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**Informal Housing:**

**Steps to Integrate the Formal and  
Informal Sectors**

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Informal housing as a consequence of the inadequacy of law. The role the private sector must take to integrate both sectors.

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#### I. Current situation

Over the last four decades the urban space of Lima has grown 1,200% as a consequence of massive invasions, purchasing and preparation of land as well as the construction of houses in infringement of the law. Although this expansion has been basically generated by informal settlements<sup>1</sup> these settlements have obtained from the government, a legal system of exception to enable them to receive land title deeds however imposing certain limitations as concerns the free use of their right over a given period of time.

Of the total housing in Lima in 1982, 42.6% belonged to informal settlements, 49.2% to formal neighborhoods, and 8.2% to slum areas pocketed in formal neighborhoods, 47% of Lima's entire population is located in informal settlements, 45.7% in formal neighborhoods and 7.3% in slum areas.

In these neighborhoods the informals have generated great wealth adding value to the land and investing in the construction of their housing. In June 1984 the value of informal housing averaged 22,038 dollars per unit and the total value of housing located in informal settlements within Lima was assessed at 8 billion dollars.

During this same period of informal growth state investment in housing of comparable characteristics barely reached the amount of 173.6 million dollars. This is 2.1% of informal investment. Even if we were to consider the entire public investment in housing including that made in middle class areas, the figure scarcely reaches 10.4% of the informal investment.

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<sup>1</sup> informal settlements are to be understood as "all inhabited areas in Peru known as "pueblos jovenes", shantytowns, marginal neighborhoods, similar areas, popular urbanizations of social interest, (UPIS), reception areas, lodgings, informal settlements, marginal human settlements, municipal human settlements, associations and cooperatives."

Lima has been transformed into a populous metropolis, with new suburbs and a hard working people. The extensive deserts and sand dunes and immense areas of state owned barren lands which surround Lima, have gradually become neighborhoods called "pueblos jovenes" or "asentamientos populares", that is popular or informal settlements.

Rural migration to the city has obliged the urban population to reorganize itself. New activities have therefore appeared replacing old ones. The result, over 13,000 hectares illegally acquired through invasions of land lots by squatters or by illegal purchase of land in agricultural zones; numerous informal industries installed in these housings without any type of work permit or license whatsoever; street vendors selling all sorts of their wares in open markets; several microbus transportation lines invading the city routes. Thus, in the last decades the economic activities have considerably multiplied themselves in the capital, changing consumer patterns and the production of goods and services. Moreover, people in general are used to living without complying with the law.

Centralism, the great malady of our society, has been incapable to respond to the multiple needs of a country which is changing very rapidly, this incapacity is basically because of the current legal framework in force. Public faith has been lost as concerns the effectivity of the courts and the traditional mechanisms applied to respect the law. There is a general malaise concerning the "status quo" which has generated a gradual loss in the social enforcement of the law.

Under such conditions, Peruvians have been obliged to spend tedious hours in queues, filing questionnaires and processing formalities required by the state to obtain their authorizations, licences, permits, rights and privileges duly granted by law.

In the past and up to date, governments have mistakenly granted privileges to only a small sector of Peruvian society, thereby destroying the people's confidence in the law. This situation is obviously not only unjust and unethical, but also reeks of corruption and political favour.

Within this context Peruvian reality has changed much, particularly in Lima. Informality has increasingly gained its place and the state which once granted privileges to only a few has a tendency to gradually disappear.

On the same basis one can certainly understand that since the law was wrongfully enacted for a specific group of people having a greater access to power circles, the migrants themselves have begun to create their own extra-legal rules in disregard of the legal framework in force.

The peasants and their descendants soon discovered that they were numerous and that the state did not grant them the same privileges as the rest of the inhabitants of Lima. They realized that in view of the immense amount of obstacles that they had to overcome in order to be able to survive, they inevitably had to prosper not only out of the legal framework and "status quo" but against it.

From this it follows that they not only had to compete among themselves but also against the traditional system as well. It is within this context that informality appeared. To be able to live, sell their goods, produce, transport and even be consumers themselves, they had to create their own system of rules for survival. Therefore they have to use illegal means to develop and establish legal activities.

Provided the analysis of this issue from the housing viewpoint, we intend to demonstrate how the law has become incapable to adapt to change and in what manner the new settlements constructed by the informals are a physically real and successful coherent alternative upon which lie the foundations for a new order which will encompass all Peruvians.

This statement seeks to show that notwithstanding the apparent misery and injustice, there is hope. This hope is based on the creativity and force of Peruvians who through the perseverance of will power have constructed 8 billion dollars worth of housing without the help of the state, against the law and even in open defiance of the existant legal provisions.

## II. Costs of formality

Peruvians live in a costly society, in which formals and informals waste valuable resources. This situation is worsened in the face of the permanent legal instability which distracts an enormous amount of effort from productivity to be placed within the political arena to avoid the legal penalties and attain the acknowledgment of the extra-legal rights acquired.

In general, the causes for the lack of housing and informal purchasing have been determined in several factors such as the migrations, distribution of income, unemployment and even the weather. However, none of these factors can explain why the people chose to invade land to construct their houses, fill streets to sell their goods or take over routes to service transportation in a given area.

The real cause apparently seems to lie elsewhere since in the strict sense, informality is a response to the inefficiency of the legal system itself. The ILD has reviewed the legal framework to determine its influence on the individual decisions to chose either informality or formality. As can be observed, the ILD works confirm the importance of the Law as a determining factor of such a choice and as a conditioning factor in the efficiency of economic activities. In this sense we refer to "good" or "bad" laws, being a good law if it guarantees and facilitates such efficiency or a bad law if it hinders or totally impedes the same.

The legal aspect is an important factor which influences housing informality. However, current legal rules are inadequate since they actually foster invasions and other illegal ways to acquire ownership by discriminating formal access to housing through the endless mesh of specifications required, the time demanded to meet these and consequently the excessive waiting period involved in this process. Under such circumstances, the government is faced with an unpostponable reality, it has no alternative but to acknowledgment the human settlements and eventually legalize the ownership of the housings.

This only clarifies once again the decisive importance which the inadequate legal framework has in the generation of the informal problem. We may conclude therefore that the problem itself is created beforehand due to a lack of foresight of the government law making policy which should have definitely foreseen the situation and legalized the ownership in a direct manner, without forcing the inhabitants to use illegal methods, to in the long run have to undo prohibitions and eventually ratify after property.

The Housing Project has discovered that a determining factor in the development of informal settlements is legal safety. This statement is the result of a study on a settlement without legal safety in comparison to another which does have such safety. There has been proof that the difference in investment between one and the other is 9 times greater.

Informal housing has been traditionally considered the lowest income population sector and therefore has been dealt with in a paternalistic and over-regulated way. General belief had it that the Popular Settlements had the worst living conditions in comparison to the rest of the population. Several studies have shown that in those popular districts where there is a greater proportion of Informal Settlements than in formal areas, the number of owners is considerably larger than that of people who rent, the figures fluctuate between 89% and 99% of ownership. While in the formal areas of low income the proportion of ownership fluctuates between 28% and 40% of the inhabitants. In this same manner, the density can bear light as to the occupancy of the informal areas. Therefore in an Informal Settlement the average space per person is 25 sq.mt. and in an UPIS shows 18 sq.mt. and in slums barely 6 sq.mt per person. Housing built by the former government for middle income sectors have a density of 16 sq.mt. per person. Statistics show that the Informal Settlements offer larger conditions of habitability than other types of housing. Moreover the inhabitants of this type of dwelling possess a greater incentive to improve their housing privately owned, as compared to rented houses or slum areas.

It was thought that the inhabitants of Informal Settlements would not heavily invest in their housings, since they were the poorest segments of Lima. This has been a great misunderstanding since it overlooks the people's enthusiasm for work, effort and dynamism.

The economic studies have shown a surprising and unexpected investment in the informal housing sector which from 1960 to 1984 has reached the enormous figure of more than 8 billion dollars.

To understand this phenomenon of informality and its huge magnitude traditional explanations were usually sought: poverty, ignorance, migrations, unequal distribution of wealth, however it was never said that one of the basic causes for housing informality was precisely due to the difficulty, or better said, to the impossibility, which the popular classes face in their struggle for access to housing in the formal market. The studies have shown that the average period needed to acquire a house formally is no less than 80 months, that is nearly 7 years:

1. To follow a process of conveyance of land.
2. To obtain the authorization for land preparation.
3. To secure a construction permit.

The state has systematically applied the policy of imposing prerequisites to obtain authorization or approval of land preparation projects and construction permits through long drawn out procedures, cluttered with sophisticated technical standards which are not in keeping with our socio-economic reality. The housing project has reached the conclusion that many of the up-front regulations must be substituted by modalities of ex-post-facto revision. In this manner legal costs could be avoided, costs of transactions and the system of previous demands would be replaced by a system of affidavits in which the owner would assume the responsibility for harm and damages incurred in for breach of contract that is, what is sought is to substitute the up-front method for that of the out-come.

A person who, because of a lack of funds cannot buy a house already constructed or a plot of prepared land and is thereby unable to acquire the ownership of property on land without resorting to the trials and tribulations of an invasion, would have to request the conveyance of land by the state and comply with the legal entanglements which these procedures impose.

The system is evidently absurd and seems to be explicitly designed to subdue the strongest through endless denials, harassments and riddles. The ILD measured the amount of steps or administrative stages a person must take to obtain a piece of land from the state. The result: 207 steps before the transfer of a land from the state to particulars. As a consequence, invasions have almost substituted conveyance. So we can tell that invasions occur because of the 207 steps that the state has created as a burden to people who need a house. Several associations who have already began the labyrinth of red tape have had their land invaded while their land conveyance files are half way through the maze. This type of procedure is a clear stimulation for invasions.

A good example of such is a housing association with 183 members who had to spend 346,602 dollars for the entire process.

For each member the formality bore a heavy toll. Expenses for the formalities, monthly rent of the housing used during the process and the loss of purchasing power in relation to the construction material, which in each case obliged the member to spend 1,894 dollars. Furthermore, throughout the entire process someone has to occupy the lot or the members themselves would have to invade the land they have requested in view of the menace of others doing so.

Furthermore, after purchasing or obtaining the land very often formalities for land preparation must be effected lasting over 31 months.

To be able to construct whatever the location of the land, a previous construction permit is required and after conclusion of the works several other procedures must be concluded according to law. These procedures require an average of 12 months to be accomplished in full, which when added to the initial formalities of land conveyance and preparation can last up to 7 years.

Finally, the title deed of the construction must be obtained through a contract given by the constructor. To submit this contract to the Public Registry previous verification of dues to the Instituto Peruano de Seguridad Social (Peruvian Institute of Social Security) must be cleared as well as those concerning the affidavit of assessed valuation of real estate property and the invoice of payment for the tax on Predial Patrimonial Value. These last three requirements make that the title deed of construction actually be a screen test to prove fulfillment of duties unrelated to the legal acknowledgment of the construction itself.

The procedure becomes a weary and tiresome process.

Conclusion: Many owners do not have the title deed of construction.

Bearing in mind that each step of requirement is a must for the following one we consider that the true solution to the problem of access to legality necessarily requires a thorough simplification of all these burdensome formalities and the elimination of the double checking follow up mechanisms.

The ILD has prepared a proposal to simplify the formalities for construction permits and title deeds of construction based upon the following two principles:

- To assume the truth of the citizen.
- To eliminate formalities when the economic costs which they impose on society exceed the benefits they grant.

Through the construction of housing the inhabitants in informal settlements multiply the value of their land by 15.4. A good legislation would not only allow for a greater generation of wealth, but also that this in itself could finance other productive activities to obtain a greater productivity as well as an improved standard of living.

Major effects of the implications proposed.

A greater rhythm of economic activity. Since the owners would definitely strengthen their rights of ownership on real estate values, they would eventually invest more in these. Furthermore, this would facilitate the access to credit which would also generate a larger investment in other productive areas as well. The ILD has estimated that if 50,000 new owners per year are incorporated into this market they would invest 248.9 million additional dollars, equivalent to 18% of the total investment and double that of PETROPERU in the last year.

An improved overall well being by fostering an increase in economic activity and a greater security in the use of their property rights would also bring about the regularization of real estate property in general and a more harmonic action of the state as concerns the interests of private agents.

### III. Costs of informality and facilitating elements of law.

Informality also involves huge costs. Despite the fact that informals try to compensate for this through their own means, the extra-legal rules they apply are not sufficient. By determining the costs of informality the ILD has reversed a generalized pre-conceived idea. It soon discovered that by living against the law by avoiding the rules and regulations informals do not sustain a situation of net benefit and that informality is not precisely the best of worlds in which to live.

If the conveyance of land is so costly the only resource left by the 'status quo' is invasion. An invasion that may well provide immediate possession of the land but also demands considerable costs. The squatters must face violent clashes with the police force, exposure to contagious diseases, deplorable deaths, arrests and disappearances .

Moreover, the lack of land deeds impedes access to credit and this is why the construction of a house may take up to 8 full years with an investment of US\$58 per month. Having access to credit the construction would take one year and the loan could be repaid over a 19 year period through the amount of US\$32 monthly installments. This represents an additional cost for the informal inhabitant in favour of the status quo and the legislation which discriminates against this type of citizen. These are the costs of informality.

The importance of having ownership rights on occupied land is not only related to the investment with the backing of legal safety, but also as concerns the possibility to obtain credit (not usury) to finance these housings. It is not sufficient to grant land deeds but to further enable this sector of the population to have access to credit. In this respect, there is a need to free land deeds from the restrictions which impede taxing this property to thereby have access to formal credit.

The impossibility to mortgage the property because it is not legally recognized or because it is limited by "restrictive clauses" harnesses investment in other productive activities which could be undertaken by the inhabitants if they had credit and funds to finance them. The ILD has proved

that if credit were available in the equivalent of 20% of the value of a typical house in informal settlements, whose average value is estimated at US\$18,048, US\$3,610 could be obtained as financing over a one year period for each house, which could greatly aid the people in informal settlements who are currently obliged to resort to usurious credit which is evidently unadvantageous.

The absence of ownership rights furthermore restricts the possibility of sale in real estate values in informal settlements since it affects the lower market value of the informal owner as well as the legal uncertainty for the potential buyer. This therefore hampers the mobility of human resources and adversely affects the general well being in use of the fact that the inhabitant cannot adjust to eventual changes in the family structure. The transactions which are evidently carried out on real estate lack legal safety and generate an average of 20% of lawsuits in each Informal Settlement.

What actually happens is that due to the lack of land deeds urban development has been distorted and Peru has been divided into two sectors: Formal and informal.

The informals do not only suffer the consequences of illegality but are also affected because they lack the facilitating elements of law to guarantee and ensure the efficiency of their economic activities: That is they lack a good law.

As has been observed one of the greatest deficiencies in informal activity is the lack of those facilitating elements of law: property rights, contracts, access to torts which enhance economic and social activities.

The facilitating elements of law can reduce the uncertainty of the people who wish to invest their work of capital to develop the existing resources. No informal inhabitant will invest in housing if he is completely unprotected by legal safety. No street vendor will improve his working conditions if he is constantly menaced by eviction. No microbus driver will respect the order of his route if his rights are not acknowledged.

The main underlying idea of this proposal is that if the state provides good laws, it will enormously facilitate specialization and exchange enabling human resources and goods to be put to their highest value. An adequate system of property rights, contracts and torts can spontaneously generate the efficient use of resources without having the bureaucracy constantly butting in as to how and why each of these may and must be used. The citizens will have sufficient stimulation to produce an economic system with an extraordinary sensibility to detect the best opportunities for development.

The law itself is undoubtedly the best explication for the existence of informality. From this point of view the choice between working formally or informally is above all not the unescapable testing of certain cultural or ethnic groups, but rather a rational decision of each individual to determine the costs and benefits of integrating the current legal systems and their economic activities within this framework.

As De Soto's book "El Otro Sendero" (The Other Path) indicates, if we were to determine some of the advantages which the law has granted to modern market economy our statement could be clearly sustained. How much investment could the United States or Western Europe have done without well defined and assured property rights as well as a system of enforced contracts and torts as well as a good system of courts to protect their rights? How many innovations would they have done without the proper trademark and royalty registrations? How many goods or long term projects would they have achieved if they had lacked the assurance of solid contracts? How many risks would they have taken if they would have lacked a system of limited liability of insurance policies? How much capital would they have accrued if they would not have had the dependable guarantees?

How many resources would they have combined without the basis of legally recognized organized enterprises? How many times would they have gone bankrupt and began again if they could not convert their debt into shares? How many private businesses and institutions would have survived through generations if they could not count on systems for legal inheritance? Would they actually be industrialized nations without using scale economies? We sincerely believe that development is impossible without the efficient legal institutions the same for all citizens.

#### IV. Causes of cost in formality and informality: Redistributive tradition and mercantilism.

Following the statements contained in De Soto's book, "El Otro Sendero" we will go through what the ILD calls "redistributive tradition and mercantilism". We have proven the importance of the law in determining the efficiency of economic and social activities which it governs. We must now ask ourselves why in Peru bad laws predominate hampering this efficiency and restricting production while forcing a major portion of the country to work informally by imposing extremely elevated costs and absurdly complicated requirements to enter into formality.

Apparently, among those who formulate the law in our country there exists a tradition of using the law as an instrument to redistribute wealth and contrarily not to generate it. In this sense the law is basically seen as a mechanism allowing certain groups within the country to distribute a fixed stock of prosperity among themselves.

This redistributive tradition has caused Peruvian society, in which nearly all the strong circles of the country are grouped into political and economic organizations, to pursue as their main objective sufficient influence on decision making levels to capture this redistribution of wealth in their favour disregarding the general good. This competition to secure privileges through the production of certain laws has lead our society to become heavily politicized.

The fact remains that such groups interested in obtaining the rents<sup>2</sup> which the state can grant or transfer through the law or provide protection against, are the so called 'redistributive coalitions'. These appear not only in the traditional circles related to political activities, such as the parties, media communication networks or informal organizations, but also in the entrepreneurial associations and within each family as well.

These coalitions constantly struggle to ensure that the formulation of law does not harm their interests and quite on the contrary that whenever possible it may favour them directly. Consequently the Peruvian state operates nearly exclusively as a law giver with financial objectives and therefore, instead of growing into a "democracy in law" Peruvians live in 'a pressure group democracy'. Thus, in the case of enterprises, these direct their natural tendency towards competition in the direction of gaining adherence to power and bureaucratic circles therefore overlooking their true role to serve the consumer as best they can.

In this way, laws enacted with exclusively redistributive objectives do not favour either rich or poor, but solely those who are in a better position to organize themselves close to the power circles.

We must endure the results of a legal system which is generated out of redistributive transactions through the intervention of coalitions which gradually institutionalize laws enacted to favor certain groups. Therefore, the subject of the law is not the individual person but rather the successful coalition group.

Society soon discovers that the decision making policies on many issues are not taken by the politicians they have elected. In the midst of growing regulations and controls, the administration and effective power on decisions on such redistributive mechanisms slowly descends into the labyrinth of public administration until reaching the lowest levels of bureaucracy. On the one hand, these are the people who directly partake in such coalitions as concerns the daily application of the agreed laws while on the other hand they are also incredibly one of the poorest paid sectors of the country and therefore vulnerable to serve the highest bidder.

Thus Peruvian society today confronts an institutional system which is particularly rigid and difficult to change. The laws enacted as a consequence of a redistributive pact between the state and a coalition group establish a law which gradually become untouchable.

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<sup>2</sup> As concerns this presentation whenever referring to rents it is to be considered as a favour or income obtained from the state and does not imply a specific productive amount, but rather a temporary privilege which is not in payment of a productive counterpart.

Our Law does not seek to adjust the necessary regulations to ensure and definit the rights and obligations to protect property and foster the transactions of everyone, because it does not respond to the concern of creating institutions to produce wealth, but rather is ruled by an obsession to directly administer the daily occurrences. In this manner, there is apparently no true intention of opening the legal institutions for the marginal population.

In a country where the law can be bought, in which both the left wing and right wing parties accept that it is the prerogative of the state to regulate the legislate every tiny detail and in which a false ethics of distributive justice has ignored and forgotten the ethics of a productive justice, there are no firm property rights, no legal incentive for the creation of wealth and the government inevitably become unstable and anarchic.

Another cause why our countries are burdened by the costs of formality and informality aside from the redistributive tradition, is mercantilism, as "El Otro Sendero" describes. "Mercantilism" is the name given to economic policies which spread throughout Europe in the HV to HIH centuries. It is based on the belief that the economic well being of the state can only be ensured through government regulation of a nationalistic nature. It also involves supply and demand of monopolistic privileges using the state's structure .

Basically, mercantilism means an administered economic policy, whose economic agents were bound by a specific and detailed regulation. The state would reserve the exclusive right to indicate and promote those economic activities it considered convenient and would prohibit or discourage those not considered desirable. To attain its objectives, the mercantilistic state would grant privileges to favoured producers and consumers by means of regulations, subsidies, taxes and permits.

Nonwithstanding the fact that the mercantilistic governors considered that the new prosperity should strengthen the nation, their real attention was placed on the power of the state as a decisive factor. However, since those who produced wealth were not the governors themselves but rather the entrepreneurs authorized by them, it so happened that the latter also acquired a great amount of power. An important portion of the literature about mercantilism of this time gathered arguments in favour of the particular or created interests. The influence of the merchants gave the name "mercantilism" to the policy carried out by the governments of that age.

As in Peru today, during mercantilism in Europe, there were excessive regulations. The regulations which privileged certain activities become increasingly intricate, including endless technical specifications to protect certain industries thus bringing the number of regulations in mercantile nations to uncontrollable sizes. This tendency got completely out of hand with the appearance of mercantilism and its manifestations.

As can be seen, the European mercantilism and the system of redistributive law of the Peruvian state bear a great resemblance. They both share, to a lesser or greater degree, characteristics such as the authoritative production of the law, an economic system directly intervened by the state, cumbersome regulations, detailed and "directed" economies, difficult or impossible access

to the firm by those who do not have close links with government officials, stuffed bureaucracies and a citizenship which in many cases is forced to organize itself in redistributive coalitions and powerful associations.

Due to its inefficiency mercantilism gradually disappeared in Europe. The mercantile countries apart from becoming more and more poor, provoked citizens to clash against each other and thus their social structure became increasingly deteriorated to the point that, either by evolution or through revolution, the European mercantile nations gradually disappeared.

Then as today, the rigidity of the institutions and the excessive constraints and administrative confusion impeded the formal private or public sector living in the cities to create enough work posts at the required rate to absorb the peasants who migrated from the fields. Thus the informal sectors rapidly grew all over Europe: street vendors invaded the side walks, contraband and clandestine products broke into the market the illegal suburbs flourished on the cities outskirts. The informal activity was easily extended and soon clashes with the public authorities became an every day scene.

To respect the law, the state already had several formally established associations which helped it to detect the transgressors. However, since instead of adjusting the laws to integrate the informals the authorities did just the contrary, they clamped down harsher on these. This brought about that many who would have wished to enter or maintain themselves within informal industries finally migrated to the suburbs, the informal settlements of those days.

Some informals prospered so much that through political pressure and bribes they gradually conquered the right to accede to formally established enterprises.

Thereafter due to their competitiveness and aggressiveness, the informals began to undermine the foundations of the mercantile order since they considered the authorities as enemies. Mistakenly the state instead of absorbing them, outlawed and persecuted them therefore hampering progress and creating an even greater uneasiness which eventually broke out into violent manifestations, the most famous being the French and Russian revolutions.

Mercantilism of the major countries in Western Europe finally caved in during the end of the HH and the beginning of the HH centuries, when the contradictions of a system which was evidently incapable of governing a more complex society inhabiting large cities finally reached its limit.

The countries that reduced their costs of transaction and assumed rules freeing the use of their citizens' creative energies, facilitated the interdependency and specialization of each, opened the access to property and entrepreneurial initiative, loosened the shackles created by an excessive legal system and allowed a continuous and more direct participation in government and the formulation of law, actually changed the paths of their economic market systems towards one bearing much less violence and a maximum well being.

The good law granted and articulated the political, economic and social liberties which in turn, spurred competition and the possibility to compare

alternatives and the control of abuse of varying sources. The discretion of the bureaucracy was reduced and law and economic activities were de-politized, therefore diminishing the power of redistributive coalitions, corruption and discouragement. By adapting the law to a heterogeneous and pluralist society, through a wide spread an popular entrepreneurship, with a rapid paced economy of technological evolution, helped the economy and the state itself to recuperate their social "raison d'etre". This change finally could decrease informality, control the violence and considerably and gradually restore confidence.

In conclusion, those countries which have changed their institutions in time and adjusted their laws to reality were able to more or less peacefully change their economic systems to market economies and attain high levels of prosperity. Those who resisted such change have been smitten with great waves of turmoil and violence, civil wars, political adventures, pseudo-revolutions and continuous strife.

The alarming side of institutional chaos and violence as a period of transition is that in the outcome there is a complete loss of peaceful and democratic control. In practically all these cases the immediate response has been repression and long term consequences have not depended on the popular and democratic will, but on the convictions or conveniences of the leader and the conspiracies of those who in the midst of such commotion can maneuver their way into the power circles.

The European example has shown us that a decadent mercantile system which opposes an adequate institutional change is on the threshold of violence and disarray. Through repressive measures and much suffering the final outcome can be delayed. However sooner or later the contradictions must probably be resolved through a communist dictatorship or the cohabitation in a democratic system and a market economy.

Peruvian mercantilism is decadent and our legal institutions are in crisis as a result of having lost the social importance vis-a-vis the surge of informality which persuades practically every bread winning activity. As concerns housing for example, the officials have had to grant a legal set of rules specifically for informal settlements.

The problem today is not that the formal institutions should or should no incorporate the informals due to humanitarian reasons, but rather if this can be accomplished in time to avoid that the representative democracy become violently destroyed. In fact, all evidence gathered up to date shows that there are two rebellious movements who question the mercantile state: the first is massive but pacific and gathered by the informals; the second although isolated but cruel has been organized by subversive groups, particularly by the Peruvian Communist Party, called "The Shining Path".

In view of this informal revolution, Peruvian mercantilism already bears certain historic indications which can lead to its fall: massive disobedience of the legal regulations, the foundation of an incipient market economy and anarchy all of which are the consequence of applying the law to bureaucratic favouritism.

Nonwithstanding, although the basic elements of an economic and social revolution are already present, it is also evidence that the legal institutions continue to be mercantile. Access to private enterprise is difficult for the popular classes, there is an overcrowded and excessive legislation for each issue, bureaucracy has reached staggering dimensions, the redistributive coalitions influence the formulation of law and state intervention is adamantly present in all activities.

The powers which tradition and the legal system grant to our governors endow them with practically absolute authority on all economic and social activities. It is hard to think of a case in which ownership or transaction rights is not arbitrarily transgressed by the state, to such a point that we may even affirm that in Peru there has never been ownership, but only usufruct.

However beyond all this harm, the vast majority of the population shares an attitude, the wish to overcome poverty and be successful.

Competitive entrepreneurs, formal or informal, are a new culture. They have rejected dependency as proposed by the politicians and have summoned up all their energies to combine exchangeable resources based on productive work, conscious of the fact that prosperity comes from knowing how to handle resources not hoard them.

In this context, the challenge which Peru faces is clear. How can we avoid continuously frustrating the informal energies through a cumbersome legal system? How can we spread throughout the country the vitality, perseverance and hope of the upcoming entrepreneur?

The answer lies in a change of the legal institutions to cheapen the costs of producing and to reach better standards of living. By giving access to everyone and integrating them into the economic and social activity they will compete under conditions of equality in a modern market economy, which up to date is the only known formula to achieve development based on a wide range entrepreneurship.

#### V. Necessary integration.

It is therefore of utmost importance to determine where this entrepreneurial energy must be placed. If the entrepreneurial activity is stubbornly reserved by a chosen group of people, then this will continue in a mercantile economy. If this energy is captured by a state technocracy then we will have state capitalism, that is a collective regime. But if each citizen can truly become an entrepreneur, then we will have an authentic democratic economy.

The informals have begun a reform of the 'status quo' indicating the path which the legal institutions should follow if they are to adjust to the new circumstances and recover their social standing. This is why there is a need to refer to the extra-legal regulations which are respected by the majority at large.

The challenge consists in adapting a legal and institutional system in accordance with the new reality to allow for an orderly behaviour of a spontaneous economy coming from the people. This would enable both formal

entrepreneurs and businessmen to produce under conditions of competitiveness and to transfer to certain individuals those responsibilities and initiatives which the state has monopolized unsuccessfully.

As a first step formals and informals should be joined under one sole legal economic system with no discrimination so that the entire population may fully use its creative energy.

For this purpose it is necessary to pinpoint the most urgent problems of the country, determine which are the legal institutions who open access to opportunities for everyone in the most effective manner, select those which foster the entrepreneurial qualities needed to create wealth, and to define which allow the best coordination of individuals and the management of resources.

To this end, the extra-legal regulations are telling us what the Peruvians seek. In the first place, to secure their property rights, give them trustworthiness of their transactions and the security of their activities. In other words to provide them with the facilitating elements of law which they are now denied. In the second place, to strenuously avoid whenever possible the snares of excessive legal formalities and, thirdly, to try to substitute the state by informal and private organizations in many areas. Consequently, any program which attempts to integrate the country will necessarily have to simplify and decentralize the public offices, and lastly, de-regulate or de-politicize, the national productive mainstream.

The other means to adjust the law to reality is to be deeply aware of the laws to be enacted in the future to thereby avoid repeating the same historic errors.

This is why it is absolutely necessary that the manner in which the law is produced oblige the governors to justify the provisions they intend to issue, verify that these are effectively required, and that the benefits exceed their potential cost.

A system of democratic production of law can respect, integrate and be inspired in the rules and good practice which formals and informals spontaneously generate. This would ensure that the law is always in keeping with reality and the needs and ideals of Peruvians.

To be able to bring about the democratization of the law in an efficient way, at least two of the essential requirements which make up the infrastructure of the system must be fulfilled: the publication of projects concerning regulations and a benefit-cost analysis.

We are convinced that there is an enormous amount of productive human resources in Peru which daily manifests its incredibly powerful inventiveness since it is definitely overcoming centuries of mercantilistic oppression.

We furthermore believe that inasmuch as the importance of the law is fully understood we will discover that the true problem does not reside in informality itself but rather in formality.

We urgently need to dismiss of once and for all the prejudices which belittle informals and taunt us to believe that due to racial or cultural origins of our peoples we are "different" and do not have equal capacity to make good use of freedom and the market economy system.

Should some of our thesis be confirmed, we will then have begun to tread another path. A path leading us away from violence as the solution to disorder, poverty and desperation which such mercantilism induces. A path in which legal institutionalality will be in keeping with our reality and assimilate the social and economic forces which are flourishing. A path joining all Peruvians who do not believe in class struggle but in voluntary exchange and cooperation.

The true remedy against violence and poverty is to acknowledge the property and work of those shunned by formality, in such a way that wherever there is the seed of rebellion, a sense of ownership and responsibility will rise in its stance instead. Thus, where the spirit and taste for independence and faith in self-reliance has already sprouted a true hope for liberty will spread in the people throughout the land.

Proposal for Access to Formal Credit

#### OBJECTIVE OF THE ORIGINAL PROPOSAL

The main objective of this proposal is to:

1. Offer legal safety to the inhabitants of informal settlements on the possession of their land and the property of their constructions, in view of the fact that they are unable to obtain land deeds from the state, (a 20 year average) and consequently can not offer their real estate assets (8 billion dollars worth) as real estate guarantee.

For this reason we consider that there is a need to:

1. Create a private registry to inscribe the possession of land plots (which in accordance with the Civil Code can not be inscribed in the Property Registry), so to enable the owners to finance their mortgage credits.
2. To create an insurance credit system to provide financemnt through real estate guarantee.

The project has accomplished all its pre-established objectives.

#### Description of the Proposal

This project has created a system to provide the "informals" with the facilitating elements of law and has simplified some legal provisions applied to "formals", with the aim of integrating both groups and creating the necessary links so that these and society as a whole may benefit from the proposed system.

To invest, since in credit applications basically two things are required: legal safety and creditworthiness.

The weak spot of the informals is their insecurity. By comparing them to the formals we can mention two distinct levels of insecurity:

I. Insecurity in the possession of their plots. While one person has a land and property deed, duly registered in the Registry of Real Estate Property, he is assured of his ownership rights and he will invest in this asset (investment is 9 times greater when backed by legal safety) and transactions may be solidly effected. The owner may furthermore sign a declaration of ownership and all the attributes conferred upon him by the law, particularly that which allows him to mortgage his property prior registration of same.

As concerns the informals, despite having invested the equivalent of 8 billion dollars at replacement value, in their housing, they could have actually invested much more if they would have legal safety. At present they do not have the certainty that the house is truly theirs and this is why they do not invest more, they can not effect transactions safely and finally since their house is not registered they can not mortgage it as backing for credit.

Therefore: the ILD has created a Special Registry of possession in which land and property may be registered jointly with a mortgage specially designed for this system which since it is backed on the possession of a plot is called "Possessory Mortgage".

II. The insecurity and lack of confidence of the market agents in the activities they undertake. While the "formals" have officially registered businesses, their income is easily calculable and the system has confidence in them since they have duly fulfilled all the legal provisions and requirements for the lawful establishment of their enterprises. Informals cannot provide proof of their income levels, they do not have commercial references, their income is not necessarily a stable monthly or permanent amount, and they are therefore not considered apt for credit. The informals are forced to resort to usurious credit or special loans granted by the government which have a ceiling. (60% man/hours worked by the informals.)

Therefore: The ILD has created the "credit insurance" which can operate in virtue of the "Special Registry" and the "Possessory Mortgage". How does this Credit Insurance operate? In case of unfulfillment between the debtor and the credit institution the insurance Company agrees to pay the credit which a person owes to a financial entity in exchange of the following:

1. Payment of a premium.
2. In the case of informal settlements that lack title deeds, the "Possessory Mortgage" or in the case of people who have a legal deed the traditional mortgage.

Thus through the creation of these three facilitating instruments or law: "credit insurance", "special registry" and "possessory mortgage", legal safety is granted to people who lack such and the doors for credit are opened

through real estate guarantee, thereby fostering an economic reactivation by placing a higher value for the use of the 8 billion dollars invested in housing which could be used as a backing for real estate guarantee.

#### BENEFITS OF THE PROPOSAL

The figures are very conservative, since they do not include the possibility of people who work informally but who do not live in informal settlements. The calculations made solely refer to those people who live in popular settlements, and who according to surveys, gain over 2 minimal basic salaries per month.

Thus, 80,000 informals are allowed into this system who could eventually receive 61 million dollars. The effective annual rate is approximately a fifth part of the rate currently in force in the informal capital market (usurers).

This system could attract less than 2% of the total credit awarded yearly to the formal sector through the financial system.

The system of loans granted in 1986 to the informals through government programs (IDESI, FOFISI) only amounts to 5.92% of the total yearly transferred by the aforementioned system. The system which the ILD proposes benefits 4.65 times more borrowers and the average loans granted would be 4 times greater than those given by the government.

## RESEARCH RECOMMENDATIONS AND ACTIVITIES IN ILD'S HOUSING SECTOR

### I.- BACKGROUND

The housing team of ILD, as mentioned in previously presented advance reports, has attained, through research carried out over the last few years, confirmation of the fact that the informality affecting popular settlements and housing in general, is mainly the product of the unsuitability of the legal framework to the reality it intends to govern.

Faced with the said confirmation, the housing team of ILD proceeded to analyze which are the main problems affecting the access to urban land, to start with, and in what way property rights fail to offer sufficient legal security to allow investment in housing.

The projects in the housing sector were reorganised and given priority as a result of the elaboration of the integral plan. The integral plan for housing is made up of 9 units, directed to overcome, first of all, those legal aspects that, in one way or another, limit access to formality in housing; in such a way that access to the latter, through ownership or rental, will not be discriminatory and will be within the means of the popular classes. At the same time, the intention is to create such mechanisms as will permit adjusting the law to the reality, in order to gradually shorten the existing gap between informality and the legal institutions.

In this sense the housing project intends to:

- Reduce the cost of formality
- Reduce the cost of informality
- Provide, from the body of laws, the expeditious instruments required by informals in order to develop their activities with greater economic efficiency (property, contracts and access to credit, basically).
- Take in, from the extra-legal regulations established by popular organizations, all those elements of law that can optimize their activity.

Towards this, projects in the housing sector are divided as follows:

-Those that reduce the cost of formality:

- a) To enter upon housing ownership:
  1. Adjudication
  2. Urban land development
  3. Building permit and construction title deed

4. Technical regulations and standards

b) To enter upon housing possession:

5. Control of rent and tenancy

-Those that offer the expeditious instruments from the body of laws and reduce the costs of informality:

6. The awarding of title-deeds. (titling)

7. Corporate ways of acquiring housing.

8. Legal security in housing and access to credit with real estate warranty.

-Those that take in extra-legal decisions:

9. Neighbourhood organizations.

All these projects require follow-up and monitoring of housing matters within the scope of the ILD - designed, private "peoples' defense" institution known as "El Balcón de Todos" (A Balcony for All); as well as diffusion, on both national and international scales, of the range of our proposals provided that these are applicable to other similar realities.

For the time being and according to the original programme, the housing team is still devoted to the execution and continuation of the following studies, which also have a place within the general objectives of the integral plan.

1. Adjudication

2. Awarding of title - deeds (titling)

3. Technical standards regulations

4. Leasehold: the housing rental market.

5. Initiation and pilot plan of the LEGAL SECURITY IN HOUSING AND ACCESS TO CREDIT WITH REAL ESTATE WARRANTY PROJECT.

## II. RESEARCH

### 1. ADJUDICATION OF STATE - OWNED LAND

#### 1.1. Objective:

To actually make legal access to State - owned land possible, with drastic reductions on the required procedures for the acquisition of the land, a process lasting over 3 years and 7 months, at present, and requiring 207 administrative steps.

## 1.2. Advance:

There is a preliminary version of a legal proposal for the adjudication of State - owned land. Over this period, the housing project has studied those topics related to urban expansion and to competition between the various governmental entities; that which specifically concerns intervention on the part of the Central Government in matters that, according to the Political Constitution of Perú itself, are solely of the competence of Local Governments.

The preliminary proposal is based on the principles of administrative simplification, de-regulation and decentralisation, all of them, principles necessary in order to optimize the applicability of any legal reform.

The possibility of land adjudication simultaneous with the constitution of a mortgage on the latter, so that the beneficiaries can build their dwellings in a shorter period of time, has been analyzed exhaustively. Credit award with mortgage security can be facilitated through utilisation of the ILD - elaborated study: "Legal Security in Housing and Access to Credit with Real Estate Warranty", which, among other things, would allow the utilisation of a Credit Insurance, which would be backed itself by the land adjudicated.

The housing team believes that the adjudication must go hand in hand with access to credit, as these are the two major problems affecting the popular classes; who have no alternative but to invade, in the lack of effective legal procedures for access to land, and to build by means of very long and expensive construction processes that excessively increase the cost of informality.

As a result of all that has been previously stated, the necessary trips and contacts have been made in order to collect the experience of other Latin American countries that face very similar problems to the ones of our country, as is, concretely, the case with Colombia. In that country, in the city of Cali, a special project is being carried out: the Aguablanca Project, by which State - owned land has been granted to private persons with the financing of the Banco Central Hipotecario of Colombia.

The final version of the legislative proposal is still to be elaborated, after carrying out a cost - benefit analysis of it, which will be contained in an economic report (ABIF) - Análisis en Beneficio del Interés Público (analysis in the Benefit of Public Interest)-. The law proposal will be subjected to popular consultation through the holding of

Public Hearings and all other diffusion mechanisms the housing team has access to, for instance, popular editions of the law project and simple explanations of its objectives and advantages.

## **2. AWARDING OF TITLE - DEEDS. (Titling)**

### **2.1. Objective:**

To facilitate the entering into housing legality of the human settlements where 42% of all dwellings of the City of Lima have been built, giving shelter to 47% of the population of this city, and the cost of which, at reinstatement prices, according to the latest estimates of the ILD, comes to 8,948 million dollars.

The simplification of the existing procedure of the awarding of title - deeds is what is being sought after, then, according to the contents of the Recognition and Awarding of Title - deeds of Human Settlements law-proposal elaborated by the ILD housing team and presented to public opinion in June 1986.

The intention is, likewise, to carry out a close monitoring of the awarding of title-deeds procedure in practice at present by application of the last awarding of title - deeds law promulgated by Congress, Law 24513, in answer to the proposal and campaign, as a whole, carried out by ILD; in order to denounce any irregularity affecting the right of these settlers to a firm and clear property right.

### **2.2. Advance:**

Advice in matters of the awarding of title-deeds is still being offered to the population living in human settlements, within the scope of the peoples' defense private mechanism created by ILD, "EL BALCON DE TODOS". This mechanism was created by popular mandate bestowed upon ILD by representatives of 180,000 inhabitants of popular settlements, at the Public Hearing called by the Institute to debate the Recognition and Awarding of Title-deeds Law-proposal, elaborated by the housing team of ILD, and specific awarding of title - deeds problems arising as a consequence of the promulgation of the Law of Awarding of Title deeds, No 24513, the result of intense campaigning by ILD to obtain the awarding of title-deeds of the inhabitants of young settlements (pueblos jóvenes).

Public Hearings are held, direct advice is given through finding answers for specific inquiries and through direct

dealing with the leaders of popular settlements, in order to ensure the fulfilment of the object of "El Balcón de Todos". The present mechanism also performs a role in the monitoring and follow-up of housing matters by widespread presentation of the great problems weighing upon the population, especially those related to the awarding of title-deeds, and by denouncing the lack of response of the Authorities concerning their solution.

Over the past few months the housing team of ILD has been offering direct advice to different inhabitants of human settlements in Lima and provinces, specially to "Bocanegra" Human Settlement, composed by 4,900 families, that having, nevertheless squatted the land more than two years ago, are still without the longed - for deed of ownership.

A survey is, likewise, being conducted with the purpose of bringing up to date the information pertaining to the legal state of popular settlements at present, within the scope of the awarding of title-deeds procedure, as well as to find out the situation of the said settlements with relation to the basic services they have, for example, water, electricity or sewage.

This information will be a tool of paramount importance in denouncing the failure to award deeds of ownership for plots of land to people who live in the "pueblos jóvenes" - it has been estimated that approximately, more than 70% of the plots in popular settlements, do not have deeds of ownership.

Once all the required information is available, the housing team will be able to publish the situation, so that, in this way, the voices of the inhabitants of popular settlements may find in "El Balcón de Todos", a suitable channel through which they can present their problems, complaints, suggestions and alternatives.

We are sure that, just as it has happened on previous occasions, the Government will listen and attend to the needs of the people and will take the required steps towards offering solution to the problems stated.

### **3. TECHNICAL REGULATIONS OR TECHNICAL STANDARDS.**

#### **3.1. Objective:**

To propose a cost - benefit study of all existing technical regulations and standards especially those contained in the National Code for Construction in order to eliminate the obstacles that hinder the access to formality. It is a question of elaborating a new code for construction, de-regulated and simplified in agreement with the

requirements of the population, leaving aside those requisites that, due to their high costs, are difficult to meet.

### 3.2. Advances:

With respect to technical regulations, and standards the housing team has been able to carry out studies related to:

- Urban Land improvement.
- Building permit and
- Construction title deed

Concerning urban land improvement, the housing team has determined that the present improvement procedure takes about two years, is extremely burdensome, in consequence it becomes discriminatory since it lies beyond the means of the popular classes, who have no alternative but to develop informally and, in so doing, have to do without basic services for a significant period.

The problem of lack of access to the legal procedure of land improvement has got another consequence of the utmost seriousness, pertaining mainly to housing associations and cooperatives, which, in spite of owning the land cannot subdivide because of not having followed the legal process of improvement. The direct consequence is that a high percentage of inhabitants in cooperatives and associations do not have individual deeds of ownership to their plots and therefore cannot offer them as real estate warranty.

The housing team has elaborated a first proposal for the simplification of the said procedure with respect to housing co-operatives and associations, with the purpose of granting credit access with real estate warranty to them. This first proposal has been incorporated into the project of law elaborated by this team on "LEGAL SECURITY AND ACCESS TO CREDIT WITH REAL ESTATE WARRANTY".

The housing team has had the chance of establishing contact with the author of the "Bertaud model" programme due to the course organized by the "Lincoln Land Institute" of Cambridge Massachusetts, under the auspices of the Interamerican Development Agency (AID).

The "Bertaud model" provides the necessary tools in order to achieve an optimal relationship between the cost derived from the physical layout of the improvement, the number of plots that compose it, and the capacity of financing each of the different types of developments. This programme would, eventually, allow offering the formal private sector the opportunity of investing in neighbourhoods for the popular sector; insofar as this tool would enable them to supply

urbanistic products in agreement with the different economic possibilities of the groups to be served.

Concerning the building permit and the construction title deed, -deed of ownership of the construction- the ILD presented a Law Project on this matter, proposing simplifying, de-regulating and decentralizing measures.

Faced with the campaign carried out by the ILD, through publications and Public Hearings, the Government responded on various occasions.

First, the Provincial Municipal Council of Metropolitan Lima promulgated Edict 040, a very similar regulation to the ILD proposal; but only applicable to the young settlements (pueblos jóvenes) of the province of Lima. Subsequently, the Provincial Council of Callao promulgated the Mayor's Decree 002-86-CFC, likewise attempting a simplification of the construction title deed procedure. Both the Ministry of Housing and the Municipal Government of Lima presented legislative projects very similar to the ILD in order to simplify the procedure of the construction title deed, in the first case, and of building permit, in the second case.

Faced with all this campaign for simplification, the National Congress promulgated Law 24687, attempting to solve the problem of deeds of ownership of every type of building. The Law promulgated shows that the Government has claimed as its own the problem stated by the ILD; however, the solution it has advanced is not integral or final, as it establishes a regime of exception with date of expiry in December 1988.

Finally, the Provincial Council of Lima has recently disposed, by the Mayor's Resolution 1884, a study to be made concerning the procedure for building permit, with the purpose of eradicating tardiness and bureaucratic obstacles.

The housing team of ILD is carrying out a follow-up of the processes of award of the construction title deed that are being executed under the application of the recently dictated regulations. Concerning this problem, "El Balcón de Todos" has received complaints from citizens from different districts, pointing out that the procedures are still troublesome and extremely burdensome - even the demand for bribes on the part of public officials in certain Municipal Councils, and the inexistence of forms in which to declare their constructions, have been denounced in most cases, making it impossible to prove the ownership of what has been built.

#### **4. LEASEHOLD: HOUSING RENTAL MARKET.**

##### **4.1. Objective:**

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That the lease on housing be a viable and attractive alternative for the people of slender means, so that the informal ways of acquisition of housing -invasion and illegal buying and selling of agricultural land- are discouraged.

Create the suitable legal framework to encourage the increase in the supply of housing for lease; which necessarily implies that the construction of housing to this end should represent a really attractive investment in relation to other possibilities of investment.

#### 4.2. Advance:

The housing team has prepared a legal document in which the legislation concerning leasehold, from 1938 to the present, is studied in great detail. The specific objective of this study is to determine the economic impact that legislation on this matter has had on the housing market as a whole.

Likewise, the housing team has managed to have access to all the projects of law of leasehold, presented to the Congress in order to be soon debated. In this way, the "Acción Popular" the "Izquierda Unida", the AFRA projects, as well as the Joint Advice of Housing Commission of the Senate, have been obtained. These projects have been object of detailed comparative analysis in relation to their respective content, and in relation to the present Leasehold Law, Legal Decree 21938.

In the same way, the housing team has been able to obtain comparative legislation on the subject; from the Argentinian Legislation, as well as from the Mexican, for instance, as well as from U.S. and Canadian jurisprudence. All this comparative legislation has been accurately consulted, in order to determine what elements of the analyzed regulations may be taken into consideration in the elaboration of a legal proposal of leasehold applicable in the Peruvian case.

The housing team has, likewise, conducted a study of the cause and effect relationship between the laws of leasehold enacted in Perú and the increase of judicial trials demanding ejections of tenants taking place during the period of enforcement of said laws. Moreover research has been conducted to determine the cost of the litigations between owners and leaseholders, that have arisen as a result of these regulations, both at the judicial as well as at the police level. The cost has been determined, from various interviews with lawyers belonging to different offices and with justice administration auxiliaries, and it varies according to the earnings of the litigating and to the value of the house subject to litigation.

The inefficiency of the regulations on rent controls in solving conflicts arising between leaseholders and owners, has been preliminarily shown through fieldwork.

Another important study has been the determination of the degree of concentration of property of housing destined for rental. The first sample has been a telling instance; the greater number of owners do not possess more than two buildings, therefore the myth that makes out that each one of the landlords concentrates a large number of buildings should be discarded. In this way, those affected by the restrictive laws of leasehold are mainly the middle class people and, likewise, house owners in young settlements (pueblos jóvenes), who contemplate the rent received for letting a second a floor as an additional source of income, which should not be deducted from their patrimony.

The housing team has, likewise, studied the way in which Municipal Councils perform the supposed control that, by law, should be exercised by local governments over rent contracts.

The first inquiries have shown that Municipal Registries of leasehold contracts, which by legal mandate should have been constituted since 1977, are not even constituted at present in many District Councils.

A minimal, almost inexistent proportion of leasehold contracts is estimated to have been entered in the Municipal Councils, either because there is no such registry in the Councils or because the requirements to do the registration are impossible to meet by the majority of the leaseholders.

Inquiries are still being made concerning the number of leasehold contracts registered in Municipal Councils under Legal Decree 21938.

The housing team has, likewise, maintained regular meetings with the economic team in order to coordinate the tasks to be done over the next few months, based in all the information obtained, and to develop a strategy to be followed up during the next national debate of the leasehold law which will eventually take place during the next legislation, beginning April 1988.

In this sense, it has been deemed necessary to extend fieldwork in order to confirm, with the greatest possible accuracy, which have been the negative effects of the successive leasehold laws.

In this manner an attempt will be made to determine how, when restrictive and over-controlling laws have been

enforced, a great proportion of leaseholders of middling to low income were evicted from the dwellings they occupied.

Likewise, the analysis of the issues affecting slums will be pursued; this will, eventually, require special treatment, because of the particular characteristics involved.

It has also been considered that a direct relationship must exist between all the legal channels of access to housing for people of lesser income; like, for instance, between the adjudication of State-owned land and the eventual leaseholders evicted from the slum areas; the housing team will be studying this relationship when ready to offer a legal alternative for solution regarding this problem.

The study will end with an economic-legal document containing an adequate legal proposal so that leaseholding may be a viable option in the face of lack of housing; which would be achieved only with certain measures such as the elimination of restrictions upon the property rights of housing granted through leaseholding. Only thus would legal security be offered to the investor, in such a way that a greater supply of housing for rent would mean a reduction in the price of rent. Thus, leaseholding would become an efficient legal alternative in the face of undesired invasion.

To complete the research and methodology employed by the ILD, Public Hearings will be held and publications made to learn what the popular feeling, both of landlords as well as of leaseholders is, the ILD proposal, then, will not be an alternative based on theoretical studies, but an adequate interpretation of reality at one with the expression of the civil sector of the population, which suffers daily from the lack of an adequate legal framework to solve the problem of leaseholding.

## **5. INITIATION AND PILOT PLAN OF THE LEGAL SECURITY AND ACCESS TO CREDIT WITH REAL ESTATE WARRANTY PROJECT.**

### **5.1. Objective:**

The ILD has been working for nineteen months on the design of the proposal of "Legal Security and Access to Credit with Real Estate Warranty", with support from the Interamerican Foundation.

The objective of this project was oriented, in the first place, towards offering legal security to the inhabitants of popular settlements (pueblos jóvenes) over the possession of their plots and the ownership of their constructions, in view of their being unable to obtain deed of ownership to

their plots -20 years on average- and, thus, could not offer their constructions -8,948 billion dollars- as real estate warranty.

The project has, finally, met all the proposed objectives and has created a system that provides the expeditious instruments from the body of laws to "informal workers" and simplifies some of the legal provisions that are applied to "formal workers"; to attempt integration of both groups and to create the necessary links.

Proposals have been made, in this way, for:

- The creation of a special registry where the possession of the plot of land may be entered so that the inhabitants may obtain legal security over these and may utilize them as mortgage backing to finance their credit requirements.
- The creation of a system of credit insurance that may enable financing with real estate warranty.

This is the reason why the present proposal is directed towards the diffusion and initiation of the results arrived at through the "Legal Security in Housing and Access to Real Estate Credit" project, so that the insurance companies may be the ones to assume the risk of default by the inhabitants of popular settlements, before the credit institutions, in exchange for a premium and for the granting of a possessory mortgage.

## 5.2. Advance:

For the initiation of this project the following strategy was designed:

- Give widespread diffusion and publicity to the proposal; and train the agents involved in the said proposal, this is, the insurance companies and the financing entities and especially the inhabitants of popular settlements. Likewise make the result of the proposal known at a Latin American level, since these countries have similar problems to those of Perú.
- Parallel to the performance of the aforementioned activities, the possibility of starting a pilot plan was raised, with the purpose of attaining the objectives stated in the proposal. To this effect it was determined that the requirements would be the following.
  - A law passed by the National Congress creating the possessory mortgage and the special registry.
  - Approval of the text of the credit insurance policy by the Banking and Insurance Companies Superintendency.
  - Divuligation of the characteristics and benefits of the proposal among the leaders and inhabitants of young settlements (pueblos jóvenes) and representatives of the Banking system and of the insurance companies.

However, it was likewise considered that a pilot plan could be initiated in short term without waiting for the passing of a law in Congress. It was a question of beginning by granting access to credit to those inhabitants of popular settlements, who in spite of having dwellings already-built and deeds of ownership to their plots of land, do not, at present, have access to credit since they cannot prove their incomes and have no commercial references, and, therefore, are not considered good subjects of credit.

To this effect, only the approval of the text of the policy by the competent organism is required, because the passing of the law in Congress approving the possessory mortgage, to give credit to those who are still without deed of ownership to the plot of land, will eventually take longer.

To initiate the short term pilot plan, the conduction of polls among representatives of popular settlements already titled, street vendors, owners of market stalls, informal transport workers was programmed; in order to determine the immediate credit demand of those people who could enter upon the credit insurance system without needing a law to be passed in Congress creating the possessory mortgage. To this effect, meetings with representatives of the Banking system and insurance companies in general, were planned.

However, the strategy of initiation of this project and of the carrying out of the pilot plan has undergone change due to two fundamental events:

- The delay in the financing for the pilot plan of the present programme.
- The nationalization (take-over by the State) of financing and insurance systems.

Conversations with the representatives of Banking concerns and insurance companies have had to be postponed due to the changes suffered by the mode of ownership of Banking concerns and insurance companies, as consequence of the debate and subsequent promulgation of the law of Nationalization as well as of the assignments made in favour of the workers of one of the most important Banks of the Peruvian financing system, all of which resulted in an atmosphere of great uncertainty as to the definition of representative officials of the Banking system and of the insurance companies with whom dialogue would be possible.

It must be remarked that during the national debate at the Parliamentary level, the political faction SODE -Solidaridad y Democracia- through their representative in Congress, Senator Javier Silva Ruete, presented a project of law that takes up the proposal of the ILD insofar as he considers

credit insurance, as one of the necessary measures to attain the democratization of credit.

At present, the housing team is studying in detail the legislative changes that have occurred as a result of the nationalization of the Banking system and insurance companies, to subsequently elaborate a strategy and analyze the way in which our proposal could contribute to the achievement of a true democratization of credit.

It must be born in mind that the change in mode of ownership of the shares of the banks is not what truly democratizes credit but, rather, the modification of the legal institutions that at present hinder and prevent democratic access to the said credit. Only the modification of institutions, in agreement to what is stated in the ILD proposal, would really enable the access of informal workers to credit, through a novel type of warranty, as is the possessory mortgage - which is directly incumbent to the possession of their plots of land and the ownership of their constructions.

To conclude, if the ILD proposal was viable and attractive within the scope of a financing system of both State-owned and private property, it will appear all the more so now to the State, which, in virtue of the said law is the major owner of the shares of the Banking system and insurance companies. The aforementioned is fundamentally based on the fact that the motives adduced by the State in order to expropriate were centred upon the achievement of the democratization of credit; just what the ILD has been proposing through the "LEGAL SECURITY AND ACCESS TO CREDIT WITH REAL ESTATE WARRANTY Project".

In consequence, it is considered that the Working Scheme established for the Pilot plan will not suffer any great variation and the housing team will initiate its execution as soon as the required funds become available.