive and developmental (LED Network). There is no research that assesses the impact of these by-laws on the traders. It is clear that they impose conditions on the traders which may not be beneficial for them.

The activities used to measure the level of rights of traders include trading areas, provision to sell which can be through licensing or permits, leasing or allocation of stands, removal or impounding (confiscation of property), and liability of traders (perhaps in the form of fines).

4.6.4 The trading licensing process

In this section the licensing process of Tshwane is outlined. It describes the steps traders must take before they can obtain a licence. For the thesis the focus is on the trading facilities and the trading licence. The trading facilities include a stand or land. It should be made clear that the information was obtained unaltered from the Tshwane Metro's website.

- **"Trading facilities**

Trading facilities are provided in the form of a designated piece of land or fully built-up stands. These are rented out for a minimal amount to informal traders.

- **Application procedure**

To apply for a street trading permit, the following are needed:

- A copy of an identification document
- A fixed home and postal address
- A preliminary lease fee for three months and thereafter monthly payments will be made
- A signed rental contract
- A signed commitment form
- Attendance of an induction workshop
- A monthly lease fee, depending on the stand provided.

- **Trading licence**

Traders handling consumable goods, e.g. fruits and vegetables or cooked food have to apply to the municipality for a trading licence. The process of obtaining a trading licence takes two weeks from the date of application to issue of a street trader's licence. The licence is renewed annually and is associated with a specific area, which means that a trader can only sell in that location.

- **Application procedure**

The trader's licence application must be accompanied by the following:

- A copy of an identity document
- Proof of access to toilet facilities in writing
- The seller's name must appear on the licence
- Application fee
- The licence must be renewed every 12 months.''

4.6.5 The informal sector strategy of the Department of Trade and Industry (DTI)

The Department of Trade and Industry (2014) developed a strategy (the National Informal Business Upliftment Strategy or NIBUS) to address the challenges of the informal economy and to ensure that traders benefit in the economy. The strategy is now implemented by the Department of Small Business Development. It mobilises stakeholders, provides resources and develops interventions. The objectives of the strategy include enhancing the ability of enterprises in the informal economy to benefit from interventions and programmes of government; strengthening the capacity of enterprises to be sustainable through the provision of access to information and markets, business development support services, business infrastructure and finance; developing the capacity of credible informal traders organisations or associations so that they are able to lobby and advocate on behalf of their members; facilitating the formalisation of informal enterprises as means of entering the economic mainstream and to address the regulatory burdens imposed by legislation and municipal by-laws on enterprises.

The pillars of the strategy include a sound legal regulatory environment, local government reform to encourage collaboration between the municipality and the traders and to encourage a developmental approach to traders; access to infrastructure, social security and protection in terms of decent work for those employed in the informal sector; access to markets and marketing; access to financial services; skills development and technology; women, youth and disabled people; information management and dissemination; informal trader associations; and foreign traders in South Africa. Foreign traders are a group that the thesis discovered that has a potential policy gap. The DTI's strategy acknowledges the presence of foreign traders in the townships, metros and rural areas as a thorny issue, where most locals find themselves without jobs and various forms of violence crop up. It further acknowledges that mechanisms and strategies are employed by foreign traders to help them do well in their businesses that locals do not have and which have to be studied. The strategy suggests that legislation might have to be promulgated constraining foreign traders from doing business of certain categories in local areas, as observed in other countries such as Ghana and Malaysia. It explains that in Malaysia foreigner participation in

trading is restricted in such areas as supermarkets or mini-markets (with a prescribed size per square metre), provision shops, convenience stores, news agents and various goods stores, health halls, petrol stations with or without convenience stores, permanent wet market stores, permanent street stores, restaurants, pubs, jewellery shops and others. The strategy does not provide clear guidance nor does it address the property rights of foreign traders.

A goal of the research was to provide a better sense of how traders have reacted to the work government has undertaken to support them, whether they have even heard of it, and whether it has produced any benefits for them. The strategy was launched in March 2014 and is currently in the implementation stage.

4.6.5.1 Foreign traders

Foreign traders are part of the informal economy landscape. The recent xenophobic attacks on foreign traders are evidence of the underlying societal challenges that result from growing poverty and inequality in South Africa and the growing number of foreign nationals on the streets. It is a serious concern because this is one issue that needs direction and a clear approach. The thesis argues that the profiling of foreign traders and the lack of a clear policy framework to address them is a serious gap for the informal trade sector of South Africa and one that requires clear consideration. Foreign traders are operating on South African streets, which has many implications for the informal trade dynamics of South Africa. Their existence changes the dynamics of the informal economy. The thesis highlights this point because there are foreign traders in Pretoria who will be observed in terms of the extent to which they operate within the context of this thesis, although the research instrument has not set out to profile them directly. It is important to highlight foreign traders regarding the extent of their participation in the informal economy.

4.7 Summary and conclusion

Chapter 4 concentrated on property rights. It addressed what property rights are and how they fit into the economy. Property rights form the main theoretical focus of this thesis as it

analyses how property rights are conceptualised, how they work and who has access to them. The thesis points out that these are the rights that street traders do not have in Pretoria, and are the rights that the traders in Lima, Peru, struggled to obtain. The thesis uses a theoretical understanding to identify the best approach to the property rights of the traders.

The answer to the question of whether the views of De Soto are applicable to South Africa will become clearer in the following chapters when the data and the literature are analysed. Chapter 5 describes the research design.

CHAPTER 5 RESEARCH DESIGN AND METHOD

5.1 Introduction

This is the first chapter of the empirical work of the thesis in which the research method and design used in the research is described in depth. It provides a theoretical perspective of the approach to property right and the selection of certain variables in the research instrument, which include crime and harassment. It further provides examples of studies that address similar indicators.

The primary objective of the study is to establish a property rights system that is strong, secure and individualised for traders in Pretoria. The study identifies the existing property rights of traders in Pretoria, understands their challenges and establishes appropriate property rights of the poor.

The questions asked by the research study are informed by the insights and concepts from the literature review. The scenario experienced by the street traders in Peru illustrated in *The Other Path* as well as experiences in other countries concerning property rights informed the questions.

The property rights of the traders are specific to them as demonstrated by Roever and Skinner (2016) and as per the legal frameworks available to traders in Pretoria. The nature of the work of traders warrants a different set of rights that include, but are not limited to, the right to trade at a particular location, the right to receive a licence, the right to freedom of trade free from crime and harassment by the police, and unfair evictions.

Table 5 The context of property rights for traders

	Definition	Secure rights	What the rights relate to	Individualised rights/person-alised
Property rights: De Soto's view (De Soto, 1989: 158-159)	The right to use, enjoy, dispose of, and claim a tangible or intangible asset	• Avoiding detection • When informal settlers spend time defending property and complying with procedures necessary to legalise their trade • When street vendors cannot offer acceptable guarantees to finance a market or buy on credit They do not have property rights • Property rights can be lost through confiscation or expropriation or sophisticated legislation	Property rights apply to tangible and intangible assets They relate not only to houses, vehicles, machines or merchandise, but also to rental agreements, foreign currency certificates, their convertibility and all sorts of credits	Absolute and exclusive entitlement to their things
Context of the thesis	The right to trade, use stock, to be in a location	• Effect of crime • Police harassment • Access to credit and banks	Licences	

		• Effect of the law If the rights are affected negatively by the above it means lack of property rights		

Table 5 summarises how the thesis views property right and why the research instrument targeted the questions that included indicators such as crime and police harassment. This section analyses the table in detail.

In *The Other Path* De Soto (1989: 158) defines property rights as the rights that confer on their holders the power to use, enjoy, dispose of and claim a tangible or an intangible asset within the framework of the law. This definition means that if the trader can use and give away the asset as well as make claims to it within the law, it denotes property rights. The assets that he refers to can be both movable and immovable assets. The rights can be real rights to things, which relates to possession, and the rights to other people through contracts.

Strictly viewed, the definition by De Soto includes the rights to use, enjoy and dispose of an asset. Anything that threatens these rights affects the property rights of the holder. In this thesis, to establish whether traders have property rights, factors that include crime, police harassment and the effect of the by-laws were assessed. These are not property rights but factors that can increase or reduce property rights, hence the research instrument prioritised them. De Soto, in *The Other Path,* identified factors in which factory owners avoided detection. Traders avoid detention from law enforcement officials, who can be police. The term harassment in the thesis refers to the action of the metro police when they go to inspect the activities of the traders continuously to the point of confiscation and the issuing of fines. It may be argued this is not an economic concept; however, it is a term that affects traders in their economic activities, and it provides a sense of whether property rights exist or not. The right to use, enjoy and dispose of assets is violated when traders are

harassed, when crime affects them and when their economic activities are not secure because they can be removed at any time.

In the thesis reference is made to crime, another term that can be regarded as non-economic by economists and others. De Soto also refers to informal settlers defending their property. Crime has a negative effect on traders and it impacts on the need for traders to defend themselves and also causes traders to incur economic loses. In that sense, it is also an important factor in determining property rights.

The factors considered in the research instrument are unique to informal traders and the environment of the informal economy. There are some by-laws that look at conditions such as use of pavements, traffic congestion and obstruction to traffic, and these may be construed non-economic terms but are peculiar to the sector which is contributing to the economy.

Lutisky, Dragiga and Jurkovic (2014: 606-608) describe assets in their paper. A tangible asset is an asset that has a physical form. Tangible assets can be fixed assets, such as machinery, buildings and land, and current assets, such as inventory (Lutisky, Dragiga and Jurkovic (2014: 608). Intangible assets are non-physical assets. Tangible assets include property, plant and equipment. Investment property and intangible assets include computer software, patents, copyrights, licences, franchises, marketing rights, etc. (Lutisky, Dragiga and Jurkovic (2014: 606).

According to De Soto (1989: 159), property rights are wide and not only relate to houses, cars, machinery or merchandise, but also rental agreements and all sorts of credit. Property rights can be lost not only through confiscation or expropriation, but also through sophisticated and harmless regulations that include tenancy laws and freezing of savings. The law can have unintended consequences.

Property rights are all the rights, personal and real, which give their holders exclusive entitlement to the rights. De Soto argues that the absence of a good law is the absence of secure, reliable property rights for all (De Soto, 1989: 159).

De Soto (1989) identified one of the rights of traders as the rights of ownership. This occurred when he observed the trader from a fixed location. There is a special relationship between the trader and the location. If the location remains the same, the trader may exercise a right over the location. This right is called a special ownership right because it is informal and governs a piece of street which is open to public use. A right to location allows storage, to increase the scale of the operation, and enables traders to specialise. By remaining in a fixed location, traders can be identified and this makes them dependable to their customers.

According to De Soto (1989: 66), traders face the threat of eviction especially when there is traffic congestion or pressure from the communities. He deems this to rule out investment to improve the location which forces traders to sell from unfavourable locations rather than from stalls constructed of proper building materials, equipped with running water, electricity, storage, display space or any other facility that allows the supply of a continuous volume of merchandise (De Soto, 1989: 67).

Property rights for traders include protection against harassment by local government officials, access to licences, the ability to trade in a particular location, protection against fines for not having a licence, and obtaining their goods back after they have been confiscated.

Property rights may also cover the issue of economic inclusion in terms of access to financial institutions, which includes both the ability to have a bank account and the ability to obtain credit from financial institutions. Property rights may further include the infrastructure of the traders and support from local government. The issue is that traders hardly find support from government as they are perceived negatively.

- **Other research studies**

Brown and Msoka (2015: 15) wrote a paper entitled *A refuge in my own country*. It discussed property rights and legal empowerment amongst traders in Senegal and Tanzania between 2010 and 2012. The paper argues for an approach to a more equitable management of public space. The paper advocates for the approach of Ostrom (1990) of collective action, where a collective action can facilitate property rights for a common good. The paper challenges the manner in which government treats the traders and their lack of rights to participate freely in the economy. In this study more than 150 traders in five markets were interviewed. The traders were all harassed; there were incidents of evictions of traders. Most of them paid daily fees to operate. The level of insecurity was therefore high.

Brown and Msoka's (2015) paper argues for tenure security with the right to use the street, and it urges the reassignment of property rights. The paper calls for a new property rights regime that will see part of the urban land to which property rights may apply being offered to the traders. It is concerned that no rights have been assigned for the common good. This paper shares the view of this thesis and that of De Soto (1989, 2000) as far as establishing the property rights of the poor is concerned. The paper proposes the right to work and for systems to be put in place to manage this approach. It addresses the issues of traders from a property rights perspective and recognises the harsh treatment the traders are subjected to daily as a threat to their security. It proposes legal rights to work and to assign certain rights to the public space. It also sees the role of informal associations as facilitating the establishment and implementation of the proposed assigned rights. This paper links the issues of harassment and evictions to property rights. It also shows how the right of traders to trade within a specific location can come about. The paper advocates for the rights of the traders to trade at a particular location. It recognises the factors that hinder the rights of traders, which include evictions, harassment of traders by the police and the charging of fees. The study discusses similar patterns that hinder the property rights of traders, and then demonstrates how traders could have property rights through a process.

The paper by Roever and Skinner (2015: 4) pointed out that exclusionary practices by government include violent evictions, relocation to marginal locations and on-going harassment of traders by state officials who facilitate the punitive legislation. Their paper showcases the plight of traders across the world who are displaced because of various legislation that sees the informal economy as dirty and a nuisance. The research addresses the lack of rights by traders to trade, to trade in certain locations and reflects the lack of security. Exclusionary practices point to a lack of rights to those who are excluded. It also affects the livelihood of those affected.

When one addresses the rights of traders, certain concepts are unavoidable in the context of the informal economy. The concepts include police harassment, evictions, fines, violent protests, relocation, etc.

5.2 Research design

This research thesis used a qualitative method as well as an explorative approach method.

Qualitative research is often used to generate options which can then be measured using a research instrument such as a questionnaire. Effective qualitative research is concerned with intangible elements that include roles, organisations and hidden elements.

Qualitative research focuses on non-quantifiable situations, which relates to quality or kind. It deals with subjective assessments that focus on behaviour, perceptions and habits.

The strength of qualitative research is that issues can be examined in detail and in depth. Interviews are not restricted to specific questions and can be guided by the researcher in real time. The research framework and direction can be quickly revised as new information emerges. The data based on human experience that is obtained is powerful and sometimes more compelling than quantitative data. Data is usually collected from a few cases or individuals, so findings cannot be generalised to a larger population. Findings can, however, be transferable to another setting.

This research is also exploratory research. Exploratory research is a form of research that discovers an issue by studying the research questions and offers no conclusions or definite solutions to prevailing challenges. When conducting explorative research, the researcher must be willing to change the way the research unfolds based on the information that emerges in the process. Exploratory research assists by giving a better understanding of the challenge, but it must not be used as research that provides conclusive answers to a situation.

5.3 Research instrument

The questionnaire is a research instrument used to gather data and is used in this thesis. Data collected through a questionnaire can be standardised as the same questions are put to several participants.

The strength of a questionnaire is that it can be practical. Questionnaires are cost effective, can accommodate a larger population and can assist in generating more information. A questionnaire can be administered by the researcher or by a number of people with minimum effect on its legitimacy and dependability. A questionnaire can obtain quick, easy-to-measure results for the researcher through the use of statistical software packages. The analysis of the questionnaire can be scientific and objective compared to other forms of research. Data that is quantified is useful for comparisons and for contrasting with other research as well as to quantify change.

The questionnaire developed and employed for this thesis aimed to establish the actual property rights of the traders.

5.3.1 The interview process: The experience

The interviews were based on the questionnaire questions. Discussions were also allowed to solicit further information where the questionnaire made provision for further discussions. Prior to the interview, a consent form was signed by the interviewee and their permission

was requested for the interview to be recorded. The questionnaires were standard and approached consistently with all 100 interviewees.

The traders sit in the streets without shelter. Few designated areas are available for the traders and few are used for the intended purpose. There are designated traders' stands which are isolated and become vandalised due to the lack of use because of where they are located. Some traders related that many people had approached them for information through interviews such as the interview for the thesis, including from government, but their material situation had never improved. Some traders met the interviewer with suspicion and were concerned that they may have been violating the terms of membership of their associations by giving information without seeking permission first. To echo the sentiments of De Soto (1989), talking to the traders showed another side of entrepreneurial people who have big dreams for their economic activities, and who have raised families and educated children through their trading activities. The interviews revealed hope and passion to make a meaningful contribution to the economy of South Africa. The traders had opted for economic activities rather than be unemployed or resort to other means of survival such as crime.

5.4 The study population

The study population consisted of informal traders in the Pretoria area. The area is not limited to the city centre, but included the city and surrounding areas. The number of street traders interviewed was 100 (N = 100). The maximum number of participants per area was 20 and the minimum was 3 participants per area (20<N>3). Some of the street names have changed but the old street names are used in the research.

The study covered the following areas in Pretoria:

- The central business district (CBD)
    - The Church Street area (Lilian Ngoyi) and the Tramshed shopping centre area
    - The Proes Street area (Johannes Ramokhoase)

- The Bloed Street area
- Pretoria Central

- Sunnyside
- The Pretoria station area
- Hatfield
- Arcadia
- Lynnwood Road
- Marabastad
- Glen Village
- Menlyn

5.5 Sampling

The research had to identify a method of establishing the population size. The research followed the convenience sampling method. This is a sampling method where a specific part of the total population is chosen for a study. Each individual is selected randomly and each has an equal opportunity to be incorporated in the sample.

5.6 Data collection

Data collection is the process of gathering data. In this research, person-to-person interviews were carried out. The participants were interviewed at their trading places, mostly on the streets, at train stations and along busy roads.

The respondents were given the consent form to agree to the interview before the interview commenced. The participants were asked permission to be recorded beforehand.

- ***Observational method***

The research also made use of observations. Observational research as indicated in Chapter 1 is research that studies behaviour. Various kinds of observational research have strong and weak points and depend on how the researcher interrupts and controls the research environment. The demographic profile of the respondents, although not on the

questionnaire, was noted throughout the research. Factors such as nationality and gender were noted as part of the research process. These variables may fail to directly address the issues of property rights, but they may provide an indication of demographic issues impacting on the traders and provide a view of issues affecting traders in Pretoria.

5.7. Data analysis

To arrive at the conclusion of the research, the data were analysed. Data analysis is an important component of research, which takes the available data and processes before the results can be finalised. It is the final step before the findings are concluded.

The qualitative method of data analysis was used. The issues were interrogated further to draw more conclusions to provide a basis for the actual challenges and extent of the property rights of traders in Pretoria.

Microsoft Excel and the SPSS software programme were used to analyse the data. Responses to the different questions were analysed in depth and the data was outlined objectively.

- ***Themes***

The data was analysed according to themes. The themes were as follows:

- The assets of the poor
- The property rights of traders
- The protection of property rights
- Economic inclusion.

The themes identified were aligned to the patterns noted through the questions in the questionnaire:

The assets of the poor

1. How long have you been in business?

2. What are you selling?
3. Do you own a property?

The property rights of traders

1. Which by-laws affect your business the most?
2. Is your business registered?
3. Was it easy to register your business?
4. Do you think your business is illegal?
5. If yes, what stops you from becoming legal?
6. Please share the rights you would like to have to successfully run your business.

Protection of property rights

1. Has your business been affected by crime? Please elaborate.
2. How has crime affected your ability to do business?
3. How has crime affected your rights to your things?
4. Are you harassed by the police?
5. How often has the harassment taken place?
6. Do the police do the following:
    - Take your goods?
    - Arrest you?
    - Fine you?

Has police harassment affected your business?

Economic inclusion

1. Can you apply for a loan at the bank?
2. Do you have any relationships with banks?
3. If Yes, please elaborate on the nature of the relationship (e.g. have a personal bank account).
4. Are you able to access finance from friends and relatives?
5. Where do you get funding? Is it from banks, stokvels, family or loan sharks?
6. If loan sharks, what is the level of interest charged: is it high?

7. Are you able to obtain support from government?
8. What kind of support have you received from the municipality (e.g. information, funding, business stalls)?
9. What kind of support would you prefer from government?

Important questions the data seeks to answer include:

- Does having a licence which can serve as a title deed guarantee access to credit?
- Can the property of the poor serve as collateral?
- Can the stock sold by traders be used to create more wealth? This question seeks to answer whether the assets or economic activities of the poor, including the stock sold, are recognised by the economic system and can be used to acquire more wealth.
- Do the Pretoria traders have property rights?
- Have the traders been evicted from their trading locations?
- Have the traders been harassed?
- How easy is it to obtain a trading licence?
- What are the benefits of holding a trading licence?
- Is local government supportive of or punitive towards traders?

5.8 Data interpretation

The data was interpreted so as to align to the research objectives and questions. The data needed inference and interpretation in order for the information to be useful.

Data validity, credibility and quality are ensured throughout the empirical research process. In this research process much rigor was applied by ensuring that bias was monitored. The data received was kept in safe storage and was verified. Care was taken to ensure consistency in the approach to data. More care was taken to avoid bias. Where possible the facts of the study were checked against the trends from other data sources in similar studies through data triangulation.

The validity was ensured through the consistent application of the research instrument. The responses were thoroughly reviewed. The interviews were recorded for verification and consistency. Permission was sought before the recordings were made. The interviews were clearly outlined and spelt out to the interviewees. Their issues were properly interrogated. The process was credible.

The next chapter focuses on the data analysis using the research design and the definition of what constitutes property rights to analyse the data collected.

5.8.1 The limitations of the method and the data collected

It was easy to find street traders who were available at any given point in time during the research using the convenience sampling method which is a non-probability sampling method. According to Price (2013), the convenience sampling method has shortcomings that make it difficult to generalise research findings (Etikan, Musa and Alkassim, 2016). This means that the outcomes of this study cannot be taken as an overview of property rights of traders in Pretoria. The sample size and the method used cannot be representative of the entire population (Price, 2013). Moreover, the method has been found to have a high sampling error. This method is perceived not to be credible and to have selection bias that the researcher cannot control. The trends in the study were measured against similar research studies where possible. Caution must be used with the conclusions obtained from the sampling results (Price, 2013). Generalisations must be avoided when it comes to convenience sampling (Price, 2013). The study outcome gives an indication of the reaction of the groups studied and care was taken to ensure that the results were not generalised to the entire population involved in the informal economy of Pretoria.

CHAPTER 6 DATA ANALYSIS

6.1 Introduction

This section outlines the findings of the study. The findings give the results from the interviews with traders.

The interviews were conducted over a period of one year and four months, between 1 April 2015 and 31 August 2016. This enabled the observation of some patterns to provide a better indication of the situation in a location.

The questions the research attempted to answer were the following:

- What property rights are suitable for traders in Pretoria?
    - What protection do street traders have?
    - What protection would they like to have?
    - What is being done to accommodate their demands and to make them part of a functional South African property system?
    - How are property rights established without compromising the existing property rights?
- Are the views of De Soto applicable to South Africa?

6.2 Demographics and assets of the traders

6.2.1 The location of the traders

This section deals with the location of the traders. The location is emphasised because it was important to cater for bias and dispersion in the sample so as to determine the holistic status of property rights of traders in Pretoria. The factors considered in the selection of areas included the locations of most traders, how busy the area was, infrastructure such as stalls, and transport hubs such as taxi ranks and train stations.

The number of traders interviewed was determined by the number of traders in a particular location. Of interest was that once the interviewer had spoken to about three traders, they highlighted similar dynamics which confirmed that the real issues had been captured.

It was worth noting that the metro does not approach the locations similarly. Traders are not treated the same in different locations, even regarding the administration of their space. Law enforcement officials often target traders who are located in the wrong areas as they are violating the law. The traders in different locations operate under different conditions due to zoning requirements, conditions in a particular area such as a train station, taxi rank or the provision of stalls. Some traders had contracts with the metro while others had no contact with the metro regarding licensing. In Table 6 the location of the traders is given.

Table 6 Locations of traders in Pretoria

Location	Number
Sunnyside	11
CBD: Church Street, Lilian Ngoyi and Tramshed area	16
CBD: Proes Street and Lilian Ngoyi	5
CBD: Pretoria central	3
CBD: Church Square	6
CBD: Bloed Street	4
Glen Village	3
Hatfield	4
Arcadia	3
Pretoria station area	13
Marabastad	20
Lynnwood Road	6
Menlyn	6
Total	100

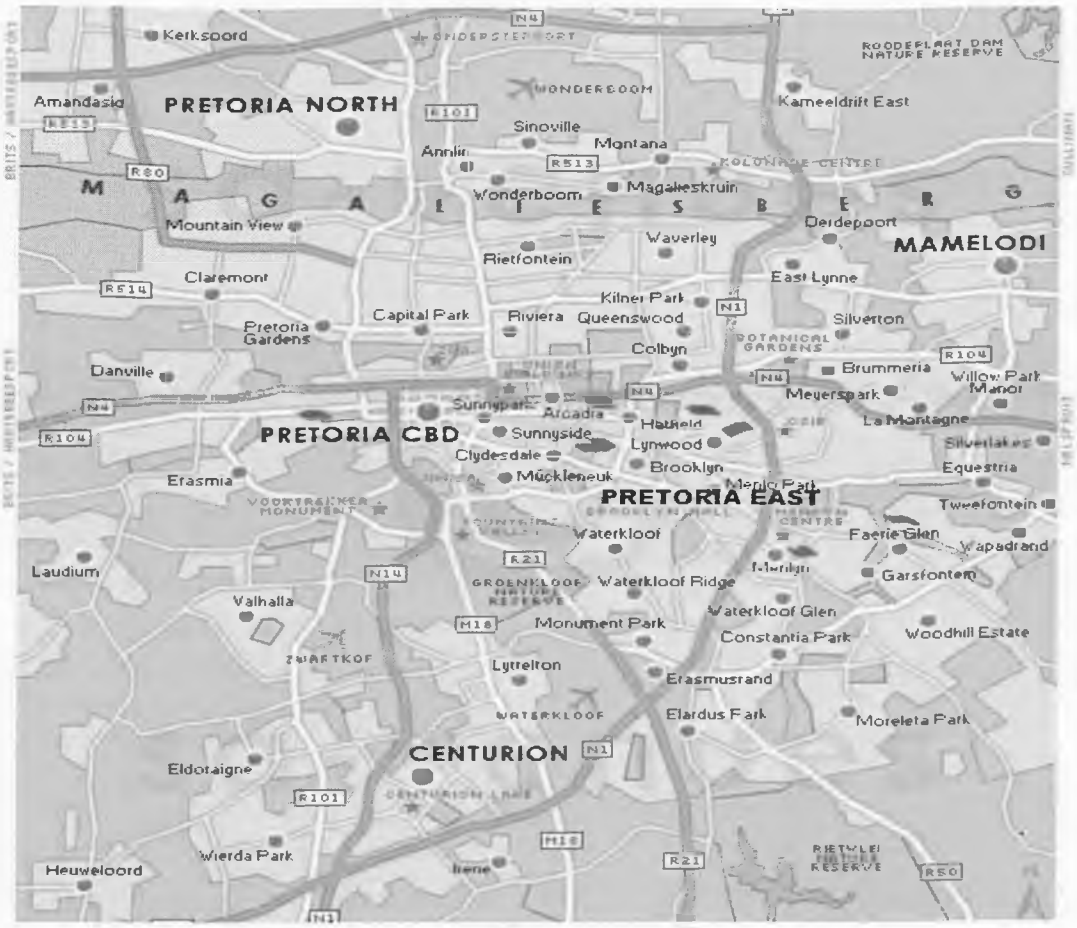


Figure 3 Locations of the traders shown on a map of Pretoria

Source: Harcourt Titanium property professionals

Figure 3 shows a map of Pretoria with the areas of research highlighted in red. The CBD locations are grouped.

The areas were selected according to considerations of density and an attempt to gain a more representative view of traders in Pretoria. Areas such as Marabastad covered a larger area, as do the CBD area, Sunnyside and the Pretoria station area. Areas such as Menlyn, Arcadia and Hatfield do not have a large population of traders, hence their smaller sizes.

The largest numbers of traders interviewed were in Marabastad, the CBD area of Lilian Ngoyi Street (formerly Van der Walt Street) or Church Street and the Tramshed shopping centre, the Pretoria station area and Sunnyside. It was important to demarcate these areas so as to be able to check the dynamics of the traders in the different parts of Pretoria to assess how they function. The other factor to consider is that if all 100 traders came from one location, the findings would not give a representative picture of the situation in Pretoria. If traders were interviewed in Lilian Ngoyi Street and the Tramshed only, after interviewing about six respondents their responses would be similar because they are exposed to the same dynamics in a particular location. The value of the study would have been limited compared to widening the scope to other areas in Pretoria.

The research targeted busy areas where traders are located. These include areas where there are taxi ranks – Bloed Street, Church Street and the Tramshed area, Lilian Ngoyi Street and Johannes Ramasemola Street (Proes Street), Marabastad. Some areas, by virtue of the density of the traders were like markets although without infrastructure and not labelled as such. The Lilian Ngoyi Street area in Church Street has traders of that order. Parts of Marabastad are also similar to markets given how the traders are located. The other target areas were train stations – Pretoria station and surrounding streets and the Hatfield train station.

Some locations were more organised than others. Sunnyside has stalls along Esselen Street, which are branded as municipal stalls. The Paul Kruger Street Church Square area has a few stalls sponsored by one of the developmental agencies. In Lilian Ngoyi and Johannes Ramasemola Streets there are a few built stalls. These stalls were isolated. The traders interviewed indicated that the area was isolated hence they preferred to trade moving around instead of sitting in the stalls. The stalls are not secure in that area so they are regularly vandalised.

6.2.2 Number of years trading

Question 1 in the research instrument asked how long the respondents had been trading. This section analyses the results of the number of years trading (see Figure 4).

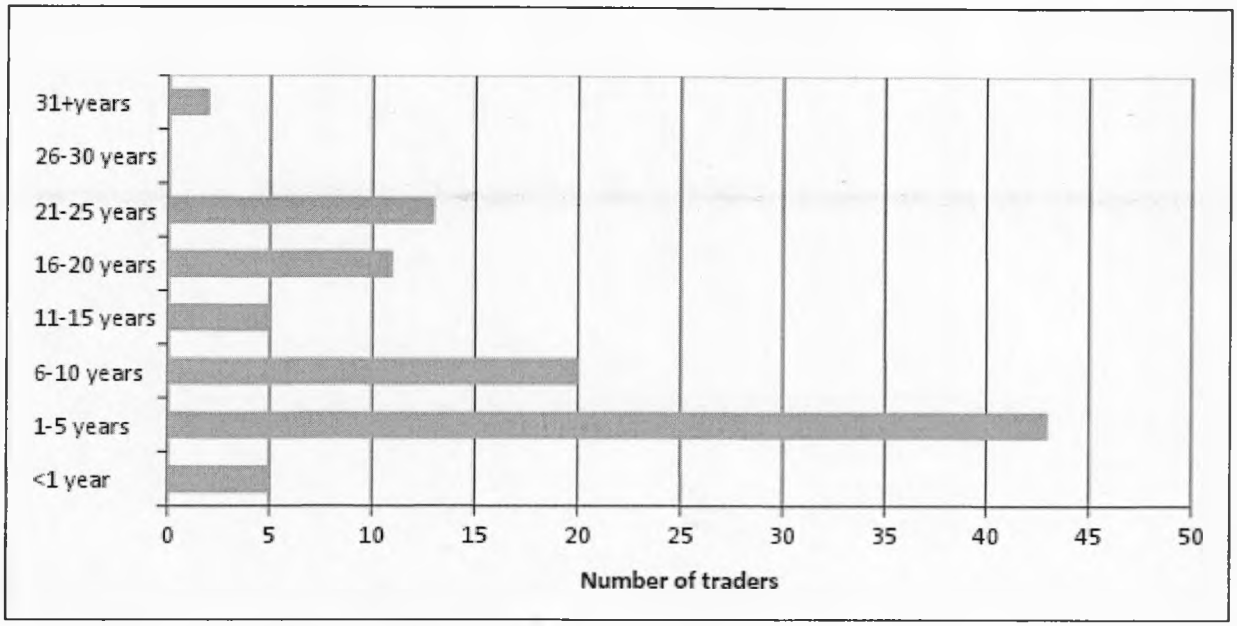


Figure 4 Number of years trading

The majority of the traders (43) had been trading between 1 and 5 years. The second category with 20 traders was 6 to 10 years. Thirteen traders had traded for more than 21 years and less than 26 years. Only five traders had traded for less than a year. An interesting fact from the interviews was that two traders had been selling for more than 30 years. One trader has been selling for 52 years. Eleven traders had been trading between 16 and 20 years.

The numbers indicate that trading is a sustainable livelihood. Some traders said that they had raised families and put children through school with the money generated from trading. Some spoke of it as a career they did not see themselves leaving given the freedom it provided because they worked on their own terms. This was surprising, given that studies have shown that traders use this type of activity to survive, but should the opportunity for

employment arise, they will leave for employment. The observation was that those who had traded for longer periods felt comfortable with trading.

Another observation was that some traders treated this as a family business with collective shared responsibility. These trading businesses were passed down to family members. Some respondents indicated that the businesses had been passed down to them by their parents.

As the last observation indicated, some traders said that they had been employed before and had been retrenched at some stage, and they had therefore opted to start selling on the streets. This fact highlighted the link between employment and trading, and related to the period when they started trading. As part of the interview, they pointed out what they were doing before they started trading. Trading was an option that came after the loss of employment.

6.2.3 The products sold

In this section the focus is on the products that the traders sell. The research question is: What are you selling?

Traders were asked to give an indication of the products that they sold. The observation is that the traders sell variety of products at the same time. Apparently the aim is not to specialise but to make quick money. This made it difficult to classify the products. The normal sectoral classification was not used, but the products were closely grouped based on the manner in which many of the traders were selling their products.

It was interesting to note that they would sell more or less similar products and this applied across the locations. Issues of competitive advantage or diversification did not seem to matter. It is not clear if this was because of lack of knowledge, or because the demand for the product warranted the sale of similar products. The products are themed or clustered based on the patterns observed. One trader will sell these mixtures of products at the same

time. This could be because of the limited number of goods that can be moved around easily and also because of the demand from consumers.

The product that was surprisingly popular among most traders, almost 50% revealed by the research, was cigarettes. Irrespective of the products sold, cigarettes were among the product mix for sale and the one most checked by the metro police because their sale is illegal. The sale of loose cigarettes is prohibited by law in South Africa unless the seller sells in a prescribed manner as per the applicable legislation such as in packages as prescribed by the regulations. The package must also contain information such as a health warning and helpline number. The reason this is prescribed is because cigarettes sold loosely makes them more affordable to children who may not be able to afford a whole packet. Also when selling cigarettes considerations of the age restriction of 18 years may not be taken into account.[40] According to the legislation, selling individual cigarettes is liable to a fine of R100 000.

The research instrument did not emphasise the value of the enterprise. This can be identified as a gap in the research; however the focus of the research was on the availability of property rights, the security of those rights and whether the rights of the traders were secure. So the emphasis was on how they were affected by the legal framework, whether they were safe to participate in the economy, whether their economic activities, no matter how small, were recognised in the economic system and whether their economic participation was sustainable. An enterprise that is secure can have its value protected. Security and value work hand in hand. When there is security of an enterprise, there is bound to be further investment and growth of the business brought about by the security of the rights.

[40] https://www.health-e.org.za/2013/03/18/smokers-take-note-current-and-future-tobacco-regulation/

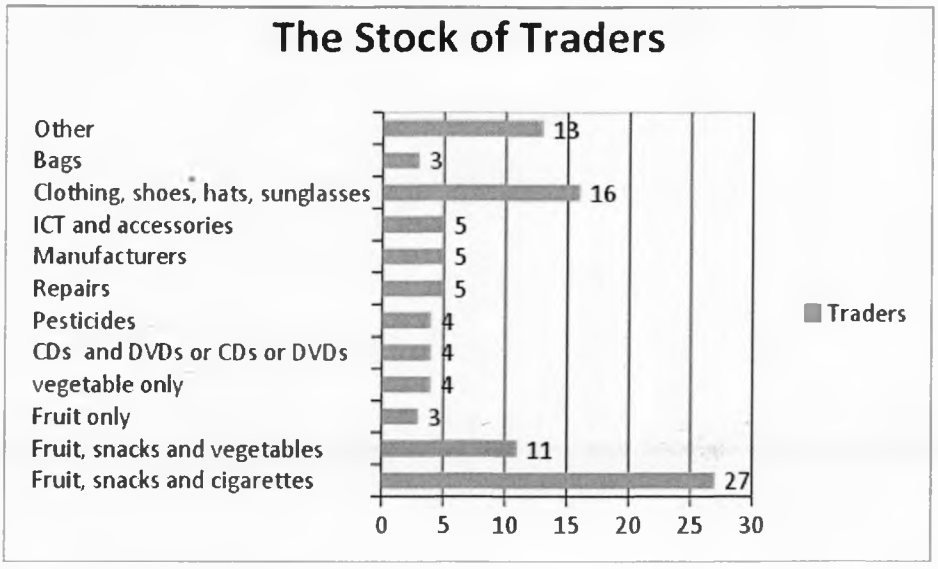


Figure 5 Products sold

Figure 5 shows the various goods and services sold by the traders in Pretoria. The traders who sell fruit, snacks (crisps, vetkoek (fried dough bread), scones, peanuts, sweets) and cigarettes number 27%. The second largest cluster of products is clothing related: shoes, hats, sunglasses, traditional wear and sportswear at 16%. The third group, at 11%, sell fruit and vegetables and snacks. This group looks similar to the group selling fruit and cigarettes; however, these figures could not be combined. The next highest number falls under products labelled "Other" at 13%. Other products include tissues, Christian books, cosmetics, wallets, atchar, eggs, hairpieces, pens, cups, buckets, African foods. The numbers were too small to be placed on the graph but were recorded.

Masonganye (2010: 18) and Tissington (2010) also found similar products sold by traders, which means that they target particular products. The choice could be determined by various challenges, such as ease of running in case of harassment.

Five traders were producing crafts that they manufactured and were selling them along a busy road in Lynnwood. The products included feeding containers made from tyres, and arts and crafts products for the garden including furniture.

An important point to be addressed is that the study did not look at the Rand value of the stock of the traders. Observations suggest that the value of the traders' stock is very small. The assumption is that the traders make enough to survive and various researchers have argued that the traders keep their activities small for fear of detection and the ability to run when approached by the metro police (Shirley, 2008:14, Peron, 2002: 2, Tissington, 2010: 14).

6.3 The property rights of the traders

This section focuses on the rights of traders, and looks at indicators of crime and harassment of traders. These indicators may not be referred to as property rights per se, but they have a direct effect on the security of the property rights of the traders. When the goods and services of the traders are threatened, there is no security of property rights. It might be argued that these indicators are non-economic, but they are the fabric of the daily environment of the traders and impact on their economic activities.

6.3.1 The impact of crime on street trading

The section below examines the rights of traders concerning crime. This section asks:

- Is your business affected by crime?
- How has crime affected your ability to do business?
- How has crime affected your rights to your things?

These questions aim to determine the status of traders when it comes to crime. Research on traders in South Africa has found that those trading on the streets are affected by crime. Property rights address issues of security of private property. The literature has indicated the right to use, own and transfer property as elements of property rights. Secure property rights are important in order for an economic agent to maximise value from a resource or good.

Although the literature has not elaborated much on the role of crime in property rights and how crime affects the security of property rights, the violation of secure ownership of

individual property impacts on the security of property rights and the right to ownership of property.

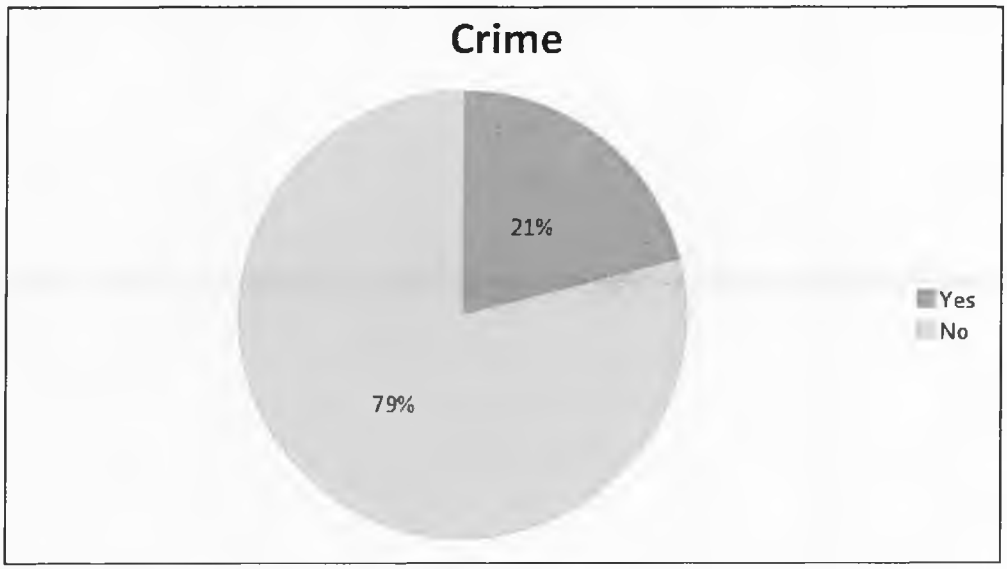


Figure 6 Is your business affected by crime?

Figure 6 above indicates that crime is not a concern overall for traders in Pretoria. An overwhelming 79% indicated that crime is not a concern for them. Only 21% said they were affected by crime. They indicated that there was security in the CBD. This is contrary to research findings by others who point to crime as one of the most important factors impacting on traders (Ligthelm and van Wyk, 2004: 5; Davies and Thurlow, 2009: 2).

Most of the crime reported occurs in Sunnyside and Marabastad. Very few of the traders complained about crime is the other areas such as Church Square, Bloed Street, Lilian Ngoyi Street and the Tramshed shopping centre area.

6.3.1.1 How has crime affected *your rights to your business?*

To this question, 90% of the respondents struggled to respond and just indicated that they did not have a problem with crime. Those who complained about crime explained that the crime that affected them was petty crime caused by youngsters under the influence of drugs

such as nyaope.[41] The traders also indicated that crime did not affect them directly but impacted on their customers, who lose their money and therefore cannot buy their products. One respondent in the Pretoria station area reported that most of her stock had been stolen by school children and this put her out of business for some time while she tried to find finance.

6.3.1.2 How has crime affected your rights to your things?

This question directly attempted to ascertain the property rights of traders from the perspective of crime. The respondents answered this question similar to the way in which they answered the questions above because overall most of them were not affected by crime. They felt that their stock was safe from crime. Some were concerned for their customers because they had witnessed customers being affected by crime: if customers are robbed, it impacts on their businesses.

6.3.2 Harassment by the metro police

This section summarises responses to the following questions:

Are you harassed by the police? Please answer Yes or No. How often has the harassment taken place on a scale of often to sometimes? Do the police take your goods? Arrest you? Fine you? Please answer Yes or No. Lastly, the question is: Has the harassment affected your business and how?

The metro police are the police referred to in the questionnaire. They are the ones who enforce street trading regulations.

6.3.2.1 Are you harassed by the police?

For traders, harassment is a significant indicator of property rights. There is literature that views harassment and confiscation of goods as a measurement of property rights for those in the informal sector (Roever and Skinner, 2016: 2). When a trader is harassed, it indicates

[41] Whoonga (or wunga, also known as nyaope) is a street drug that has allegedly come into widespread use in South Africa since 2010.

a lack of property rights and shows a lack of safety and security of the property owned by the trader. The traders in Roever and Skinner's (2016) work struggled with the countless threats they received from the police. There were constant tensions between traders, local government and the police.

Table 7 Harassment of traders in Pretoria

Harassment		Frequency		Goods confiscated		Arrested		Fined	
Yes	No	Sometimes	Often	Yes	No	Yes	No	Yes	No
13%	87%	2%	10%	19%	81%		100%	15%	85%

In Table 7, figures for metro police harassment are given. Surprisingly, 87% of traders reported that they did not face harassment. The 13% who reported harassment reported it during early 2015. The respondents interviewed in 2016 reported that they had last been harassed before June 2015, hence they had not experienced further harassment. Those who reported it in 2016 were either foreigners or were selling dangerous or unlawful products and complained that metro police came to check for permits, and others reported it was because of the nature of products they were not supposed to sell such as cigarettes, pesticides and related chemicals, but overall there was no harassment. Many traders said that the harassment had stopped because of the upcoming local government elections in August 2016. They suspected that the harassment had stopped because of the local government seeking votes.

6.3.2.2 How often has harassment occurred?

Overall the harassment was low – this applies to its frequency. Only 2% said they were sometimes harassed and 10% said they were often harassed. This aligns to the time period before June 2015, excluding the routine checks by the metro police. Harassment was not a threat to the traders during the period of the research. The traders indicated that it used to be a concern in the past. Some added that ever since new traders associations had been

fighting for them after previous protests, some arrangements had been made with local government on behalf of the traders, which reduced the extent of harassment.

6.3.2.3 Do the police take your goods, arrest you or fine you?

To this question, because of the impact of goods being confiscated, 81% answered that they had experienced their goods being confiscated. When asked when this occurred, most said that it had not been recently such as within six months of the interview, except those who were interviewed in 2015. This statistic may apply mainly to previous periods rather than to more recent times.

None of the respondents had been arrested. 15% reported paying a fine after their stock had been confiscated. 85% reported never having paid a fine for the stock.

From the analysis it appears that the level of harassment has declined significantly. It also seems that the traders have more rights than they did before and this can be attributed to third party institutions that have emerged to act on behalf of traders, such as the traders associations. The traders associations have organised themselves and set up formal structures. They organised traders as members and formed networks with local government and started engaging strategically on issues affecting traders. These issues do not appear in the formal literature, but have been exposed in the media as they form part of recent trends. The associations have played a major role in transforming the lives and the property rights of traders through engagements with local government (metro). In the past they adopted a more hostile manner by organising traders to protest violently.

6.3.2.4 Has police harassment affected your business and how?

This question is linked to the previous questions. Those who answered yes indicated that harassment had affected their businesses because their stock had been confiscated and they had to pay fines. Previously this occurred frequently and they would pay several fines,

which affected their profits. The fines were high and often when they received their goods back, the stock had been tampered with or was incomplete.

In recent times, this has declined significantly and the situation has improved at the time of writing.

6.4 Access to the economy

This section addresses the access of the traders to the economy. The questionnaire aimed to determine whether the traders could obtain credit, had access to the financial services through the banking system, whether they had access to finance and overall to understand if they were included in the economy. De Soto (2000) has argued in *The Mystery of Capital* that the poor are excluded from the economic system because the legal system excludes them due to their lack of property rights. These are questions this section answers from the findings of the questionnaire.

6.4.1 Can you apply for a loan at the bank?

When the traders were asked if they could apply for a loan at the bank, 86% said no and 14% said yes. This is in line with the finding of the Stats SA Survey of Employer and Self Employed (SESE) of 2013 that 16.6% had access to credit from commercial banks. The majority of traders interviewed said that they did not have the required paperwork needed by the banks such as bank statements and identity documents. Some traders said they had tried but were rejected. Some traders claimed that they did not make enough income to be eligible for any loans. In this study, a loan is proxy for credit. It is assumed that if people have access to a loan or can obtain a loan it means they are viable for credit. The majority of the traders did not have confidence in their ability to obtain credit and had never tried.

Access to credit was an indicator De Soto used in his work to demonstrate access to the economy. When the properties or the efforts of the poor can be turned into capital, as outlined by De Soto (1989) in *The Other Path*, then the properties/assets can be translated

into the economy. They will have access to credit and be able to access the economy. Therefore access to credit is one of the indicators of economic inclusion. Traders have constraints that prevent them from accessing credit. There are constraints that make them ineligible to apply for credit because the economic system is not tailored to their circumstances, which is the issue De Soto has advocated for tirelessly.

6.4.1.1 Do you have any relationship with the banks?

This question aimed to determine whether the traders had bank accounts or could have bank accounts. 62% of the traders had bank accounts and 38% did not. This might be due to the fact that there are banking options available to low-income earners and that the requirements to open an account are not as stringent compared to the requirements for obtaining a loan due to the risks.

6.4.1.2 Are you able to access finance?

Questions 13 and 14 of the questionnaire, which focus on the sources of funding, are combined because of their similarity. The only difference is the sources of funding from friends, relatives, banks, stokvels, family or loan sharks, also known as micro lenders. This question attempts to gain an understanding of the informal financial mechanisms used by traders to obtain financing. Figure 7 indicates the trends of funding for traders.

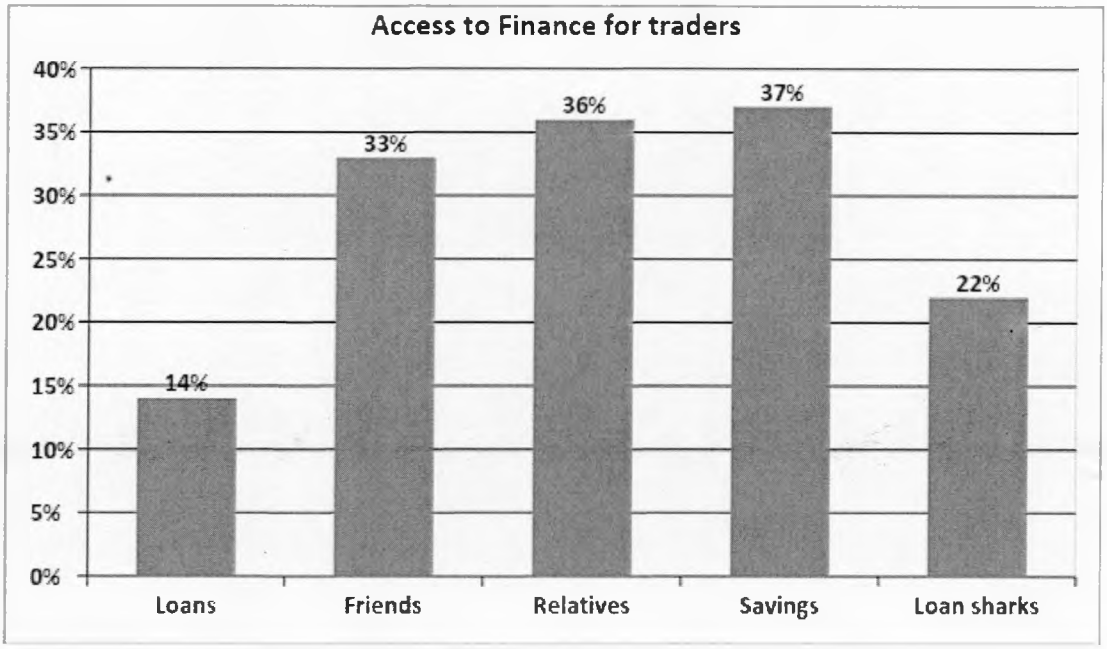


Figure 7 Access to finance for traders

Traders have access to finance from various sources and they combine the sources. For instance, there were traders who obtained funds from a stokvel and friends. A stokvel is placed under savings because it works as a group savings scheme. In a stokvel, members have an account wherein an agreed amount is contributed by the group every month and members receive their share later at agreed intervals. Some stokvels may agree to give a share on a rotational basis to each member as contributions are made each month, or they may save the money and only distribute it at the end of the year. This was the highest source of income for the traders apart from their daily activities.

Relatives and friends followed as sources of finance at 37% and 36% respectively. This makes sense if finance cannot be obtained from formal financial systems. Studies have shown that this is one of the most preferred ways to gain access to finance.

Micro lenders who tend to charge high interest rates were ranked at 22%. Some traders indicated that they preferred them because they could afford to pay the interest. Some stated they had no one to borrow money from so the micro lenders were an option.

The Survey of Employer and the Self Employed (SESE) of Stats SA of 2013 found that the traders obtained most funding from friends and relatives and 70% said they raised own funds. This finding is similar to the finding of the thesis, namely that the highest contributors are relatives and friends as well as savings, which are own funds.

The lowest source of finance was bank loans at 13%. This is indicative of the inaccessibility of debt financing for the poor. Access to credit is a concern from this finding. This clearly shows that the system is not geared towards the poor.

6.4.2 Do you own property?

In *The Mystery of Capital*, De Soto (2000) claims that the poor in developing countries have assets but not the rights to convert the assets into property. His research reveals that these countries have assets but the assets cannot be recognised by the economic system. The assets of the poor include property that does not have title deeds. And by obtaining title deeds, he asserts they can participate in economic exchange.

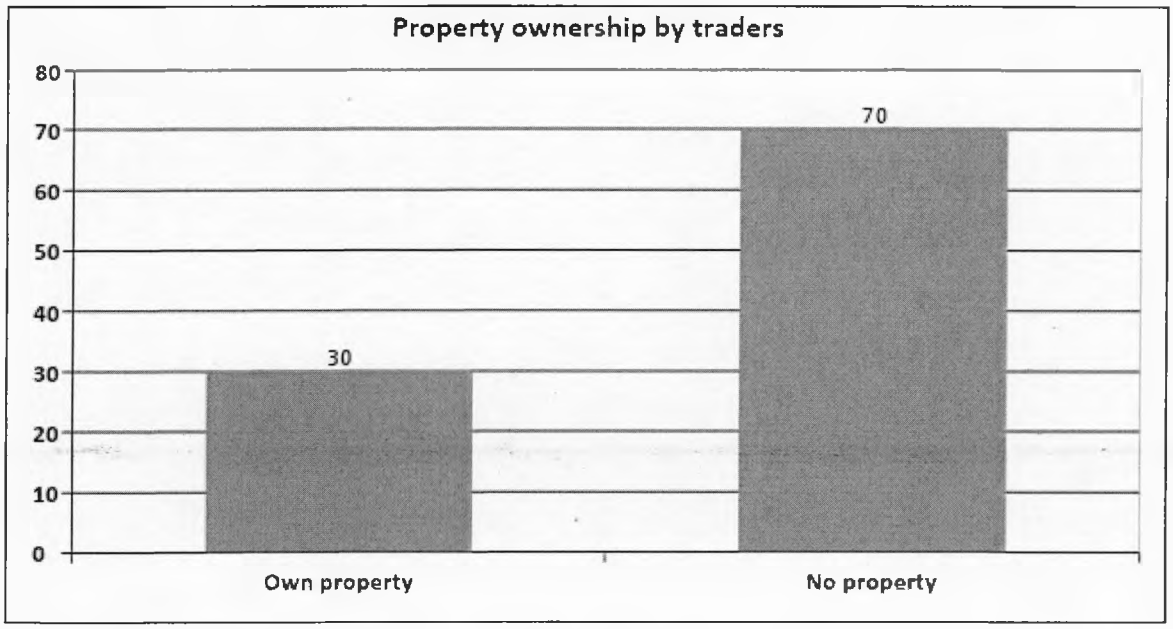


Figure 8 Property ownership by traders

This question sought to establish if the poor had property. Figure 8 compares the proportion of ownership. There were 70% of traders without actual property ownership, and 30% indicated that they had property. From observations, they had built their own property which they mentioned as stands. The properties may be registered but that is not conclusive. Some traders mentioned that their property was RDP houses from government or houses inherited from parents as family homes. The ownership of property was taken to mean that the traders had title deeds to that property, or some documentation that reflected ownership according to De Soto (2 000). The thesis makes the assumption that the traders who own property have title deeds. However, there was no indication that the traders were better off economically by having ownership of the property, except that they had secure dwelling for private use. Access to property does not equate to property rights. However, having property has the potential to indicate the availability of value derived from a property and can reveal property rights if the property can be translated in the economy and if it is secured.

Interestingly, the SESE of 2013 found that over 90% of traders had no access to mortgage finance, meaning that many who are in the informal economy do not own property in South Africa.

It is important to explain why the question of property ownership matters in the context of De Soto and in this thesis. A question was asked in the questionnaire about the property ownership profile of the traders. This question was not asked to confine the definition of property rights to ownership and title deeds, but to examine the view of De Soto concerning the assets of the poor. In determining whether his views are applicable to South Africa, it is important to assess the different arguments he made. One of his arguments is that the poor in emerging nations have resources that are not recognised by a sophisticated and validated property rights system. Notwithstanding that property rights is a wider concept beyond title deeds, this issue had to be examined to see the alignment between De Soto's views and the reality in Pretoria. From the interviews, property ownership is not a strong issue among the traders. Most of them do not own property. This asset is not prevalent among the traders interviewed.

It must be added that the ownership of assets or property was not the main emphasis of the thesis. The focus was on the traders and their ability to trade without constraints. The traders cannot therefore claim ownership of the land they are trading on. The ownership of a licence provides the right to operate in a particular designated area, but does not denote a title deed or ownership of the land. The licence provides the right to that space for a particular time frame and with certain conditions. In *The Other Path*, De Soto (1989) advocates for the rights of traders to be economically active without fear of fines and eviction. This is different to leveraging of the asset which can be exploited further through a representational system. In the thesis the leveraging of the property through title deeds is not a significant issue.

6.5 The licence status of traders

The licences are part of property rights and they are a representational system. A licence is supposed to ensure the rights of traders to their stock and to operate where they are located without interference. This section focuses on the licensing status of the traders. It aims to understand whether traders have property rights through the licensing system. The assumption is that with a licence, the trader is allowed to trade without harassment.

6.5.1 Is your business registered?

The results in Table 8 reveal that many traders interviewed were not registered. 66% of the traders interviewed were unregistered compared to 34% who were registered. Furthermore, Table 8 illustrates that many licensed traders are in Sunnyside, Church Square and the CBD area of Church Street and the Tramshed shopping centre. Masonganye (2010) in her study conducted in Pretoria in areas such as Sunnyside, found that 60% of traders were not registered. In addition, she found that a large proportion of them were foreign traders. One of the reasons why they were not registered was that they lacked identity documents. This fact does not come out strongly in this thesis. A few interviewees from Zimbabwe trading in Marabastad said the metro police made them pay bribes for not having a licence. Another had lost all his papers and was selling without papers and a licence.

Another observation of the thesis made in Sunnyside was that South African traders were leasing their licences to foreign traders, and some stalls were owned by foreigners. Masonganye (2010) found the same result. This means that officially the licence holder is the person trading, but in practice someone else is operating daily using that licence.

This shows that 66% of traders can be classified as informal traders. They operate outside the legal system.

Table 8 Registered and unregistered traders

Location	Number	%	Registered	Unregistered	%
Sunnyside	11	73	8	3	27
CBD: Church Street and Tramshed	16	69	11	5	31
CBD: Proes Street and Lilian Ngoyi Street (Church Street)	5	40	2	3	40
CBD: Pretoria central	3	33	1	2	67
CBD: Church Square	6	83	5	1	17
CBD: Bloed Street	4	50	2	2	50

Glen Village	3	0	0	3	100
Hatfield	4	0	0	4	100
Arcadia	3	33	1	2	67
Pretoria station area	13	0	0	13	100
Marabastad	20	15	3	17	85
Lynnwood Road	6	17	1	5	83
Menlyn	6		0	6	
Total	100		34	66	100

The traders in Sunnyside have a contract with the Sunnyside City Improvement District (CID) that comes with a stall.[42] The traders in Church Square also have stalls and licences. The licensing situation in those areas is organised and the traders pay regular fees to renew their licences. In the CBD area the situation is controlled and some traders have licences.

The observation made about registration was that the traders in different locations were treated differently by local government. Upon enquiring further as to why some traders did not have licences, it came out that in some areas the quota of licences had been filled and the traders were forced to remain despite being told that the limit on the number of licences had been reached. In the Hatfield area, the traders who were located outside the train station indicated that they were not shown on the map because of zoning issues, hence they did not have licences. The Pretoria station traders, particularly those close to the station, said they were on Passenger Rail Agency of South Africa (PRASA) land and that arrangement was that they only required permission from SANRAL to trade in that location. In Marabastad, there was a group of traders inside the taxi rank, and they stated that they did not need a licence, but just had to respect the conditions of the rank.

Many traders interviewed were not registered. Many mentioned this was a concern for them and that a licence was an intangible asset they would like to have. The lack of a licence made them feel insecure, and they worried about possible harassment by the metro police. A licence is a very important tool for traders to operate in the economy. However, access to

[42]The City Improvement District is a geographic district approved in terms of section 3 of the Gauteng City Improvement District Act of 1997.

a licence does not guarantee access to other economic resources such as funding, given the current economic situation and that the structures in the economy are not tailored for the traders.

6.5.2 Was it easy to register your business?

In his books De Soto emphasises the importance of the legal framework. Douglas North recognises the importance of laws in economic development. While the legal system creates structure in the economy, it also has costs. The cost of the legal system can create burdens and make it difficult for the poor to access the economy.

The question of whether it was easy to register the business aimed to assess whether it was easy for traders to obtain their licences, which can serve as a tool to allow them their rights, and whether the processes make it difficult to access the economic system. Figure 9 shows that out of the 100 traders, 43 indicated that it was not easy to register. The second biggest group of 36 in the sample indicated that they had never tried to register to trade. Only 16 were satisfied with the system of registration and found it easy to register to trade.

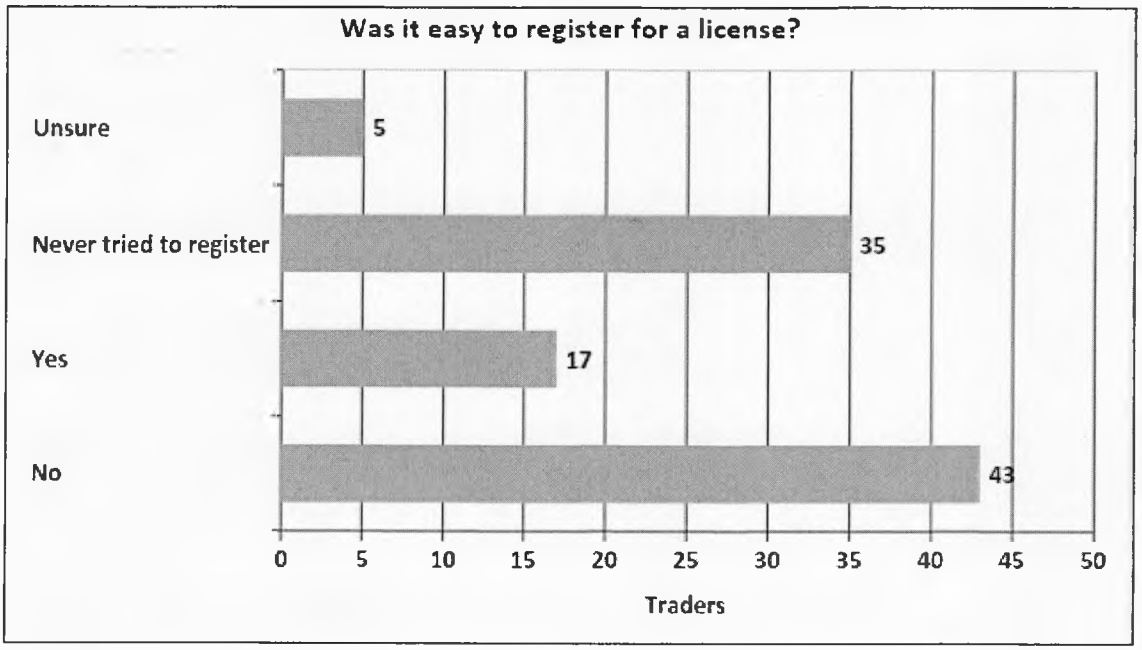


Figure 9 Ease of registration

The indication of many traders that they struggled to register for a licence shows the difficulty of gaining access to the economy. Some stated that they were frustrated with the licensing system and that it pushed them into locations that had no economic benefits. Other traders complained that they were kept waiting for licences. The majority of traders did not register because the metro had placed a moratorium on licences. It is indicated that the metro was working on a system at the time of the research to streamline the issuing of licences. This is particularly the case in the CBD areas. In other instances, traders were denied licences for zoning reasons, for example the place where they are located is outside the area suitable for traders. The zoned areas may be good places for trading and at times not great for business activity.

6.5.3 Do you think your business is illegal?

The traders were asked if they considered their non-registration status illegal. Some of them stated that they did not consider themselves illegal because what they were selling was not harmful. The statistics are given in Table 9. Some said that they were acting responsible by selling rather than committing crimes. Most of the traders who said they were legal did not have licences. They viewed their activities as fair and just because they caused harm to no one. Table 9 shows how the traders view their legality.

Table 9 Legality versus illegality of traders

	Legal	Illegal	Not sure
Traders	71	21	7

Some traders stated that they were illegal because they did not like the locations recommended by the municipality and would rather operate illegally than be in isolated areas. Others said that they had been waiting for the municipality to clean up the licensing system which had many issues that needed attention. The issuing of licences was corrupt and the system was flooded with fraudulent and duplicate licences, making it difficult for

the city to monitor the number of traders it allows to trade.[43] The metro suspended the process of issuing licences.

6.5.4 The rights that the traders would like to successfully run their businesses

This question aimed to establish the rights that the traders would like in order to run successful businesses. According to Figure 10, out of 100 traders, 78 claimed to have those rights. They indicated that they were doing well and had no challenges to operate in the economy. Twelve stated that they would prefer the harassment to stop and not be under the threat of harassment. Twelve indicated that they would like licences and proper trading spaces to allow them to improve their operations. Although the traders said they had rights, they were still asked if they could improve things, which rights they would request.

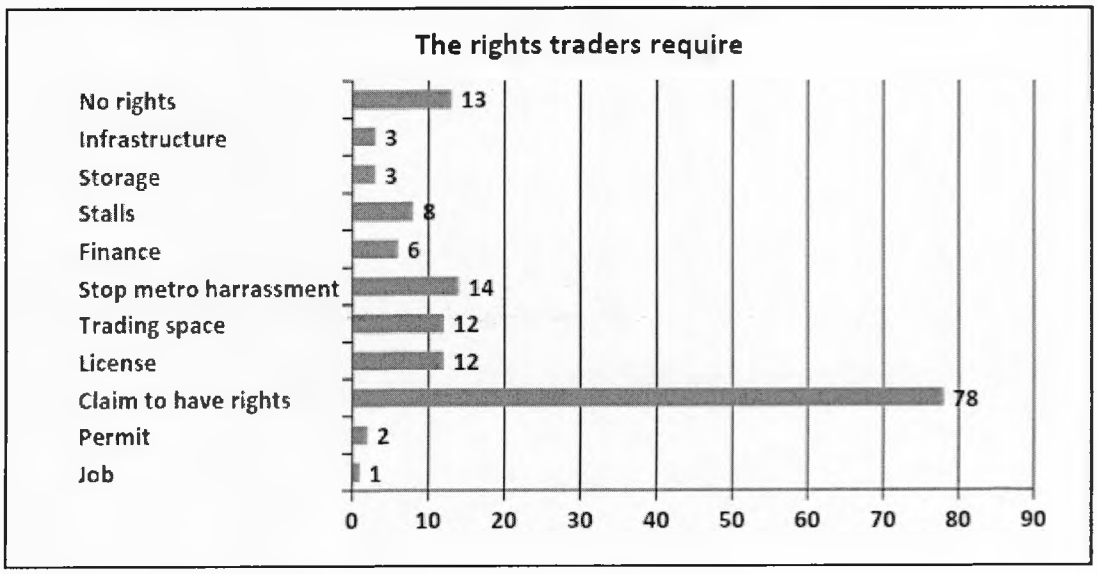


Figure 10 The rights traders require

This question focused on the rights the traders had and would prefer to have. The overwhelming majority of the traders described the environment as conducive, with few incidents of crime and they were able to trade. At the time of the interviews, because the harassment had stopped for most of the traders, they indicated they had property rights. When asked what kinds of rights they would like to have, they indicated access to licences

[43] http://mg.co.za/article/2014-06-18-tshwane-there-is-no-widespread-harassment-of-hawkers

and that no further metro police harassment should occur. Some indicated that they would like to have trading stalls, and another group indicated finance and access to a good location where there were more customers. Only 13 traders indicated that they had no property rights. A few traders did not say whether they did or did not have rights but indicated the items they would prefer. Figure 10 shows that overall the traders perceived themselves to have property rights. The few areas of attention are not a cause for concern.

6.6 Government support to traders

This part of the research highlights the role of government and the support it provided to the traders.

6.6.1 Are you able to obtain support from government?

This question aims to establish if the government provides support to traders. The relationship between those trading on the streets and government tends to be negative according to the literature, including the work of De Soto.

Table 10 Government support for traders

Location	Number	Foreigner	Non-foreigner	Yes	No
Sunnyside	11	6	5	7	4
CBD: Church street and Tramshed	16	9	7	4	12
CBD: Proes Street and Lilian Ngoyi Street	5	2	3	1	4
CBD: Pretoria Central	3	3	0		3
CBD: Church Square	6		6	4	2
CBD: Bloed Street	4	2	2		4
Glen Village	3	1	2		3
Hatfield	4	1	3		4

Arcadia	3	2	1		3
Pretoria station area	13	6	7		13
Marabastad	20	10	10		20
Lynnwood Road	6	5	1		6
Menlyn	6		6		6
Total	**100**	**47**	**53**	**16**	**84**

The data in Table 10 above is grouped according to foreign and non-foreign traders. The research instrument was not designed to address profile data; however, as part of the observations, the interviewer consistently made note of it because of its prevalence across all the research locations in Pretoria. It is interesting to note how close the numbers are of both groups, which might be explained by the fact that that there are many foreigners trading in Pretoria. What is striking about this data is that it appears that both foreigners and South Africans are not receiving support from government. The issue of government support is a gap that goes beyond nationality. When asked if government provided support, 84% (84/100) of the traders said that they had never received any support from government. This is interesting given the fact that local government set aside funds for the informal sector. Only 16 traders said that they had received support. The support was mainly in the form of stalls which the traders paid for. Only two traders claimed they had received support beside stands: one had received a municipal prize and the other said he had attended business development training years ago. From these statistics, it seems that local government is not supporting the traders.

6.6.2 Type of support required

This section addresses the needs of the traders at the various locations. It aims to show the gaps in the services and the rights the traders would prefer to have.

Table 11 Summary of preferred rights

Location	Traders	Licence	Permit	Finance	No harass-ment	Shelter/stall	Storage	Cleaning	Security	Other	Infra-structure
Sunnyside	11			5	1	1	2	1			
CBD: Church Street and Tramshed	16	3	1	1		6					4
CBD: Proes Street and Lilian Ngoyi	5					2		1			
CBD: Pretoria Central	3	2		1							
CBD: Church Square	6					1		1	1		
CBD: Bloed Street	4		1	1		1				2	
Glen village	3			1						1	
Hatfield	4			1		1	1				
Arcadia	3	1	1								
Pretoria station area	13	3	2							3	2
Marabastad	20	3	1	3		11					
Lynnwood Road	6	1	2								
Menlyn	6	2		2		2					
Total	100	15	8	15	1	25	3	3	1	6	6

The traders indicated that they would prefer to have proper trading spaces. The second item they required was finance as well as licences to trade. It should be highlighted that not all traders indicated their preferences on this question. Some traders, particularly, foreign traders, felt there was not much that government could do for them.

6.7 Observations

This section addresses other observations made that may impact the rights of the traders. These issues did not form part of the research instrument, but patterns were observed that warrant further analysis. These issues may impact the security of the property rights of the traders of Pretoria.

6.7.1 Foreign traders

The surprising thing was the number of foreign traders operating in Pretoria. An estimated 44% of traders interviewed were from other African countries. Tensions were observed between the South African traders and non-South African traders. The South African traders expressed the view that foreign traders phased them out of the market because they knew how to buy in bulk and collaborate to buy cheaper, which is a skill the South African traders feel they do not have. One trader in Marabastad expressed concern that many South African traders were leaving their businesses because of the increasing number of foreign traders. One foreign trader raised concern that they were being harassed by the metro police and forced to pay bribes. The traders claimed the metro police intimidated them with requests for permits (identity documents). Another foreign trader suggested that local government needed a policy on foreign traders because it appeared that they did not have an approach for them. The foreign traders said they were denied licences because of their foreign status.

6.7.2 Associations for traders

An emerging trend that was observed in the research was the role of the informal sector associations. Many traders reported how the associations had assisted them to reduce the extent of metro police harassment. Several of them were paying membership fees to get

protection through the associations. Many expressed the confidence they had in the associations. Some traders are leaders in their associations. The word associations is used as a dummy variable to refer to one association in the study as an institutional mechanism in the form of an organisation; the words associations and association are used for classification purposes only and are used interchangeably.

6.7.2.1 Traders associations in Pretoria

Associations have emerged to address the interests of the traders in Pretoria. The most active one is the Tshwane Barekisi Forum which is discussed in some detail in the thesis. The Barekisi Forum describes itself as a non-governmental organisation (NGO) established by the traders. It was established in 2012 to represent the traders against metro harassments.[44] In 2015 it elected leaders with various roles. The Tshwane Barekisi Forum competed in an election in July 2015 as an informal traders organisation fighting for the right to represent traders in the city of Pretoria. The election involved other traders associations competing for seats to represent traders in the metro, and the Barekisi Forum won all the 10 seats (Sibiya, 2015).[45] The chairperson and the secretary are the representatives who address the media on issues affecting traders and they also engage closely with the metro.

6.7.2.2 Hostility between the Forum and the metro

The relationship between traders and the metro was hostile before 2015. Rekord newspaper, the main source of community news in Pretoria, and other newspaper sources, reported that in the past, traders took part in many violent protests and instigated disorder in the city centre. The metro failed to collect the memorandums of the traders and in that way did not acknowledge the various protests that took place. This angered the traders and led to further protests.[46] According to a report by Ron Sibiya (Sibiya, 2015), a reporter for Rekord newspaper, the Tshwane metro did not recognise the Tshwane Barekisi Forum as an association representing the traders and this was the reason why the metro did not collect

[44] http://www.my365.co.za/tshwane-barekisi-forum/

[45] http://rekordeast.co.za/57167/bullet-survivors-win-by-landslide-majority/

[46] http://rekordeast.co.za/10672/informal-traders-plan-to-wreak-havoc/

the memorandums of protests. Sibiya (2015) further reports that the metro spokesperson told Rekord newspaper in a statement in June 2013 that the metro recognised the Tshwane Informal Traders' Forum, Tshwane Informal Trader's Council, Tshwane NAFCOC and Tshwane Micro Entrepreneur's League but not the Tshwane Barekisi Forum. According to the reports, traders were not happy with the other associations because they did not address their concerns, which included harassment by the metro police, removal of their stock, lack of licences in the city and many other concerns. The Barekisi Forum was the association representing the traders against metro police harshness, and it noted with concern the extent of the removal of stock, failure to issue licences and the reluctance of the metro to resolve the licence issue.

During protests, the traders accused the metro police of the murder of an informal trader, citing the shooting as an example of metro police brutality. The trader was shot in January 2014 for supposedly refusing to give his bananas to the metro police when they attempted to remove them. He was killed because he held on to the items according to reports by the Barekisi Forum. The metro has denied this. They claim that the man shot was not a trader but a person in the community who was visiting his brother who was a trader at the time. [47]

There was mistrust between the traders and the Tshwane municipality. The former mayor, Kgosientso Ramokgopa, said the Barekisi Forum members who were protesting at the time had political interests and had much to gain politically and were not pursuing the interests of the traders. These remarks were made at the State of the Capital City Address of 2014. The protests by the traders led to damage to property, theft and making the city dirty, although the traders denied allegations of causing damage in the city and instead blamed drug users for the damage and theft in the streets. It is reported that the traders intended to make the city ungovernable.

[47] http://www.iol.co.za/pretoria-news/opinion/tshwane-mayor-under-attack-1763369

6.7.2.3 New era of cooperation between the metro and the Barekisi Forum

Subsequently more discussions took place between the Tshwane metro administration and the Barekisi Forum through the leadership of the former mayor of Pretoria, Kgosientso Ramokgopa. Sibiya (2015) reports that the tensions between the metro and the traders lessened in late 2014, when Ramokgopa undertook to build a working relationship with the Tshwane Barekisi Forum. Since the establishment of the Barekisi Forum the relationship between the Tshwane metro and the traders has markedly improved. The Barekisi Forum Chairman confirmed in the Rekord newspaper that there is no longer extreme animosity between the Tshwane metro and the Tshwane Barekisi Forum.[48] The Chairman also made a commitment that traders would never undertake violent marches in the city provided the metro continued working harmoniously with the association. Because the metro and the traders worked well together, especially with Mayor Ramokgopa, the leader of the Tshwane Barekisi Forum did not anticipate any further protests. The traders' leader made this statement in July 2015.

Rapulana Moatshe (Moatshe, 2015a; 2015b), a reporter, wrote that the Tshwane metro committed to work with the elected traders' body subsequent to the voting of the association at the Tshwane Show Ground in September 2015, and encouraged unity and speaking with one voice by all the traders. Moatshe (2015b) further reports that the celebration event was organised by the Barekisi Forum at the newly built offices in Pretoria in September 2015 to recognise the turn of events after years of harassment at the hands of the metro police. Close to 300 traders recognised that the event represented a change for the better in the circumstances of the traders, and the Chairman expressed his gratitude to the former Mayor for his efforts to improve collaboration between the informal traders and the metro police.[49]

There are some limits with the respect to which kind of organisation the council is prepared to engage with. Rekord newspaper reported that the Municipal Manager Committee leader

[48] http://rekordeast.co.za/58369/metro-and-hawkers-are-enemies-no-more/

[49] http://www.iol.co.za/news/south-africa/gauteng/hawkers-hail-opening-of-offices-1917717

of Economic Development and City Planning stated that "We are not going to pay attention to those who go out and start other organisations. If you go out, goodbye to you". The metro only recognises trader organisations that are formalised through a municipal process. The metro refuses to acknowledge or negotiate with organisations that do not follow this elective process.

However, through the validated traders organisations, traders and the metro are in the process of developing and formalising their economic activities. This is a core reason for the recent success story in Tshwane to date and it confirms the results of the study concerning metro police harassment. The active traders association had a positive effect on the property rights of traders in Pretoria. This trend must be sustained because it is an extremely positive development, allowing the traders to have a say in their governance and in developing a more inclusive property rights system.

6.7.2.4 How the Forum works and its achievements

An observation made from the interactions with the traders and the additional information they have provided is that the Forum meets with traders regularly and ensures that their issues are addressed with the metro. According to reports in the media, there have been significant improvements because of the intervention of the Barekisi Forum and its discussions with the metro. Some of the interventions include the metro's commitment to provide licences for traders who have no licences, to stop the harassments, and a bursary scheme that was launched and implemented for children of traders who matriculated; a commitment was also made to provide facilities such as toilets and stands for the traders. As another intervention, the former Mayor spent one day with the traders in August 2015 to understand their dynamics.[50] There are plans to improve the situation of the traders that include the establishment of a co-operative bank for traders. The co-operative bank will have facilities to borrow and invest funds. The Barekisi Forum also lauds itself on establishing sound relationships between itself and other traders associations in Pretoria.

[50] http://www.sabreakingnews.co.za/2015/08/24/tshwane-mayor-to-spend-the-day-in-the-life-of-a-hawker/

The traders interviewed for the thesis explained that the Forum provided cards that confirmed their membership, costing R50.00. These cards were shown to metro police when they came and they protected them from harassment. The Forum also addressed other issues such as when traders argue over space allocations among themselves. Some traders are so loyal to the Forum that they first wanted to seek permission from the forum before they would speak to the interviewer for this thesis concerning their trading activities.

The former mayor explained to the media in October 2014 that the city continued to respond to several concerns raised by the Tshwane Barekisi Forum and the public and business platforms through numerous initiatives that included:

- Metro police harassment
- Bribery in the issuing of trading licences
- Leasing of stands to foreigners
- Demands of bribes by metro officials
- Crime and vandalisation of stands. [51]

Tshegofatso Ngobeni (2016), a reporter, reports that the Barekisi Forum had been assisting traders to obtain licences. Part of the discussions with the metro was that the metro would issue licences to traders who did not have them. This commitment was made in 2015. This was evidenced by the Marabastad hawkers' protest in May 2016 about a concern that the Tshwane metro had not issued them with trading licences a year after the commitment had been made.[52] This was a proactive move by the traders. It does not indicate a lack of rights, and at the time the harassment had stopped. The metro must gear up its systems to respond to the commitments made to the traders.

[51] http://www.iol.co.za/pretoria-news/opinion/tshwane-mayor-under-attack-1763369

[52] http://rekordcenturion.co.za/85490/hawkers-demand-trading-licences/

6.7.2.5 What's next for the traders with the new metro administration?

It remains to be seen if the metro administration will continue the plans the former mayor made to reduce the plight of the traders. Of concern is that the traders protested in December 2016 because the new mayor, Solly Msimanga, put a stop to the bursary scheme due to budgetary constraints in the metro (Moatshe, 2016). A bursary scheme was introduced by the previous metro administration which was allocated to children of traders of Pretoria. The Tshwane municipality paid the university fees for 104 students.[53] Moatshe (2016) further reports that the current mayor perceives the bursary scheme as a way that the ANC used to gain votes before the elections. He indicated that he had already given R500 000 worth of bursaries from the mayoral funds since he had assumed office. The mayor indicated he would engage with the Barekisi Forum. According to him, the city can only award bursaries once they have been budgeted for. He added that so far the city did not have any funds budgeted for them. [54] The Barekisi Forum expressed concern about the new mayor's seeming willingness to ignore initiatives agreed upon with the former mayor.

The protest in December 2016 was about the bursary scheme that was withdrawn by the metro. This is a different issue from the protests concerning harassment and licences. It is a positive development that the harassments stopped, and although issues of licences are still pending, it is encouraging to note that the traders also want licences and are demanding that the metro should do something to correct the issuing of licences. The Forum leader was reported as saying on the issue of bursaries: "Our aim as a Forum is that we don't want our children to stay in the street and sell bananas like we do".

Another area to watch out for is that some traders complained that the new association leaders were pursuing their own self-interests, buying cars, being bribed by metro officials and no longer pursuing the interests of the traders. These are allegations. However, they do not sound far-fetched and are similar to what occurred in Lima when traders organisations were politicised and some of the leaders obtained top government positions. It would be

[53] http://citizen.co.za/news/news-national/1376525/informal-traders-gun-for-msimanga-over-bursary-scheme-saga/

[54] https://www.pressreader.com/south-africa/pretoria-news/20161214/281552290496752

disappointing if it were true, given how much work this Forum has put in to turn the situation around in Pretoria in such a short space of time.

From reports it appears that other associations in Pretoria have not made the same head way as the Barekisi Forum in creating a footprint for traders in Pretoria. The traders interviewed mentioned the Barekisi Forum and it is clear that they had confidence in the association. Much progress has been made by the Forum. It is hoped that the current metro administration will pick up from the success of the previous administration. The issues impacting the traders are real, they demand urgent attention and should not be politicised.

6.8 The costs of trading

Transaction costs are an important part of new institutional economics. A property rights system which is effective reduces the cost of transactions. Various costs are incurred by traders, and they demonstrate that the economic system does not have an adequate infrastructure to cater for their needs. The traders incur transaction costs and other costs apart from the costs of registration through licensing. They pay costs for storage and to move their stock from storage to their trading locations. This was an important observation because the traders do not seem to make much money out of their small stock and are subjected to daily expenses.

6.9 Illegal goods

One of the issues that may impact on the rights of traders and lead to harassment is the sale of illegal products. Illegal products include cigarettes, DVDs and CDs and pesticides and poisons. These products may be a livelihood for traders but they may influence the level of harassment they are exposed to. The sale of illegal goods is important because it determines the amount of time the metro would spend on visiting the traders because of the goods they were selling. Regular inspections are made by government agencies for pirated goods, illegal substances, harmful products, etc. These routine inspections may be construed as harassment. Traders need to be educated about the type of products that are prohibited by law to be sold on the streets.

6.10 Coefficients

This section focuses on regression analysis. The logistic regression method was applied using the SPSS statistical software because the data is binary with only two options for the responses from the variables considered. The regression consists of odd ratios which can be less than 1 or greater. In logistic regression, the outcome is always modelled and the dependent variable is binary or dichotomous, which means that it only contains data coded as 1 or 0. The responses have yes and no answers. In all the instances yes answers are equal to 1 and no answers are equal to 0. In the thesis, there could only be two responses to the research instruments: Yes or No. For ease of reference, the questions that were considered are given in Table 12.

Table 12 Binary options and research questions

Questions	Characteristics	Numerical values	Number of traders
Do you have a bank account?	Yes	1	62
	No	0	38
Can you obtain a loan (credit) from the bank?	Yes	1	14
	No	0	86
Do you own property?	Yes	1	30
	No	0	70
Have you received support from the government?	Yes	1	16
	No	0	84
Is your business registered?	Yes	1	34
	No	0	66

6.10.1 The sample size and its validity

The sample size was 100 traders. This sample size can be considered small, and while it provides an indication of the data, a general conclusion about the entire population of informal traders in Pretoria cannot be derived from it. The sample size is not representative enough to formulate a situation on the informal economy of Pretoria, but it can be limited to the data of 100 street traders and the indications the data provides. The results should therefore be seen as preliminary indicators rather than definitive conclusions.

The key variables in this thesis are the traders' registration status, access to credit and the ownership of property. In various sections, these variables serve as dependent variables because of their significance in the theory of property rights and economic inclusion. Registration of traders is supposed to affect access to credit, for example. On the other hand, the ownership of property is supposed to affect access to credit according to De Soto (2000). Although the thesis did not delve much into property ownership, it remains important in the theoretical views of De Soto.

The regression models were used to examine the p test and the coefficients for significance and the likely effect respectively. Other ratios that were interpreted in the regression models are the odds ratios. Odds ratios in logistic regression are the effect of one unit of change in X in the predicted odds ratio with the other variables in the model held constant.

Coefficients represent the mean change in the response for one unit of change in the independent variable while holding other variables in the model constant. Generally, positive coefficients indicate that the event becomes more likely as the predictor increases. Negative coefficients indicate that the event becomes less likely as the predictor increases.

The significance of the model and the population that is affected by the outcome is indicated by the confidence interval. In this regression model a 95% confidence interval is applied. The correct interpretation of a 95% confidence interval is that "we are 95% confident that the population parameter is between X and Y.

The variables in the models are property, credit, government support, registration and bank accounts. They are all binary variables because their responses are yes's and no's. Property means ownership of property; credit means access to credit; government support is as it is; registration means access to a licence by traders, also referred to as registration by traders; and bank accounts means access to banking. The words are used interchangeably in the study.

6.10.2 Correlation: Model of property and other variables

The first model consists of property ownership as a dependent variable versus the independent variables of credit, registration, access to banking and government support. Property ownership is one of the key indicators that De Soto has promoted as a way for the poor to have access to credit and capital. Although the thesis did not delve much into property ownership, this area was considered briefly. The traders who were interviewed were requested to shed light on the extent of their property ownership.

Table 13 Correlation of property and all the variables

	Coefficient	p-value	Odds ratio	95% confidence
Credit	-.40	0.951	.96	.274; 3.37
Bank account	1.163	0.031	3.20	1.113; 9.21
Registration	.851	.101	2.34	.848; 6.47
Government support	-.49	.941	.95	.261; 3.47

An analysis of this study on property ownership and other variables shows that there is a marginal association between registration and property ownership and a significant association between banking access and property ownership. This is evidenced by the p-value which is between 0.05 to 0.1 for registration and a p-value of less than 0.05 for banking access. The p-value for each variable tests the null hypothesis that the coefficient is equal to zero (no effect). A low p-value of < 0.05 indicates that the null hypothesis can be rejected. In other words, a variable with a low p value is likely to be a meaningful addition to the model because changes in the independent variables are related to changes in the dependent variable. A marginal level of significance is not a strong significance but it can be considered to have a slight association. There is some evidence that suggests that the lower coefficient of trader registration at 0.85 is associated with property ownership. This could mean that a unit change in trader registration has the odds to increase property ownership by 0.8 units. In this model, there is a correlation between property ownership and banking access. This correlation is significant, which indicates that a unit increase in access to banking is likely to increase property ownership by 1.16 units. The coefficient of 1.16 suggests that greater access to banking is associated with a higher level of property ownership.

The model uses registration, credit, government support and bank account to predict whether traders own property or not. The odds ratio for registration of 2.34 predicts that for every 1 unit increase of trader registration, the likelihood of property ownership is 2.34 times higher for the traders who are registered than those who are not. The odds ratio for a bank account indicates that the 1 unit increase in bank account suggests that the likelihood

of property ownership is 3 times higher for those who have access to a bank account than those without bank accounts.

The confidence interval that is significant at 95% is for access to banking, which indicates that it can be predicted with confidence that the occurrence of property ownership can affect a population of between 1 to 9 traders.

The variables that are insignificant are credit and government support, which means that the results suggest access to credit and government support are not associated with property ownership. For instance, it cannot be said that a change in access to credit for a trader can affect the ownership of property, likewise with government support and access to credit because they are statistically insignificant. Concerning access to credit, it has been found in practice that there is a negative correlation between property ownership and access to credit especially for the poor. South African authors such as Tomlinson (2007) who critiqued the work of De Soto on property rights found this, as did other researchers such as Williamson (2011).

The findings from the data must be interpreted within the context of the 100 traders and the scope of this study. Property ownership has not translated to access to credit and economic inclusion for many in the economy across the world and in South Africa as shown by the literature.

The coefficients in this model are mostly less than 1, meaning even if the variables were statistically significant the effect would be less. In Table 13, a one unit increase in credit is likely to be associated with a reduction of 0.4 in property ownership. An increase in government support is likely to cause a reduction of -.49 in property ownership. An increase in access to banking has odds of 1.1 of increasing property ownership.

In the current economic system, there are no guarantees of access to the economy by mere ownership of property for the traders. The dynamics of property ownership in South Africa

are complex and require significant transformation and much needs to be done to integrate property ownership of the poor to translate it into economic participation.

In terms of the significance of the variables above, the thesis concludes that the results do not render the data manipulation process insignificant, but the results confirm that the variables that De Soto linked such as credit and property ownership do not have correlations without other conditions being met in the economy, such as creating an inclusive overall economic system that recognises the efforts of the poor. This also indicates that there are many other factors impacting on the traders that this study did not address.

6.10.3 Correlation: Model of credit and other variables

Access to credit is one of the major yardsticks of theory to indicate access to the economy. De Soto (2000) indicates access to credit as a signal that there are property rights and economic inclusion. Part of the research questions addressed this as the study aimed to assess the status of access to credit by the traders.

In this model, credit is the dependent variable and property, banking, government support and registration are the independent variables.

Table 14 Correlation of credit and other variables

	Coefficients	p-value	Odds ratio	95% Confidence
Property	-.067	.917	9.35	.264; 3.309
Bank account	1.41	0.08	4.10	.248; 4.038
Government support	.589	.457	1.8	.381; 8.532
Registration	0.001	.999	1	.820; 20.561

In the model of credit and the other variables, the odds are that banking is marginally significant because its p-value is between 0.05 and 0.1 at 0.08. This means a unit increase in access to banking can increase the odds of access to credit by 1.41 units, which indicates

that this is more likely. The other variables are statistically insignificant, which means that there are no correlations between credit, property ownership, government support and registration. This means that these variables cannot be directly associated with access to credit. The level of insignificance of the variables makes it difficult to interpret the coefficients of these variables.

In this model, property, government support, registration and access to bank accounts predict the outcome for access to credit. The odds ratio for bank accounts suggests that for every 1 unit increase in bank accounts the likelihood of an increase in access to credit is 4 times greater for those who have bank accounts than those who do not. The confidence interval of 95% is insignificant for all the variables, so the data cannot be used to predict the extent of the population size affected in this regard.

6.10.4 Correlation: Model of registration and all the variables

The registration variable is one of the most important variables in the thesis. In this thesis it is treated as the property title deeds that De Soto (2000) advocated for as a representational system that can facilitate economic participation. In the next model, trader registration is a dependent variable and it is paired with property ownership, credit, access to banking and government support as independent variables.

The model aims to understand how registration is affected by ownership of property, access to credit, government support and access to banking. It determines whether having a trading licence ensures access to the economy.

Table 15 Correlation registration and all the other variables

	Coefficients	p-value	Odds ratio	95% Confidence
Credit	-.032	.963	.97	.255; 3.677
Government support	2.44	0.001	11.6	2.85; 47.44
Bank account	.272	.604	1.31	.46; 3.66
Property	.848	.100	2.33	.850; 6.41

This model highlights the fact that property ownership is marginally significant and has a slight association with trader registration. There are indications that ownership of property is associated with trader registration. The variable of government support is significant with a p-value of 0.001. There is evidence that suggests a correlation between government support and trader registration. An increase in government support is likely to increase the registration of traders by 2.44 units. The credit and bank account variables are statistically insignificant. This means that there is no correlation between trader registration and access to banking and access to credit. The interviews for the thesis found that those who had registration in some locations such as Sunnyside were given stalls by the municipality. An unregistered trader would not necessarily qualify for government support as the trader would be deemed illegal. In general, local government was found not to provide support to traders, but in instances where support was provided, it was to licensed traders. Having a licence (registration) does not guarantee access to credit. The results are aligned to the challenge of developing a sustainable economic system that can provide opportunities for the poor in the economy.

In this model, credit, government support, bank account and property predict the outcome of trader registration. The odds ratio for government support suggests that a unit increase in government support is likely to increase traders registration 11.6 times. Furthermore, the confidence level of 95% is significant for government support, and it means the likelihood of the occurrence is between 2.8 and 47.4 traders in the population.

Although the literature on property rights emphasises access to credit and not access to banking, economic inclusion includes the poor having access to financial services including banking. This is evidenced by a p-value greater than 0.05 or 0.6. Therefore it cannot be concluded from this data that having access to a bank account is associated with registration. Access to banks has no effect on registration for a licence. In reality, registration of licences falls within the ambit of local government. This does not affect access to banks by the poor. The banks have their own systems which are flexible to assist the poor to open accounts. However, poor people who do not have valid documentation such as identity documents and valid addresses cannot open a bank account. These traders also tend to be foreigners, and the thesis has shown that many traders interviewed in Pretoria were foreigners. The strict requirements by the banks also pertain to access to credit as banks are not willing to take the risk of lending to the poor.

The overall results of the regression analysis are mixed and to some extent explain the correlations between the variables of property ownership, licence registration, access to credit and government support. Some of the p-values that explain the significance of the correlations with the variables are insignificant, while others are significant across the models that were run. This means that the field data does not explain the relationships among the variables. It should, however, be noted that there were a few variables that had correlations and positive associations such as property, banking and registration. Other variables such as credit as well as registration and government support had significant correlations. Correlations are summarised in Table 16 below.

Table 16 Summary of correlations

Correlations						
		Property	Registration	Credit	Government support	Bank account
Property	Pearson Correlation	1	.221*	.050	.131	.255*
	Sig. (2-tailed)		.027	.619	.194	.010
	N	100	100	100	100	100
Registration	Pearson Correlation	.221*	1	.075	.435**	.184
	Sig. (2-tailed)	.027		.456	.000	.066
	N	100	100	100	100	100
Credit	Pearson Correlation	.050	.075	1	.138	.204*
	Sig. (2-tailed)	.619	.456		.170	.041
	N	100	100	100	100	100
Government support	Pearson Correlation	.131	.435**	.138	1	.237*
	Sig. (2-tailed)	.194	.000	.170		.018
	N	100	100	100	100	100
bank account	Pearson Correlation	.255*	.184	.204*	.237*	1
	Sig. (2-tailed)	.010	.066	.041	.018	
	N	100	100	100	100	100
* Correlation is significant at the 0.05 level (2-tailed)						
** Correlation is significant at the 0.01 level (2-tailed)						

Some variables have correlations and are statistically significant, which means that the data can be used to explain some of the outcomes of the research.

The issues that impact on the poor are complex. The economic system is not comprehensive enough and has not been able to translate issues for the poor into material benefit to them. It is possible that the reason why some of the data is not corroborating is because the traders still require further support to be able to excel at their activities where they are. Several gaps were found and they varied, which might explain this. For instance, a trader would be able to open a bank account but not have access to credit and government support. A trader in some instances would have access to property but not a licence. The findings therefore had inconsistencies because of the social and economic factors which impacted differently on the traders. The economy is a large, complex system and therefore

there are possibly many other variables that have been omitted and that have affected the outcomes of this thesis.

6.10.5 Studies that align with the thesis

The results of the study must be seen in the context of the findings, but should not be seen as representative of the total population of Pretoria in the informal economy population. However, the key observations from this thesis are applicable. Other studies have also confirmed some of the outcomes of the research. The studies by Statistics South Africa (Stats SA, 2013) identified similar trends in some dynamics of the traders such as access to finance. The study by Tissington (2010) identified activities of traders that were similar to the activities the thesis identified. The study by Roever and Skinner (2016) addressed the patterns relating to property rights that impacted on traders, such as police harassment, evictions and the regulatory constraints faced by traders on a daily basis. Brown and Msoka's (2015:15) paper, *A refugee in my own country*, identified the property rights challenge of traders similarly, although from a collective action and property rights perspective. The research by Masonganye (2010) studied the informal traders of Pretoria and identified some of the issues, such as the trend regarding foreign traders, licensing, the economic activities of the traders, etc.

Although the data and sampling methodology used in this thesis may have its limitations, they do not invalidate the key findings. Some aspects of the findings of the research are supported by other similar research as mentioned above. The uniqueness of this thesis is the emphasis it takes from the perspective of De Soto and how De Soto's recommendations shapes the actions going forward. The thesis argues that these findings can be used as a basis for further research as well as policy making to address the plight of informal traders in Pretoria.

6.11 Are the views of De Soto applicable to Pretoria?

This section attempts to integrate the data and work of De Soto in the literature in order to carry out a comparison.

6.11.1 Comparison between Peru and Pretoria traders

This section compares the property rights and dynamics of traders in Pretoria to those in Peru based on the literature and the findings from the interviews with traders in Pretoria. The comparison is based on the situation in Peru at the time when *The Other Path* was written during the early 1980s. The current situation in Peru may be different now. The context of that period was important because of the negative experiences of the traders. The situation in Peru represented the experience of traders in South Africa based on research studies done on the informal sector. A brief comparison is given in table 17.

According to the findings of the thesis outlined in Table17, there are more varied types of traders in Peru than in Pretoria. Most of the traders operate in fixed locations in Pretoria. This is not to say that in other parts of Pretoria traders are not moving around. Those interviewed for the thesis occupied fixed locations. There was one exception who was pushing a trolley because the location designated to him did not have customers as it was a quiet street. The traders in *The Other Path* faced police brutality. The traders in Pretoria expressed the view that the metro police were harsh in the past, but this has since subsided thanks to the interventions of the traders associations. In Lima the relationship between the traders and local government was hostile and filled with tension. Likewise, traders in Pretoria had negative feelings towards government. There was an overwhelming indication from Lima as well as Pretoria of the lack of support by local government. In Lima, the traders formed informal markets to organise themselves to a greater extent. In Pretoria there are no informal markets but areas where traders clustered in groups.

There were invasions by traders in both Lima and Pretoria. The invasions in Peru were quite violent. The ones in Pretoria were more subtle: traders installed themselves in places not allocated to them according to the local laws for traders. The local government in both

Pretoria and Lima perceived traders as a nuisance. In Lima, the traders resisted the law and the political system, while in Pretoria there were traders who were compliant. In Lima, the traders became politicised and some obtained government positions. In Pretoria, some traders have become members of associations and have been given positions in the associations.

Traders in Lima sold limited types of goods. Traders in Pretoria sell limited and small amounts of stock with not many choices of goods. In both areas traders had no access to credit, and traders in both Lima and Pretoria faced the risk of eviction. When it came to properties, in Lima they owned properties but had no access to title deeds. In Pretoria, very few traders have properties and few have title deeds or some kind of proof of ownership.

In both Lima and Pretoria, traders had restrictions on locations where they could sell, and these restrictions made it difficult for them to make a living – they ended up violating the restrictions by going to busy areas.

No protection was provided to traders from the police and government in Lima, but in Pretoria the situation was different at the time that the research was being done. In the past the traders and the metro police had tense relationships which escalated into violence. The traders have no training and lack education in general in both Lima and Pretoria.

Table 17 Comparison between Pretoria traders and Peru traders

Peru traders (De Soto, 1989)	**Pretoria traders**	**Similarities**	
		Yes	**No**
Street trading consists of street selling, roving vending and vending from a fixed location (De Soto, 1989)	Street traders are based in fixed locations. There are incidents of some who move around to avoid designated	No	

	areas	
Informal traders faced police brutality	There was metro police brutality, but this is in the past	No
Poor cooperation with local government	The traders seemed to have very little interaction with government, and spoke of government in a hostile way	Yes
Establishment of formal markets	There are areas where many traders group themselves together, but there are no markets as such	No
Lack of support from local government	The traders in Pretoria reported a lack of support from government	Yes
Divided into informal traders and informal markets	The informal sector consists of traders	No
The traders invaded locations	The Pretoria traders have invaded locations	Yes
Street trading was seen as a structural problem by government	Street trading is seen as a concern by government	Yes
Traders resisted the laws and the political system	Not all traders resist the laws. Some are compliant	No
Traders became politicised and obtained government positions	Traders have become members of associations and are obtaining leadership roles in the positions	No
Traders offered a limited amount of goods	The traders sell limited and small amounts of stock	Yes
Informal traders had difficulty obtaining credit	The traders in Pretoria have no access to formal credit	Yes

Traders lived under the threat of eviction	Traders without permits live under the threat of eviction	Yes
The poor had property but lacked title deeds	Few traders have property and few have formal title deeds	No
Traders faced many restrictions in locations where they can sell	The traders in Pretoria face restrictions of location	Yes
Traders had no protection from the police and local government. They did not have safety and security.	The traders in Pretoria have protection from local government. Few raised concerns	No
Informal traders had no training and money	Informal traders have no training in general	Yes

The situation in Peru has a lot to teach us about the challenges that traders face. Overall traders are receiving negative treatment from governments across the world. Traders are associated with illegality and creating obstructions that affect investment. Informal traders are perceived as an eye-sore in many cases (Roever and Skinner, 2016: 5).

The traders discussed in *The Other Path* had no property rights at all. Their situation was characterised by violent protests and violent invasions by the traders, and there was hostility between the traders, the police and the government. This used to be the case in Pretoria, which is evidenced by the killing of a trader before the situation improved. There is evidence to support the fact that the situation has improved.

De Soto was advocating for a good law that would incorporate poor traders into the economy. He also sympathised with the fact that bad laws push traders into remaining informal because of the costs of formality and the various requirements. His overall ideology was to promote a representational legal system that would recognise the efforts of the poor. The traders in Pretoria perceive themselves to have rights. They claim that the situation of police brutality that they previously encountered has subsided. There is an overall indication of improvement in their conditions since the active participation of the

Tshwane Barekisi Forum. One could argue that they have some rights. Metro police harassment is no longer a major issue except in some exceptional situations. The traders interviewed felt secure and that their goods were safe.

In the past there was extreme metro police brutality and many violent protests by traders in Pretoria. The situation has improved significantly. It is argued that the emergence of traders associations has improved the situation – the traders themselves believe their situation has improved and they have property rights.

Unlike the traders of Peru who operated largely outside the legal system, some traders in Pretoria have licences and comply with the law. In Pretoria it does not mean that if someone is trading on the streets they are informal traders.

The traders in Peru did not have access to debt financing. This is an area they have in common with the traders in Pretoria. The interviews showed that they do not have access to credit. De Soto (2000) showed that by giving the traders property rights and a pauperised right, they would have access to credit. In Peru, lack of access to credit is understandable because the traders were outlawed. However, even though the Pretoria traders are registered, some indicated difficulty obtaining credit.

Another factor is that traders in Peru have property according to De Soto's work. The majority of traders interviewed had no property. The point made by De Soto that traders have assets but lack a representational system does not align with the situation in Pretoria. Even when the traders have stock, they sell on small scale and what they own does not constitute significant property.

6.11.2 Is the capitalisation process feasible in South Africa?

This section reviews the different steps in the capitalisation process and assesses their feasibility in the South African context and investigates their ability to be implemented.

The capitalisation process applies to tangible and intangible assets. De Soto, when he refers to property rights, refers to both types of assets (De Soto, 1989: 159). The thesis takes the position that the capitalisation process applies not only to assets, because the process outlined by De Soto is about bringing the poor into the mainstream economy and can apply to both movable and immovable assets. The property rights of traders can be taken through a similar process until the stage is reached where the entire process is transformed. In *The Mystery of Capital* De Soto (2000) focuses on property and the use of title deeds to grow the economy. The process is legitimate, and ensures integration into the economy. The same process can transform the property rights system of a trader whose economic activities have not been absorbed into the economy. Therefore a licence can be considered as a necessary but in no way sufficient part of the capitalisation process.

Table 18 Feasibility of the capitalisation process

Step 1: The diagnosis stage	**Feasibility**	**Step 2: The establishment of legal systems and the organisations**	**Feasibility**
The economic activities and assets of the poor are identified as are the reasons the poor chose the activities. Quantifies the value of the assets. Measurement tools are developed. The development of the legal process takes place. Determine the costs of extra-legality to the legal business sector and the government.	This process has never been undertaken before in the context of traders and licensing. There is a legal framework in Pretoria by-laws. Is that framework taking the rights of traders and their activities into consideration? No, it isn't. This process might	Political buy-in and the establishment of an organisation. Removal of administrative and regulatory bottlenecks. The calculation of costs of capitalising extra-legal assets, the costs of permits at all levels of government, the number of forms and other documents required and time	This process has not been undertaken before. Political buy-in may be difficult given the multiple priorities of government. This project must be assigned to an organisation. It is an expensive process.

	be quite expensive and time consuming.	delays. Draft statutes developed that recognise extra-legal evidence of ownership with the support of illegal communities.	
Step 3: implementation	**Feasibility**	**Step 4: The integrative process**	**Feasibility**
Communities are bringing their proofs and are being trained to know how the system works. (The manuals, training, resources needed and the proofs required for the communities to participate in the economy). Communicating the strategy, which includes campaigns and ensuring a similar message is sent across after the systems have been put in place.	This process will depend on work done in steps 1 and 2. Traders will need to be trained on how to use the system developed.	The data on the capital from the extra-legal sector to be absorbed into the economic system. This process includes the registration process, proofs of registration, use of systems and ensuring the system is functional.	This process will require pulling together of various systems and role players in the economy and processes.
Step 5: Other implementation	**Feasibility**		
The communities are able to use their assets to participate in the economy because the systems have been adjusted to recognise their activities.	This is the stage that will support traders to benefit in the economy.		

Table 18 above summarises the key steps in the capitalisation process, which aims to assess whether it is feasible for the steps to be implemented. The capitalisation process has been applied to the traders of Pretoria and their activities.

The process consists of the diagnostic stage, the establishment of legal systems and the organisations, implementation, the integrative process and other implementations. Step 1 is where the assets of the poor are identified and quantified, and legal processes developed and costs determined. This can be a long process and will require significant political will and buy-in. The second step is where organisations implement this process and it will require buy-in. This process can take time and will need a common vision to support traders. Within the South African policy context and with competing priorities for the economy, it may also be a complicated, time-consuming process which may not be easy to achieve.

This section of the analysis ties in to a large extent with the Williamson model, which outlines the processes of institutional change. Where organisations need change, the process can take up to 10 years to take effect. For step 1 in Table 18 regarding the proposed changes to the legislation, the time can range from 1 to 10 years or longer. The implementation phase, in which communities bring proof of their participation and communications, can occur more easily once steps 1 and 2 have been successfully completed and everyone understands their place in the economy.

To change a system entails a shift in culture and mindset, and requires a common vision. This step may be shorter because the previous steps would have created a basis for it. Step 4 is the integrative step that puts everything together. This step includes the registration process and the proofs of registration. Step 5 occurs when everything is fully functional or adjusted and the system has changed and the traders are part of the economy with their activities successfully integrated. This is the ideal stage, but it may be very difficult to achieve. Efforts can be made to start aiming for a common vision to provide property rights for traders which goes beyond paperised licences to actual economic participation and practical economic inclusion. For example a system is required that takes into account that not all traders have fixed addresses for opening a bank account, therefore a simpler process and requirements for their context are introduced.

The question of whether the capitalisation process is feasible in South Africa is important. This process has been attempted in many countries from a property titling programme perspective with mixed results. Evidence of this process from a business registration point of view has not been reviewed. This process is worth trying. However, it has been argued that this process might be expensive and cumbersome.

The capitalisation process will require massive buy-in from government and traders alike. The assets of the traders must be recognised and recorded. The existing laws will need to be amended to accommodate the assets of the poor and to prepare the different sections of the economy to accommodate the efforts of the traders.

The different elements of the capitalisation process have not been tested in this format for the traders in Pretoria. A comprehensive system of this nature requires time, networks and resources, and requires much commitment in order to create property rights. The formation and recognition of the Barekisi Forum should be seen as a significant first step in this process.

6.11.3 The implications of the capitalisation process for South Africa

This section unpacks some of the implications of the capitalisation process in South Africa.

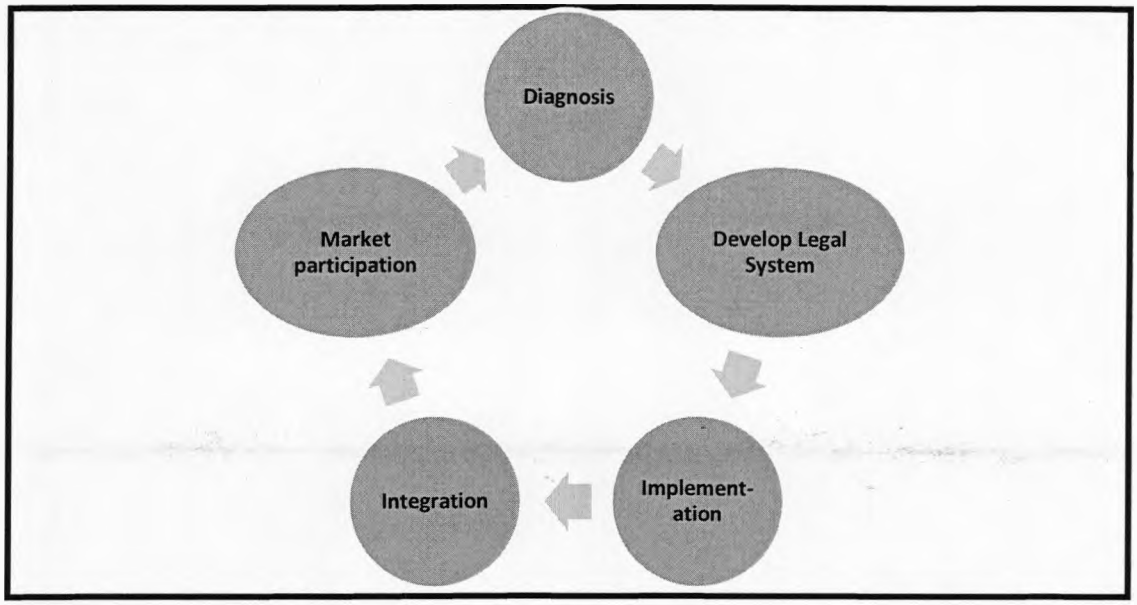


Figure 11 The capitalisation process

Figure 11 above shows the capitalisation process of De Soto in a nutshell. This process has implications for South Africa, where the economy is grappling with poverty, high unemployment and low growth. In fact, economic growth has declined dramatically to below 1%.

The debate about economic inclusion of the poor is significant and we should see De Soto's work as pointing to an important *aspect* of the development process. The economy will not function optimally unless all citizens who can make a contribution are accommodated. Therefore issues regarding assets, resources, activities and economic access must be tackled. The costs currently being incurred must be examined to see how the poor are being hampered by the legal system. The next step will be to identify the property rights system to accommodate the poor. A proper criterion and process that fits the circumstances of the poor must be identified. The relevant role players from the state and from other parts of society will have to come on board to ensure that the process has been activated. The poor must then be educated and informed about the system and ultimately brought into the system, where their assets and activities will find a platform.

The capitalisation process has significant implications for South Africa. The analysis found that the capitalisation process has the following implications:

- The property rights system must strengthen access to the economy (i.e. access to credit).
- It is important to know the assets of the poor.
- The social contract of the poor must take their unique circumstances into account.
- The government as well as political buy-in to the process is key.

6.12 Summary and conclusions of the chapter

In this chapter the data was analysed. The first set of data focused on the number of years trading, the type of stock sold, the effect of crime on traders, the level of harassment of traders, access to banking and financial systems, the level of government support and the property rights the traders prefer. The chapter further addressed correlations between various variables.

The traders require support to obtain licences and permits to be in suitable locations. Overall, the traders deem themselves to have rights. Surprisingly, the levels of harassment and crime were not reported as high. The Pretoria traders interviewed seemed to be satisfied with their overall rights except for a few challenges.

When comparing the situation of traders of Pretoria with the situation in Peru, the traders in Peru seemed to work under harsh conditions. The Pretoria situation has improved significantly from what it was in the past when harassment was rife. The capitalisation process of De Soto may be a costly process for South Africa, and it has not been fully tested. Given that it has not worked in many countries and in piloted areas in South Africa such as Langa, it may not be the silver bullet that will unlock the economic development dilemma

facing street traders.[55] In the next section, the study discusses the results, recommendations and future areas of research.

The traders seem to have improved their property rights since metro police harassment has subsided and less crime has been reported. The reduction of harassment means fewer fines and less confiscation of goods, which also adds to security of the rights. These positive developments can ensure that the traders will start making plans for growing their economic activities without fear of intimidation and loss of livelihood because of the metro police. The moratorium on licences for traders who are operating without licences but wish to obtain them is a constraint that may undermine progress in securing the rights of the traders.

Much work is needed to be done to overhaul the economic environment for traders because, although they contribute to the economy, they are not recognised as part of the economy. The access to financial services is a must for traders and there is room to provide more support to traders to stimulate economic growth and development. Progress has been made to remove some barriers affecting traders and it is the hope of the author of this thesis that more deliberate actions will be taken to address the issues of the traders. Also the capitalisation process that De Soto has proposed, if implemented properly, may still go a long way to transforming the economy for traders.

[55] https://www.researchgate.net/publication/228314945_The_Effects_of_Property_Titling_in_Langa_Township_South_Africa

CHAPTER 7 DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

7.1 Discussion and conclusions

This chapter discusses the conclusions of the research, points to limitations of the research and makes recommendations for future research.

The research aimed to establish whether the views of Hernando de Soto were applicable to South Africa. The study focused on the street traders of Pretoria as a target group and case study. The research questionnaire aimed to understand the existing property rights of the traders, the rights they desired and to assess whether De Soto's proposals and viewpoints could improve their situation.

The situation in Peru was compared to the situation facing traders in Pretoria. Peru was chosen because it is a higher middle-income country, and has a sizable informal economy. De Soto's book, *The Other Path*, focuses on the informal economy in Lima, which, like Pretoria, is also a capital city. On the question of the existing rights of traders in Pretoria, the research found that the traders had more rights than they had in the past. Indications are that between 2015 and 2016 the level of metro police harassment and crime had declined and many traders claimed to have some form of property rights.

When asked what types of rights the traders would like to have, the traders mentioned a wide range of rights they would prefer. The most important rights for them included obtaining licences, operating in favourable locations and not those prescribed by the municipality, which had no economic viability, permits for foreign traders to be in South Africa, storage facilities and access to finance.

Central to secure property rights is the ability to operate freely and securely. The issue of crime was included in the research questionnaire. The results revealed that crime was not a

major concern among the traders interviewed. Most of them indicated that they were safe and their property secure. This could also possibly indicate a recent improvement in the traders' conditions.

One of the cornerstones of De Soto's work is that the legal system is the driver of economic development and that a suitable, inclusive legal system that recognises the assets of the poor is conducive to economic growth and development. De Soto (2000) claims that the poor have assets that are not taken into consideration because of they lack access to a representational system. De Soto's emphasis on assets may be overdrawn. Most of the trades had very few assets except the small stock they owned. They would nevertheless benefit from better access to the formal economy and legal system.

Access to credit is an outcome that De Soto's work promoted, which is influenced by property ownership. According to De Soto, access to a representational system of property makes it possible to access credit. In this research, registration of the trading activity was recognised as a property right, which means that the trader will have access to economic activity because of the legal papers. The findings show that traders struggled to obtain credit because the banks had tighter requirements because of the management of risks and their legal conditions. This creates a barrier for traders. Interestingly though, quite a few traders did have access to banking facilities.

The research found that the traders in Pretoria had property rights in the form of the by-laws that govern access to trade. Traders could obtain licences to trade, although a moratorium was recently placed on the issuing of licences. Some traders trade without licences, so not having a licence does not stop traders from selling on the streets. Ever since the harassment by the metro police stopped, the traders themselves claimed to have improved rights. The licensing situation has many shortfalls and inconsistencies such as the non-issuing of licences in various areas and the non-standard approach to licensing. Many traders interviewed had no licences for these reasons.

There were some challenges highlighted by the traders which the research considered negative to the security and private rights of the traders. There seemed to be no policy to address foreign traders. This is a concern because a fair number of traders interviewed were non-South Africans. The foreign traders reported that they were treated unfairly, refused trading licences and harassed continuously by the metro police, who also take bribes from them. They seem truly to exist outside the legal system and the formal economy.

With the general improvement in the trading environment, and membership of the traders association (the Tshwane Barekisi Forum), the overall environment is more favourable. Some traders indicated that the metro police approached them for permits (identity documents) to be in South Africa rather than for trading licences per se, and solicited bribes in that regard. It should be made clear that overall the traders viewed themselves to have rights, but the fact that there was no clear policy or law that addressed foreign traders frustrated them because when they request licences they were sent away. The issue of bribes is related to crime. Some of the traders claimed that the metro police took advantage of their foreign status and solicited bribes, especially from traders without identity documentation.

The role of the informal trading associations, especially the Tshwane Barekisi Forum, emerged in the interviews as a positive factor that has eased the relationship between traders, local government and the metro police. The association has won the confidence of the traders and it seems it has contributed to the ease of trading in the city. This finding is not conclusive. However, a number of traders indicated their confidence in the association because since negotiations started between the association and local government, the incidence of metro police harassment has declined.

The Other Path discusses the challenges of tension between local government and traders, which highlights the lack of support. Table 17 in Chapter 6 shows the similarities and differences in Peru's and Pretoria's informal economy. The Peru traders undertook violent protests against the police. There were evictions and relocations of traders to uneconomical

trading locations. The traders resisted the control of the local government by taking part in unlawful invasions and occupying stands not allocated. They protested and affected traffic and caused congestion in the city, and they set up informal markets. The informal traders organisations were strong in Lima, but serious police harassment remained the order of the day. All these issues are almost similar between the two cities except that in Lima they set up informal markets and in Pretoria there have been significant changes and the environment has become more conducive for traders. The traders in both countries struggle to obtain access to credit. The situation in Peru is limited to what transpired in 1980s described in *The Other Path.* The thesis does not in any way suggest that there has been no improvement in the property rights situation of Lima traders since then.

The study asked questions about government support. The traders reported that they did not receive support from local government, except those who received trading stalls, which they paid for. There were an exceptional few who mentioned that they had entered a competition, another said they received a tent and table randomly and a T-shirt from the municipality. These were isolated and once-off incidents. The traders seemed to speak of local government with resistance and disfavour generally and they did not seem to have confidence in the intentions of municipal officials. The same negative sentiments were expressed concerning the metro police.

The work of De Soto has brought forward the importance of the informal economy and its challenges. His work teaches that the challenges that South Africa is experiencing with the informal economy is not unique to South Africa. Other countries have faced worse situations. De Soto also shows that the informal sector cannot be ignored and it is an important part of the economy making a valuable contribution to employment and growth. This provides a roadmap for strategies and efforts by all parties concerned to work together in the economy. The views of De Soto are therefore applicable to South Africa. This sector of the economy needs a more deliberate and coordinated effort to promote growth. Property rights applicable to the poor should be the concern of every government, national and local.

Can the capitalisation process proposed by De Soto address the plight of the traders of Pretoria? The capitalisation process is an important strategy because it aims to take into account the activities of the poor. The capitalisation process is also important because it requires buy-in from all the role players concerned and a more open economic system. The economy absorbs the assets of the poor according to the process. This process is rigorous and requires massive resources. It has also been found that the capitalisation process proposed has not worked in many countries, including Peru. Many studies suggest that the economy overall has to be transformed to accommodate the communities before the capitalisation process can work. The poor may not have the assets to be accommodated in the capitalisation process, which was also found in the research in Pretoria. What is required may be recognition of the activities of the poor, strengthening of existing rights and customising the process of De Soto to the existing situation impacting on the traders in Pretoria.

It is difficult to identify a property rights system that can accommodate the traders given the complexities with the economic system and how the traders can be incorporated. The social contract of the traders has to be identified and noted. This is an expensive and lengthy process. As the name suggests, it should be regarded as a process. While in no way a quick fix or silver bullet, progress towards the goals would produce benefits for Pretoria's street traders.

7.2 Recommendations

- **Strengthen the role of associations**

The traders associations have become important champions of traders in Pretoria. For example, the Tshwane Barekisi Forum fought to reduce the level of harassment and negotiated with the metro for a bursary scheme, business development support, including infrastructure (stalls, toilets, storage) and a fund for traders. The former mayor had built rapport with the association, and the representatives met with the metro on numerous occasions to negotiate on issues affecting traders. The Tshwane Barekisi Forum has made strides in negotiating a favourable environment for traders and the manner in which they

did so within a short period of time indicates the capacity and power of associations to negotiate on behalf of traders. The associations therefore form an important part of the institutional landscape that impacts on traders. It is recommended that the efforts made by the traders be enhanced and built on. The relationship between the metro and the associations can be strengthened and formalised with regular structured interactions accompanied by sustainable programmes. It will be easier for the metro to provide appropriate interventions that respond directly to the traders. This process must not be politicised where a new metro administration fails to continue the good work which the previous administration has started. Good programmes must be sustained. The inroads made by the former mayor will need to be observed to ensure sustainability. The Tshwane Barekisi Forum will need to build and sustain the rapport established by the previous mayor with the current administration. The most positive development made on behalf of the traders is that the association has proved to be viable – it works and it is an institutional mechanism that can improve the city's economic landscape by giving the street traders a voice and providing them with support.

- **Incorporate traders in the city budget**

The metro must provide a budget for the traders. A budget for traders means that in the city's planning and allocation of funds, efforts must be made to incorporate activities that create an enabling environment for traders. Traders are an important part of the city's economic landscape. Street trading is a global phenomenon that requires a developmental approach that fosters growth. The economic dynamics of South Africa is such that it is not possible to absorb everyone into formal employment. More needs to be done to support traders for their activities to be sustainable and have growth. Items to be budgeted for include secure stalls, toilets, storage facilities, training, funding and other needs of traders. In December 2016 it was reported that the traders had staged a protest for the bursary scheme which the new mayor had suspended because of budgetary constraints. These are some of the issues that must be addressed going forward.

- **Pilot the capitalisation process for street traders in Pretoria**

The capitalisation process proposed by De Soto is a costly and extensive process; however, it should be given a chance in Pretoria. The thesis recommends a pilot programme to incorporate the traders into the economy by bringing them into the formal system, understanding their activities, evaluating the value of their stock and property and negotiating with other role players in the economy to accommodate the traders. This could include actions such as negotiating with banks to relax some of their conditions for traders, and discussions on government incentive programmes to create funding and training for traders. The metro can establish a fund to assist the activities of traders. The capitalisation process can assist traders to obtain bank loans. Strategies to integrate the traders into the overall economy must be explored.

- **Develop a policy approach to foreign traders**

There is no clear strategy on to how to address foreign traders. Although many of them had no licences at the time of the research, there is a need for the metro and other spheres of government to identify ways to accommodate the foreign traders instead of ignoring them because they are contributing to the economy. The DTI's strategy mentions them and it makes a point about their skills and capacity, but does not go further to determine how they should be prioritised in the economy. The strategy recognises that there are lessons that can be learned from the foreign traders on doing business, which the local traders can benefit from. The foreign traders should be recognised and properly integrated into the local economy.

- **Prioritise the licensing situation**

The licensing issue has caused many difficulties for traders in the Pretoria area. It is responsible for the metro police harassment and for traders operating illegally. The suspension of licences was initiated by the metro. The licensing situation must be resolved to ensure a secure environment for the traders. The cost of the licences can also be considered – the cost can be lowered to assist in reducing costs for traders. The metro must prioritise the licensing system and create certainty for traders. It has made this commitment

to traders and the momentum of the relationship between the traders and the metro must not be stalled.

7.3 Limitations of the research

This section addresses the limitations of the research. The following issues were some of the limits of the study:

- The focus included business registration in terms of licensing, the activities of the traders, harassment, crime and the traders' access to the economy. Although De Soto also emphasises title deeds when it comes to property rights, the questions on property titles were limited only to ownership. The focus of the thesis was therefore on business registration by the traders and not so much on property registration and the status of the property of the traders. Both property and business ownership are important enablers to bring the poor into the economy. Title deeds and licences, which form part of property and business ownership respectively, served a similar purpose in the thesis, likewise the distinction between tangible and intangible assets which they both represent respectively. If the property rights can be addressed through property titling and made secure, the poor can be part of the economy in a sustainable manner. The thesis emphasised licensing of the traders as a way to be part of the mainstream economic system. A systematic and deliberate process of economic inclusion still needs to occur.
- The value of the assets (property owned) was not investigated further in actual rand values. The same applies to the stock and the actual amount of money made, and financial values were not investigated. When interviewed most of the traders did not have property but only the stock they were selling. However, the value of the stock was not investigated further. This would have given an indication of the financial profile of the traders based on their activities.

7.4 Areas of further research

The following are areas of further research that require consideration:

- **The status of title deeds of traders in South Africa and a review of the existing property market system**

  Further research should look at the status of property ownership of the poor in South Africa, in particular traders. Traders have informal arrangements when it comes to owning property, and many rely on government support in the form of RDP houses. It is important to take this work further and understand the extent of this phenomenon in South Africa. The second part of the study could investigate to what extent the existing property market accommodates the poor and what measures can be put in place to support them. The study would also determine whether the financial system could recognise the property of the poor as collateral.

- **The integration of the poor into the economic system (the property market, the credit market and the labour market)**

  Much has been said about integrating the poor into the economy. Practically speaking, how does that look? A study could be carried out to determine how the entire economic system could accommodate the poor who are currently in the informal economy.

- **The impact of removing the costs of doing business for traders**

  Traders face many costs in the daily operation of their activities. The impact of these costs must be studied and recommendations be made on how to ease their burden of doing business.

- **Pilot study of the capitalisation process in the South African context**

  The capitalisation process, which goes beyond property, can be addressed in its entirety and be studied to test its viability in South Africa beyond the research currently being done.

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APPENDIX: QUESTIONAIRE

The research instrument questions asked of the respondents:

Name of interviewer_____**Name of Interviewee**_____

Date_____ Location_____

1. How long have you been in business?

_____

_____

2. What are you selling?

_____

3. Is your business affected by crime? Please elaborate_____

_____

_____

4. How has crime affected your ability to do business?_____

_____

_____

5. How has crime affected your rights to your things?_____

_____

Yes		No	

6. Have you been harassed by the police?

Often		Sometimes	

7. How often has the harassment taken place?

8. Do the police do the following:

	Yes	No
Take your goods?		
Arrest you?		
Fine you?		

9. Has police harassment affected your business? How?_____
_____
_____

10. Can you apply for a loan at a bank?_____
_____

11. Do you have any relationship with banks?_____Yes_____No

12. If Yes, please elaborate the nature of the relationship (e.g have personal bank account)_____
_____

13. Are you able to access finance from friends and relatives?_____
_____
_____

14. Where do you get funding? Is it from banks, stokvels, family, or loan sharks?____

_____

_____

Yes	No

15. Do you own property?

16. Are you able to obtain support from government?_____

_____

_____

17. What kind of support have you received from the municipality (e.g. information, funding, business stalls)?_____

_____

_____

18. What kind of support would you prefer from government?_____

_____

_____

19. If loan sharks, what is the amount of interest charged, is it high?_____

_____

_____

20. Which by-laws affect your business the most?_____

_____

_____

21. Is your business registered? _____Yes_____No

22. Was it easy to register your business?_____

_____

_____

23. Do you think your business is illegal?_____

_____

_____

24. If yes, what stops you from becoming legal?_____

_____

_____

Please share the rights you would like to have to successfully run your business_____

_____

_____