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**Commercial Justice System  
Modernization Program**

**Final Report**

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## **I. Executive Summary**

From August 2003 to August 2005, the Commercial Justice System Modernization Program worked to improve the normative framework of the commercial justice system and not only establish the country's first commercial courts, but also lay the foundation for the successful functioning of these courts. These two years were marked with numerous achievements, many of which are easily verifiable through tangible results.

IRIS's Commercial Justice System Modernization Program was organized into two components. The first of these components sought to modify the legal framework to support commercial justice reforms. IRIS worked with counterparts primarily to improve the inefficient system of enforcing court decisions and to develop a new corporate law (called "La Ley de Empresariado" in Spanish). By the end of the project, IRIS had substantially developed the technical issues surrounding the enforcement issue and had begun a lobbying effort with a government entity that promotes small and medium size companies in an effort to better position the issue within the Peruvian landscape. IRIS advanced far more with the new corporate law. As the project closed, a draft corporate law was awaiting vote in Congress.

The second component of the Commercial Justice Sector Modernization Program required IRIS to improve the technical and management capacity of Judicial Branch counterparts to process commercial law cases in the Lima metropolitan area. Towards this end and most significantly, IRIS and Judicial Branch counterparts successfully established-thirteen commercial courts within the Superior Court of Lima. Eight of these courts were fully functional by the close of the project. The remaining courts will be functional within one month of the project's close. IRIS and the Superior Court of Lima worked closely to ensure that these eight functioning courts assumed the best practices possible to improve productivity and transparency. By the end of the project, these courts were already showing greater productivity and greater client satisfaction.

## **II. Activities, Accomplishments, and Analyses**

### **A. Component One: Modifying the Legal Framework to Support Commercial Justice Reforms**

#### **1. Enforcement**

##### **a. General Overview**

For litigants in Peru, obtaining a verdict is only part of the challenge. The process of trying to enforce the verdict is almost equal in length. A study of enforcement by The International Foundation for Election Systems assigned the blame for this on a series of factors that deal with the legal norms and culture that governs the enforcement process.

The establishment of the commercial courts created a window of opportunity for trying to improve the process of enforcing court decisions. No matter how efficient the new commercial courts prove to be in issuing decisions, their impact will be less than optimal if the structure that governs the execution of these decisions remains unchanged.

## **b. Activities and Accomplishments**

Assisted by the momentum generated by the creation of the commercial courts, IRIS established a working group that addressed current failures in the enforcement process. After a series of meetings, the judges, academics, and litigating attorneys that comprised the working group narrowed the focus to the roles that current procedures for notifications, appeals, and auctions play in the enforcement process, as well as the general "over-bureaucratization" of the process.

Armed with this input, IRIS contracted a consultant who outlined specific proposals in these four areas. Contemporaneously, IRIS identified a government entity with sufficient enough interest in the subject matter to assume leadership in promoting change. This entity, PROMPYME (Promoción de Pequeña y Mediana Empresa), is an office within the Ministry of Commerce.

The working group validated the specific proposals developed by the IRIS consultant, and IRIS carried out a workshop with PROMPYME near the close of the project to share these proposals and help them development a strategy.

## **c. Analysis**

The identification of PROMPYME and the transfer of technical knowledge to it regarding the enforcement process was probably the most important development in IRIS's work on enforcement. Prior to this, not one private entity or public institution expressed the level of interest necessary to assume leadership on this issue, and without an organization or institution providing leadership, there was little chance of initiating the sustainable process of promoting changes in the enforcement process.

# **2. Corporate Law**

## **a. General Overview**

In 1902, the Commercial Code entered into effect. This code governed commercial transactions between companies and between individual persons. Gradually, significant portions of this code were removed, modified, and made into stand-alone codes outside of the Commercial Code. Currently, the Commercial Code consists of only four sections.

What remained of the 1902 Commercial Code in 2005 is insufficient to address the complexities of the modern business environment. The worth of today's companies consists of their tangible *and* intangible assets. Intangible assets are a company's reputation and know-how, elements that are difficult to quantify but are necessary to consider when considering the true value of the company. Unfortunately, the 1902 Commercial Code does not address the issue of intangible assets.

This deficiency has a practical consequence. Companies seeking capital are limited in the amount of capital they can obtain if their intangible assets are not considered by the loaning institution as part of the security for the loan. This logically limits economic growth.

If the legal norms provide a mechanism to capture the intangible assets of a company, it logically follows that the norms would provide greater incentive for small and medium-sized companies to formalize since such formalization would give them access to more capital than before, when loaning institutions only considered the value of their tangible assets.<sup>1</sup> This is the essence of the motivation behind creating a new corporate law.

### **b. Activities and Accomplishments**

IRIS provided technical assistance to the Justice and Human Rights Commission (hereinafter "the Justice Commission") of Congress in drafting "*La Ley de Empresariado*." IRIS and the sub-commission of the Justice Commission responsible for producing a draft law carried out three work meetings in Lima with representatives of justice sector institutions, the private sector, and academia to obtain feedback and recommendations on a draft law written by an IRIS consultant. On the heels of these three meetings, IRIS and the sub-commission sponsored two public audiences in Trujillo and Arequipa to ensure that input for the draft law included interested parties outside of Lima as well.

The sub-commission presented the draft of "*La Ley de Empresariado*" to the Justice Commission, which immediately approved the law and passed it to Congress in June 2005. The draft law includes the establishment of "el fondo empresarial," or the acknowledgment that the value of a company includes both its tangible and intangible assets, the regulation of the maintenance of accounting records a company, rights of companies, rights of consumers, and creation of a mechanism for limited liability of the officers of a company.

### **c. Analysis**

The aspiration behind this law of promoting greater formality of small and medium-sized companies will only be realized if loaning institutions buy-in to the concepts behind "el fondo empresarial" Once this law is passed, the Justice Commission needs to undertake a dissemination campaign within the banking community. The success of "*La Ley de Empresariado*" in providing incentives for small and medium-sized companies to formalize depend to a large extent on the response of the banks to this law.

## **B. Component Two: Improving Technical and Management Capacity to Process Commercial Cases in the Lima Metropolitan Area (covering the Superior Courts of Lima, Callao, and Cono Norte) a Focus on Supporting the Establishment of Specialized Court Capacity to Handle Commercial Cases**

### **1. Technical Assistance for the Supreme Court's Commercial Courts Commission**

#### **a. General overview**

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<sup>1</sup> Informal companies do not have access to the capital of loan institutions.

Following promises made by the Supreme Court president in 2003, the Executive Council of the Supreme Court (hereinafter "Executive Council") authorized the creation of the Commercial Courts Commission on February 4, 2004. The objective of this commission was to develop an implementation plan for the establishment of commercial courts within the Superior Court of Lima. Over the course of two months, it did exactly that. On March 19, 2004, the Commercial Courts Commission delivered an implementation plan to the Executive Council.

### **b. Activities and Accomplishments**

Throughout the planning phase for the commercial courts, IRIS provided technical assistance to the Commercial Courts Commission in defining legal issues surrounding the commercial courts, addressing human resources concerns, and determining the configuration of courts necessary to address the then-existing commercial law caseload in the civil courts in the Superior Court of Lima.

Soon after the inception of the commission, IRIS organized a workshop for the commission to assist it in defining the subject matter of commercial law. The commission's recommendations, which incorporated information gleaned from this workshop, were adopted by the Supreme Court in September 2004.

The determination of the subject matter of commercial law played a significant role in defining the profile of the commercial law judges. IRIS incorporated the commission's recommendations on the issue and worked with civil law judges and the Judicial Academy (hereinafter "AMAG," its acronym in Spanish) to flush out the details of the profile. Ultimately, this profile became the basis of training provided by AMAG (supported by IRIS) for commercial law judges.

Contemporaneously, IRIS carried out an inventory of thirteen civil trial courts and one appellate court in the Superior Court of Lima. The purpose of reviewing nearly 17,000 of the 90,000 commercial law cases was to understand the existing commercial law caseload in order to define the configuration of courts necessary to respond to the demand by users within the jurisdiction of the Superior Court of Lima and the rollout plan. Based on the IRIS inventory, the Commercial Courts Commission recommended the establishing of twenty-two trial courts and two appellate courts. In addition, it recommended a staggered implementation process consisting of three stages. In each stage, the Judicial Branch would establish eight courts. This recommendation was approved by the Executive Council.

### **c. Analysis**

The implementation plan presented by the Commercial Courts Commission presented a viable framework for making the commercial courts a reality. In addition, the president of the commission did a commendable job in ensuring that each of the Judicial Branch entities that would be involved in the establishment of the commercial courts was involved in the planning process.

IRIS's input was instrumental in both facilitating the definition of the subject matter of commercial law and in determining the scope of the commercial courts project. Prior to the establishment of the Commercial Courts Commission, there were at least five

proposals regarding the subject matter of commercial law circulating in the justice sector. With IRIS's urging and technical support, the commission carried out the workshop during which the justice sector actors and academics reached consensus on the nature of commercial law.

Perhaps even more significant was the role IRIS played in the Commercial Courts Commission's ultimate recommendation of the establishment of twenty-four commercial courts. This recommendation was directly tied to the results of the inventory carried out by IRIS. Prior to these results, the commission had intended to recommend the establishment of eight courts. But with the information provided by IRIS's inventory, it became clear that eight commercial courts would have been woefully insufficient to handle the commercial law caseload in the Superior Court of Lima. In the second year after installation, these eight courts would have inevitably been overwhelmed. As a result of the IRIS inventory, the commission recommended twenty-four courts, which if implemented, will be sufficient to absorb the commercial law caseload and provide a much greater possibility of success.

## **2. Technical and Financial Assistance in Establishing Commercial Trial and Appellate Courts in the Superior Court of Lima**

### **a. Overview**

Even before the Executive Council approved the implementation plan of the Commercial Courts Commission, the Technical Cabinet of the Supreme Court began investigating potential sites for the commercial courts. Following the Executive Council's approval on October 6, 2004, of the establishment of twenty-two trial courts and two appellate courts, it decided upon a locale in Miraflores as the site. Once decided, the Technical Cabinet began with the technical work necessary to prepare the building to receive the first module of seven trial courts and one appellate court. Several months later, the Judicial Branch carried out the necessary technical work to prepare an area in the locale for the addition of five more commercial trial courts.

### **b. Activities and Accomplishments**

In the implementation phase, IRIS assisted by carrying out an analysis of the physical factors affecting office efficiency, the infrastructure design in the locale, and needs of the judges and support personnel in order to develop an organizational design. This organizational design was semi-corporative in nature. This means that the individual courts shared some common services while retaining others within their own separate spheres. Specifically, the commercial courts share a pool of messengers who deliver notifications to litigating parties and share the intake table. But support personnel are not shared between the courts and instead work directly for each court. Ultimately, the Judicial Branch accepted nearly all of the recommendations in the IRIS office design.

IRIS provided quality control as the Judicial Branch carried out the technical work, and once it was completed, IRIS delivered \$407,000 of information technology equipment, furniture, office equipment, and a telephone switch. For the second phase, which began several months after the inauguration in April 2005, IRIS delivered \$163,000 of the same purchases (less the purchase of another telephone switch) to fully equip five

additional trial courts and expand the one already-existing appellate court. In all, IRIS equipped twelve trial courts and one appellate court.

### **c. Analysis**

Numerous delays plagued the establishment of the first eight courts. Among the most serious were delay in identifying the locale for the courts and the friction between the Technical Cabinet of the Supreme Court and the Superior Court of Lima.

These problems disappeared in the second phase implementation of five additional commercial trial courts because there was no further need to identify a locale and because of the improved chemistry between the various Judicial Branch entities involved. In addition, the involvement of a project manager by the Judicial Branch from the very beginning of the second phase played a significant role in expediting the implementation process.

## **3. Technical Assistance for the functioning Commercial Trial and Appellate Courts in the Superior Court of Lima**

### **a. Overview**

The provision of technical assistance by IRIS to the new commercial courts was systematic. Such assistance included training, dissemination, implementation of transparency mechanisms, establishment of administrative tools to help improve performance, improvements to the case-tracking system, promoting a space for dialogue amongst the new commercial law judges, and an initial survey of users.

### **b. Activities and Accomplishments**

The most important aspect of the new commercial courts is that of human resources. Recognizing this, IRIS contracted two respected institutions to provide in-depth training to the new commercial law judges and support personnel. The "Escuela de Administración de Negocios para Graduados" (hereinafter "ESAN," its initials in Spanish) carried out 108 hours of training for trial commercial trial and appellate court judges and for those civil judges who will nominated shortly to be new commercial judges. Training covered the gamut of commercial law as well ethics, management, information technology, and economics.

Contemporaneously, the "Instituto Peruano de Administración de Empresas" (hereinafter "IPAE," its initials in Spanish) carried out an identical amount of training for the \_\_\_ support personnel in the new courts. Training touched on such subjects as writing skills, file management and organization, time management, computer skills, and customer service.

IRIS complemented this training for judges by working with them to carry out "plenitos," or meetings where the commercial judges discussed legal issues to try to arrive at a consensus in application of the law. In the last few months of the project, IRIS supported the commercial law judges in carrying out one "plenito" every two to three weeks

Judicial Branch counterparts, wanting to maintain the momentum generated by the newness of the courts and the first-rate training, sought to establish monitoring and evaluation mechanisms to ensure that high standards for production and quality were met. Towards this end, IRIS carried out an inventory of civil courts in the Superior Court of Lima to establish a baseline for processing times. Against this baseline, the commercial courts can measure increases in production or improvement in case-processing times. Another tool for measuring improvements in case-processing time, as well as the quality of service provided, was the user surveys that IRIS carried out near the end of the project. In addition, IRIS provided technical assistance in the development of a monitoring and evaluation plan.

The opening that IRIS had with helping the commercial courts deliver a qualitatively improved service extended to the courts' standard operating procedures. IRIS studied the processes within the civil courts that had the heaviest commercial law caseload and identified a series of "best practices." IRIS then designed standard operating procedures for the commercial courts that reflected these best procedures, made adjustments to align the procedures with the staffing and information technology assets of the new commercial courts, and then validated the procedures with personnel from both the trial and appellate courts. Finally, IRIS assisted counterparts in carrying out internal training designed to train all commercial courts' staff on the procedures and a separate manual defining the functions of all support staff.

All of the above activities – training, the establishment of a baseline, "plenitos," a monitoring and evaluation plan, and the manuals of standard operating procedures – are geared towards improving the performance of the commercial courts. Equally important to the Judicial Branch counterparts involved in the courts was the transparency of these courts. Towards this end, IRIS developed a web site portal that permitted the public to access all trial and appellate court decisions of the commercial courts.

### **c. Analysis**

Counterparts in the Presidency of the Superior Court of Lima, the Administrative Office of the Judicial Branch, and the commercial courts provided unqualified support to activities designed to improve the operation and transparency of the first eight commercial courts. Both the president of the Superior Court of Lima, an initial critic of the courts, and the commercial appellate court's president adopted the IRIS vision of making the commercial courts the model of proper judicial administration, efficiency, and transparency.

IRIS's presence in the initial functioning of the courts was critical. It was also successful because it was coupled with strong leadership in the Judicial Branch. Almost immediately, the courts stood out in terms of their level of production and customer service, as indicated by the IRIS survey of commercial court users.

But the commercial courts were still in their embryonic stages by the close of IRIS's project. They still have sufficient time to mature and institutionalize good practices and procedures (for instance, ongoing training), but the window for this is limited. The presidency of the Superior Court of Lima will change hands at the end of 2006, and the Judicial Branch may create a new appellate court by the end of 2006 as well. In the

case of the former, the next Superior Court president may or may not share the same vision of the commercial courts as the current president; in the case of the latter, the new appellate court might dilute the authority of the one appellate court president. This is of little concern if the new appellate court president shares the current appellate court president's vision and has a desire to collaborate with the other appellate court, but it could be problematic if he or she does not.

#### **4. Technical Assistance to Superior Courts in Cono Norte and Callao in defining need for commercial courts**

IRIS channeled the bulk of its financial and technical assistance in establishing commercial courts to the Superior Court of Lima based on the Executive Council's approval for twenty-four courts within this jurisdiction. However, support in the commercial law realm was not just limited to the Superior Court of Lima; IRIS also began work with the Superior Courts of Cono Norte and Callao. Specifically, after both of these courts expressed interest, IRIS carried out an inventory of commercial law caseload in an effort to gauge the necessity of commercial courts within each of the Superior Courts. The commercial law caseload for civil courts in the Superior Court of Cono Norte registered 29.6%, the exact amount of the commercial law caseload in the civil courts of the Superior Court of Lima. The commercial law caseload in the Superior Court of Callao was slightly less at 26.1%.

Based on these results, the presidents of both courts petitioned the Executive Council for the creation of commercial law courts within their respective jurisdictions. These requests were still pending at the end of IRIS's project.

#### **5. Jurisprudential Predictability**

##### **a. General Overview**

Of the many serious challenges that the Judicial Branch has, perhaps one of the most disconcerting is the near absence of jurisprudential predictability. For the most part, the 25,000 cases that the Supreme Court decides every year have little relevance beyond the case and litigating parties at hand. In other words, the cases decided by the Supreme Court for the most part provide little guidance for other litigants not directly involved with the case decided.

The result is fragmented, inconsistent jurisprudence throughout the Judicial Branch. Similar cases in front of different courts – and even different tribunals within the same court – sometimes have completely different outcomes.

Laudably, this is slowly growing as a concern for the Supreme Court. In August 2004, Congress promulgated Legislative Decree 959, proposed by the Supreme Court, providing for the issuance of binding opinions by the Supreme Court. These opinions would bind lower courts to a certain interpretation of the law. In the case of conflicting binding opinions between different Supreme Court tribunals, this decree permits the Supreme Court, sitting *en banc*, to define which of the conflicting opinions will be binding on lower courts.

Since the decree promulgated in August 2004, two Supreme Court tribunals have produced fourteen binding opinions.

### **b. Activities and Accomplishments**

IRIS activities in this area have centered on a two-prong strategy. First, throughout the second phase of the project, IRIS periodically carried out presentations on jurisprudential predictability by international consultants that have been attended by more than three hundred justice sector actors in Lima, including all of the Supreme Court justices. The idea behind these presentations was to expose Peruvian justice sector actors to comparative experiences and highlight the benefits of jurisprudential predictability.

At the same time, IRIS produced a tangible product that has the potential to play a significant role in the development of jurisprudential predictability. This product – a search engine that had an attached database of nearly 25,000 Supreme Court opinions from 2002 – could be found at [www.pj.gob.pe/jurisprudencia](http://www.pj.gob.pe/jurisprudencia). The search engine identified specific Supreme Court opinions by a specific word or specific words in the text, by date, by case number, by Supreme Court tribunal, and by Supreme Court magistrate. The search engine could be used at no cost by those who enter the Judicial Branch's web site.

IRIS worked with the Technical Cabinet in 2004 in creating the search engine and preparing the database. However, the Technical Cabinet and the Supreme Court president made no effort to gather political support within the Supreme Court or even explain to the other Supreme Court justices what the search engine and the database entailed. This was left to IRIS following the close of the administration of the previous Supreme Court president at the end of 2004.

Throughout 2005, IRIS undertook a concerted campaign to gather support for this project. This was critical because the creation of the search engine and the accompanying database in no way guaranteed its sustainability. The Supreme Court president, the Executive Council, the Center of Investigations, and the Administrative Office of the Supreme Court collectively had to have the will to create the necessary procedures within the Supreme Court to ensure that each tribunal of the Supreme Court would add its opinions to the database on an ongoing basis.

As the culmination of its efforts, IRIS signed an agreement with the Supreme Court president in June 2005 detailing the mutual commitments each party assumed to make the search engine and the database sustainable. By the end of the project, IRIS fulfilled its commitments, and the Supreme Court was working to follow-through on its commitments

### **c. Analysis**

There were certain elements within the Supreme Court who initially did not agree with the concept of jurisprudential predictability. For these persons, this concept infringed on the concept of judicial independence. Thus, to minimize resistance to the search engine and database, IRIS sold this concept to the Supreme Court as more of a mechanism of transparency and less a tool to establish jurisprudential predictability. By

the end of the project, however, there seemed to be a growing consensus among the Supreme Court justices of the need for greater predictability.

The search engine and database are critical to establishing this predictability. First, it allows judges from inferior courts to access more easily the binding opinions issued by the Supreme Court. Second, and perhaps more importantly, it helps the Judicial Branch identify the legal areas where there were conflicts between Supreme Court tribunals or to what extent there existed gaps in Peruvian jurisprudence. Once identified, these areas could be the subject of “*Plenos Casatorios*,”<sup>2</sup> a tool that is experiencing increased use in the Judicial Branch.

Equally significant as the search engine and database were the Supreme Court’s own advances in establishing predictability through the fourteen binding opinions issued by the end of the project. These opinions represented a significant step forward for Supreme Court jurisprudence. Although these fourteen opinions represented a statistically insignificant part of the total production of the Supreme Court, they represented the possible beginning of a drastic shift in the culture of judges. Instead of having carte blanche to decide cases in the manner they saw fit (thus creating jurisprudential chaos), judges are going to have to follow guidance from the Supreme Court in deciding cases. This will result in a more standardized, consistent jurisprudence. This, in turn, will provide greater jurisprudential predictability.

## **5. Study of Feasibility of Commercial Dispute Resolution Mechanism Outside of Formal Justice System**

### **a. General Overview**

Through IRIS's Commercial Justice System Modernization Program, USAID took a significant step in improving the administration of justice in commercial law cases. However, there is a significant part of the population that would not resort to the formal justice system to resolve their commercial law disputes. In an effort to explore the possibilities of creating commercial dispute resolution mechanisms for those who would not resort to the Judicial Branch to resolve their disputes, IRIS proposed a study to determine the possibility of creating such a dispute resolution mechanism within municipal government.

### **b. Activities and Accomplishments**

IRIS carried out a study specifically focusing on the diverse municipalities of San Borja, Ate, and Lurín. The study, and the two later proposals that expanded upon this study, highlighted the need for a dispute resolution mechanism and the willingness of these municipal governments to explore the possibility of their creation.

### **c. Analysis**

As a result of this study, IRIS concluded that such a mechanism was indeed feasible. The cost of such a mechanism would be reasonable. And, perhaps most important for

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<sup>2</sup> “*Plenos Casatorios*” are formal gatherings of judges whose purpose is to arrive at a consensus in interpreting legal issues.

the successful operation of such a service, the municipal government would be able to enforce the rulings which resolve the dispute.

Conceptually then, a commercial dispute resolution mechanism located within a municipal government is a viable option for addressing disputes between businesspersons that would not use the formal justice system. However, its success would depend significantly on the municipality selected and the nature of the parties who are typically involved in disputes. If both parties are physically located within the municipal boundaries and there are some elements of formality to their respective businesses (i.e., they have licenses to operate from the municipality), then the municipality exercises some sort of authority over both parties – a factor essential to the enforcement of the rulings of the dispute resolution mechanism. If one of the parties is outside of the authority of the municipality (i.e., the party operates exclusively on an informal level or it is not physically located in within the municipal boundaries), then it will be difficult, if not impossible, to enforce these rulings.

### **III. Recommendations**

#### **A. Continued involvement in the support of existing and the development of new commercial courts.**

Apart from the promise that the commercial courts have of providing greater expertise in resolving commercial law conflicts, these courts also offer the model of a new way of doing business in the Judicial Branch. The commercial courts boast of competitively selected trial and appellate court judges; intensive training for both these judges and support personnel; routine bi-monthly meetings among the judges to develop standards for the treatment of specific commercial law issues; manuals of Internal Operative Procedures and Organization and Functions designed to increase efficiency in the routine processing of cases; the most modern information technology to enhance judicial production; a physical layout carefully planned to complement the distribution of human resources; and a dissemination plan ultimately geared towards firmly establishing transparency as an anchor of the courts.

But perhaps the most important asset that the commercial courts have now is leadership in the president of the Superior Court of Lima and the commercial appellate court president. Both judges have seized upon the idea of the commercial courts as a model for professionalism, efficiency, and transparency.

The courts themselves are in their embryonic stages. Through technical and financial assistance, IRIS has helped these counterparts take the initial steps in converting these courts into Judicial Branch trailblazers.

But these courts need continued technical and financial assistance to be fully capable of maintaining the initial high standards and operating on their own. Specifically, USAID should recommend and support the creation of a quality control office within the courts charged with the responsibility for establishing indicators for productivity and quality, designing systems to collect information concerning these indicators, and reviewing compliance with internal operating procedures. In addition, IRIS recommends exploring with the Judicial Academy ways to institutionalize basic training for support personnel and judges (especially important with judges given their

marketability in the private sector) and develop more advanced commercial law training for judges.

The strong leadership of the president of the Superior Court of Lima provides USAID a window for high-impact assistance until the end of the president's term in December 2006. USAID should take advantage of the political support provided by the Superior Court president as well as the shared vision that she and the appellate court president have. With continued support over the next fourteen months, USAID will be able to help these counterparts institutionalize the practices that will make the commercial courts a best practices model throughout the judiciary.

**B. Exercise caution in providing financial and technical assistance to the Superior Court of Cono Norte to establish commercial court.**

As a precursor to establishing a commercial court within the Superior Court of Cono Norte, IRIS carried out an inventory of the commercial law caseload in the civil courts within this jurisdiction. Although the results of the inventory showed that there was a need for a commercial court, IRIS recommends caution in working with this superior court. Although there seems to be substantial enthusiasm to improve the services they provide litigants and citizens, there is very little appreciation for a structured, comprehensive planning process. Twice within the past year, the Superior Court of Cono Norte publicized initiatives to provide internet access to case status and electronic notifications. These initiatives took place under two different presidents. Unfortunately, both failed. IRIS began working closely with the Superior Court of Lima on the issue of electronic notification. First, IRIS developed a work plan with the court that would have resulted in the creation of a sustainable, well-functioning product. But in the interest of time, the Superior Court of Cono Norte discarded the work plan and rushed to have a public presentation of the electronic notification system. Within weeks after the presentation, it began to fail.

**C. Provision of technical and financial assistance to PROMPYME (Promoción de Pequeña y Mediana Empresa) as it lobbies for legislative changes to improve the enforcement process.**

Throughout most of the project, the greatest challenge with IRIS's work with the issue of enforcement was finding a counterpart institution enthused enough to assume leadership on this issue. Towards the end of the project, IRIS identified PROMPYME, an office within the Ministry of Commerce, as the counterpart institution most interested in seeing legislative changes. IRIS recommends that USAID support PROMPYME as it begins to lobby Congress for normative changes to the enforcement process.

**D. Implement a pilot project commercial conflict resolution mechanism at the municipal level, but only after thorough analysis of the nature of the parties in a certain municipality who would be involved in commercial law disputes that could be addressed by the municipality.**

**IRIS recommends that USAID launch a pilot project to establish a commercial conflict resolution at the municipal level. However, IRIS recommends that this**

**only be done after studies that will serve to identify municipalities that satisfy the requisites of such a project.**

**E. Arbitration.**

Arbitration, although a viable alternative for resolving commercial law disputes, is underutilized in Peru. In an effort to promote its use, the Inter-American Development Bank has provided funding to the Ministry of Justice (hereinafter "MOJ").

**F. Close monitoring of the search engine and accompanying database provided by IRIS to the Judicial Branch.**

The Investigation Center of the Judicial Branch is the entity responsible for maintaining the database that is attached to the search engine updated. It has to make operational the process by which the Supreme Court tribunals send new decisions to the Investigation Center on a regular basis. This process is essential if the Investigation Center is to add these decisions on a regular basis to the database.

The linchpin for the success of this system is the director of the Investigation Center. This is of significant concern to IRIS. Although sufficiently motivated, the director lacks political weight and communication skills. Much of the collaboration of the Supreme Court tribunals in providing their opinions to the Investigation Center on a routine basis depends on the persuasive skills of the director. In addition, he needs to have an excellent relationship with the Administrative Office of the Judicial Branch, which will handle all technical aspects of this project on the web site. Unfortunately, this relationship is lacking.

IRIS supported the director as much as it could in trying to strengthen his relationships with the Supreme Court tribunals and the Administrative Office. In addition, IRIS rallied as much political support as it could for the search engine and database. Nevertheless, there was no guarantee by the end of the project of its sustainability. IRIS recommends that AID – and its next Rule of Law contractor – closely monitor the development of this activity. Should it not develop according to plan, IRIS further recommends that AID or the contractor raise its concerns with the president of the Supreme Court who signed an agreement clearly laying out the Supreme Court's responsibilities with regard to the sustainability of the project.

**G. Continued support to commercial law sub-specialty in establishing predictability.**

The recently established commercial courts have made a deliberate effort to standardize their jurisprudence. Once a month, judges from these courts have met to discuss issues where there is a divergence in opinion in an attempt to reach consensus. Not only is there currently momentum for doing this, the Inter-American Development Bank has committed funds to helping Judicial Branch counterparts design a methodology for carrying out "*Plenos Casatorios*" dealing with commercial law issues. IRIS recommends continued support for the commercial law judges in these efforts to develop and standardize their jurisprudence.