

December 3, 2017

BY EMAIL AND COURIER

Mr. Angel Gurría  
Secretary-General  
Organisation for Economic Co-operation and Development  
2, rue André Pascal  
75775 Paris Cedex 16  
France

**Re: Peruvian Agrarian Reform Bonds**

Dear Mr. Gurría,

The undersigned *Asociación de Bonistas de la Deuda Agraria del Perú* (“ABDA”) (Peruvian Agrarian Reform Bondholders’ Association), *Asociación de Agricultores Expropiados por Reforma Agraria* (“ADAEPRA”) (Association of Expropriated Farmers of the Agrarian Reform), *Agrarian Bondholders Association in Arequipa and Puno* (“ABAP”), *Agrarian Bondholders Association in Chiclayo and Piura* (“ABCP”), *Agrarian Bondholders Association in Chancay, Huacho, Barranca and Pativilca* (“ABCHBP”), *Agrarian Bondholders Association in Chíncha, Pisco and Ica* (“ABCPI”), and *Agrarian Bondholders Association in Cusco* (“ABC”) are each a Peruvian non-profit organization. The undersigned *Peruvian American Bondholders for Justice* (“PABJ”) is an American non-profit organization. Collectively, our organizations have been representing thousands of individual bondholders, in some cases for over two decades, each of whom own an interest in Peruvian agrarian reform bonds (the “Agrarian Reform Bonds”) which were originally issued by the Republic of Peru (“Peru”) as compensation for a vast and economically unsuccessful program of land expropriation. These Agrarian Reform Bonds remain unpaid and represent a valid sovereign debt of several billion U.S. dollars, based on estimates from the Peruvian Congress (\$3.1 billion in 2005),<sup>1</sup> former Peruvian Finance Minister Ismael Benavides (\$5.1 billion in 2015),<sup>2</sup> and Standard & Poor’s (\$4 billion in 2015).<sup>3</sup>

As you are well aware, accession to the Organisation for Economic Co-operation and Development (“OECD”) is one of Peru’s key foreign policy objectives, as signaled by senior Peruvian officials on several occasions. Shortly after taking office in 2016, President Pedro Pablo Kuczynski announced that Peru seeks to become a member of the OECD by 2021 and that it is one of the administration’s “top priorities.”<sup>4</sup> President Kuczynski has reaffirmed his position

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<sup>1</sup> Peruvian Congress, Comisión Agraria, May 10, 2005, available at <http://bonosagrarios.pe/wp-content/uploads/2016/01/Dictamen-Comision-Agraria-de-mayo-2005.pdf>.

<sup>2</sup> Benavides et al., Expert Report, February 17, 2015, p. 7, available at [http://perubonds.org/wp-content/uploads/resources/benavides\\_expert\\_report\\_english.pdf](http://perubonds.org/wp-content/uploads/resources/benavides_expert_report_english.pdf).

<sup>3</sup> Standard & Poor’s, Supplementary Analysis: Republic of Peru, September 30, 2015, p. 12, available at <http://www.alacrastore.com/s-and-p-credit-research/Supplementary-Analysis-Republic-of-Peru-1458085>.

<sup>4</sup> Alvaro Tassano, “Can Peru become a member of the OECD by 2021?,” *Peru This Week*, August 2, 2016, available at <http://mobi.peruthisweek.com/news-peru-member-of-the-oecd-by-2021-110096/>; “Peru: A Reliable Partner for the OECD,” GOVERNMENT OF PERU, available at [http://www.rree.gob.pe/Documents/Brochure\\_PERU\\_A\\_Reliable\\_Partner\\_for\\_the\\_OECD.pdf](http://www.rree.gob.pe/Documents/Brochure_PERU_A_Reliable_Partner_for_the_OECD.pdf).

while in office, including during a June 2017 visit to Europe, which included official meetings with European leaders and a keynote speech at the OECD's 2017 International Economic Forum on Latin America and the Caribbean.<sup>5</sup> Peru has also established commissions within the Executive Branch and Congress to oversee the accession process.<sup>6</sup>

Given Peru's desire to join the OECD and to further educate you on the Agrarian Reform Bonds, we find it timely to share with you the enclosed report, "The Implications of Peru's Agrarian Reform Bond Default on Peru's Prospective Accession to the OECD", written by Dr. Hans J. Blommestein. As you know, Dr. Blommestein was the Head of Public Debt Management at the OECD from 2001 to 2016. In his report, Dr. Blommestein addresses his concerns with respect to Peru's failure to adhere to OECD guidance and leading practices and concludes that Peru's conduct with respect to the Agrarian Reform Bonds does not adhere to the OECD's values and principles in accordance with the OECD's leading practices relevant to public debt.

### **Recent Forgery by Peru's Highest Court**

As Dr. Blommestein explains in the enclosed report, Peru's courts and Congress have repeatedly confirmed that the Agrarian Reform Bonds are a valid sovereign debt. This involved a landmark 2001 ruling by the highest court in Peru, the Constitutional Tribunal.<sup>7</sup> Yet, the steps taken by our organizations and other bondholders to recover the updated, current value of the Agrarian Reform Bonds have been frustrated by a cobweb of illegitimate decisions, as well as deceitful and criminal acts, on the part of Peru's executive branch, including interference by former President Humala in a 2013 court decision from Peru's Constitutional Tribunal (the "2013 Constitutional Tribunal Order"), which resulted in a forged decision and a subsequent string of Presidential decrees designed to avoid payment. While shocking, this type of misconduct is consistent with a recent *New York Times* column describing Peru's "weak judiciary" – and the fact that four out of the last five Peruvian presidents are either in prison or facing the prospect of prison based on corruption charges.<sup>8</sup>

This bizarre turn of events has also led one of the victims of this forgery, former Constitutional Tribunal Justice Carlos Mesía, to file criminal charges against Constitutional Tribunal clerk, Oscar Díaz Muñoz. These charges implicate former Constitutional Tribunal Chief Justice Urviola.<sup>9</sup> Below are just a few samples of the many shocking photographs – contained in

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<sup>5</sup> "The Economist: President Kuczynski's trip to favor Peru's OECD accession," June 7, 2017, available at <http://www.andina.com.pe/Ingles/noticia-the-economist-president-kuczynskis-trip-to-favor-perus-oecd-accession-669970.aspx>.

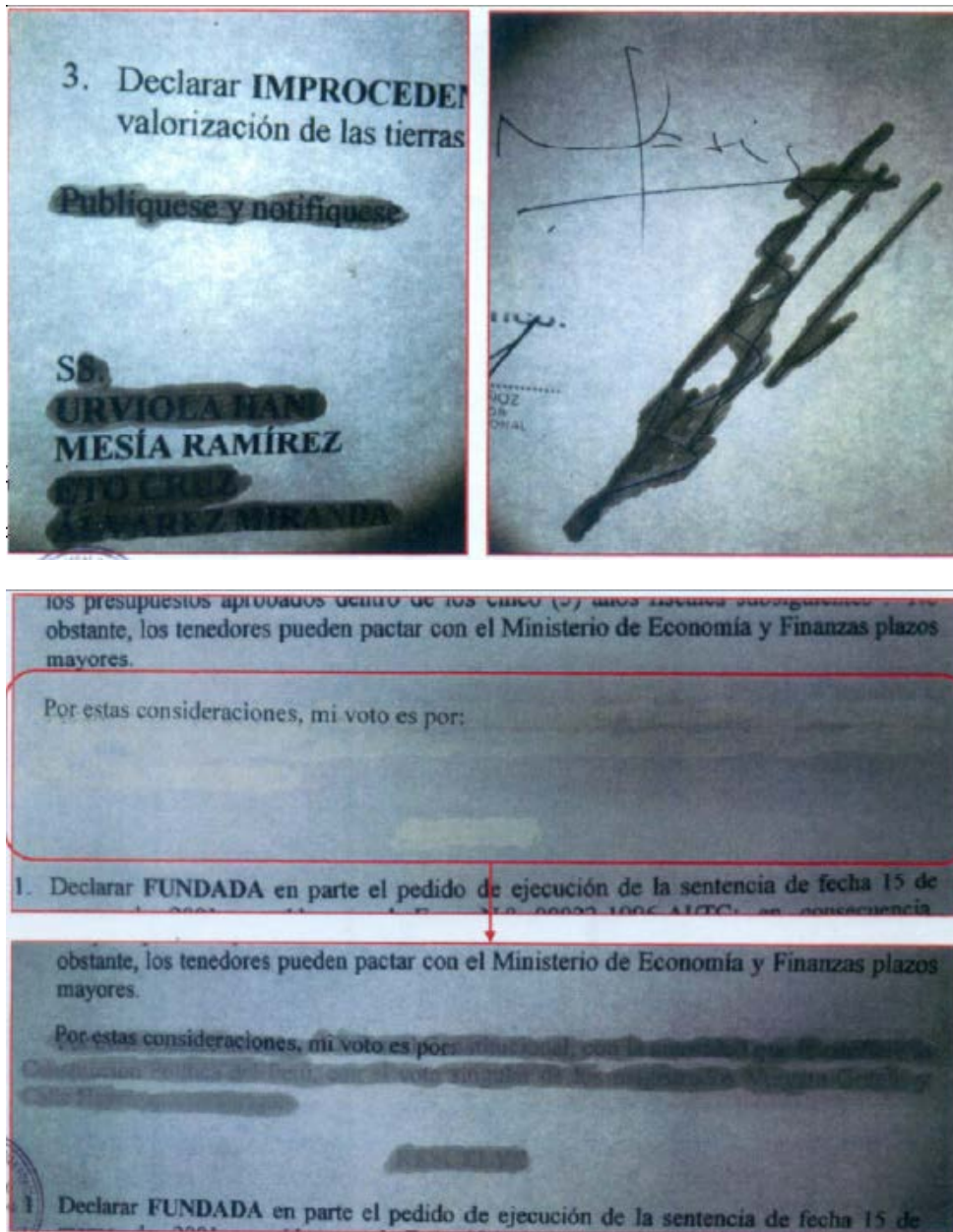
<sup>6</sup> "Peru: A Reliable Partner for the OECD," GOVERNMENT OF PERU, available at [http://www.rree.gob.pe/Documents/Brochure\\_PERU\\_A\\_Reliable\\_Partner\\_for\\_the\\_OECD.pdf](http://www.rree.gob.pe/Documents/Brochure_PERU_A_Reliable_Partner_for_the_OECD.pdf).

<sup>7</sup> Constitutional Tribunal Decision, March 15, 2001, p. 3, available at <http://tc.gob.pe/jurisprudencia/2001/00022-1996-AI.html>.

<sup>8</sup> Does Peru Need a Special Prison Just for Ex-Presidents? By Sonia Goldenberger, *The New York Times*, August 7, 2017, available at <https://www.nytimes.com/2017/08/07/opinion/does-peru-need-a-special-prison-just-for-ex-presidents.html>.

<sup>9</sup> "Admiten Acusaciones Constitucionales contra miembros del TC y Basombrio," *El Comercio*, June 27, 2017, available at <http://elcomercio.pe/politica/admiten-acusaciones-constitucionales-miembros-tc-carlos-basombrio-437809>.

a forensic expert report issued by the Lima Police Department in 2015 – showing the illegitimate and illegal use of white-out to erase the signature of former Constitutional Tribunal Justice Gerardo Eto to make it look as if Constitutional Tribunal Justice Carlos Mesía had signed a dissenting opinion, when in reality he did not.<sup>10</sup>



<sup>10</sup> Institute of Legal Medicine and Forensic Sciences, Expert Report N° 12439-12454/2015, August 14, 2015, available at <http://bonosagrarios.pe/wp-content/uploads/2016/01/Informe-Pericial-Instituto-de-Medicina-Legal-y-Ciencias-Forenses-Agosto-2015.pdf>.

### **Current Position of Peru with Respect to Agrarian Reform Bonds**

President Kuczynski has not taken any action to reverse or annul the 2013 Constitutional Tribunal Order or even publicly criticize it despite the undisputable fact that the 2013 Constitutional Tribunal Order is the product of a forgery. Bondholders from every corner of Peru have pleaded to the Humala administration, and have now pleaded to the administration of Pedro Pablo Kuczynski, to take measures aimed at overturning the 2013 Constitutional Tribunal Order, but to no avail.

Even worse than ignoring the 2013 Constitutional Tribunal Order, President Kuczynski has actually relied upon it. In particular, President Kuczynski has – on the basis of the 2013 Constitutional Tribunal Order – recently issued two Supreme Decrees that continue former President Humala’s criminal effort to eradicate the Agrarian Reform Bond debt. Our organizations, which represent the vast majority of bondholders, have formally rejected the decrees issued by the Peruvian government and declined to participate in the process allegedly created by President Kuczynski’s Supreme Decrees.<sup>11</sup> We understand that nearly all other bondholders have also refused to participate in the process as well.

### **Peru’s Failure to Report the Agrarian Reform Bond Debt**

In addition to relying on a forged court decision in order to avoid taking a responsibility for a multi-billion-dollar default, Peru has failed to report the Agrarian Reform Bond debt to the International Monetary Fund (the “IMF”), the U.S. Securities and Exchange Commission (“SEC”), and the Luxembourg Stock Exchange, as required under applicable rules. At a minimum, Peru’s failure to report the Agrarian Reform Bond debt constitutes a violation of its reporting obligations. More importantly, it runs counter to the OECD’s stated commitment to transparency and the rule of law. It also furthers an ongoing injustice which has deeply impacted our members and other Peruvian citizens.

### **Peru’s Repeated Response to Criticism**

We acknowledge that the facts presented by Dr. Blommestein may not be consistent with the positive image that Peru has attempted to portray to the OECD and others. Consistent with past practices, we fully expect Peru to issue blanket denials and attempt to label this issue as a “valuation dispute” with a few select bondholders, as opposed to an ongoing bond default impacting thousands of bondholders (aided by criminal actions by the highest levels in the judiciary and executive branch) and a willful and purposeful attempt to not report the Agrarian Reform Bond debt. We also expect Peru to claim that the Supreme Decree process currently in place is meeting international standards. The OECD will need to judge the validity of these eventual rebuttals for itself, but there is one fact that Peru cannot deny: the Supreme Decree

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<sup>11</sup> Letter from ABDA to Minister of Economy and Finance Claudia Cooper Fort, September 27, 2017, available at <http://www.abdapera.org/web/noticia/837/abda-envia-carta-a-mef-no-participara-enprocedimiento-del-ds-no-242-2017-ef>; Letter from ADAEPRA to Minister of Economy and Finance Claudia Cooper Fort, September 27, 2017, available at <http://bonosdeudaagraria.blogspot.pe/2017/10/compartiendoiniciativas-con-asociados.html>. See also, Letter from Peruvian American Bondholders to President of the Council of Ministers Mrs. Mercedes Aràoz Fernández, October 13, 2017 available at <http://bonosagrarios.pe/wpcontent/uploads/2017/10/Letter-to-the-President-of-the-Council-of-Ministers-of-Peru.pdf>.

process was issued unilaterally by Peru without a single negotiation with bondholders. In the long history of sovereign restructurings, it is unheard of for a country to reject the entire notion of negotiation with creditors.

We are confident that the facts recited in Dr. Blommestein's report are well documented and supported by the independent evidence cited therein. We implore you to conduct an unbiased and objective analysis and urge you to commission an OECD report on the Agrarian Reform Bonds.

To aid your analysis, we have also enclosed the following materials in addition to Dr. Blommestein's report:

- 1) Former Constitutional Tribunal Judge Carlos Mesía's formal criminal complaint, dated as of September 2015, alleging that his "dissent" to the 2013 Constitutional Tribunal decision was forged;
- 2) Lima Police Department Forensic Report, dated as of August 14, 2015, containing numerous photographs of the forgeries;
- 3) Supreme Decree, dated as of August 19, 2017, executed by President Pedro Pablo Kuczynski which relies on the forged 2013 Constitutional Tribunal decision (see page 24, first paragraph);
- 4) "Peru's Agrarian Reform Bonds and the International Monetary Fund," dated as of June 2017, prepared by Jaime Jaramillo-Vallejo, J.D., Ph.D. which concludes that Peru is not reporting the Agrarian Reform Bond debt to the IMF in accordance with applicable rules; and
- 5) Peru's most recently filed Form 18-K submitted to the U.S. Securities and Exchange Commission on July 6, 2017 which states that "Peru is not involved in any disputes with its internal or external creditors," (see Exhibit D, page D-123).

As these materials demonstrate, Peru has failed to meet OECD standards of transparency and has instead done everything possible to sweep this issue "under the rug", including affirmatively denying it has any disputes with creditors.<sup>12</sup> With all due respect to the Republic of Peru, we represent thousands of "creditors" and strongly "dispute" Peru's ongoing actions with respect to the Agrarian Reform Bonds.

### **Questions for Peru**

To quickly ascertain some simple truths and provide transparency regarding this matter, we also implore you to seek a public response from Peru on the following basic questions:

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<sup>12</sup> Robin Wigglesworth and Andres Schipani, "Peru hits back at US hedge fund over \$1.6bn claim," Financial Times, where former Peruvian Finance Minister Alfredo Thorne stated, "[the land bond issue] is a problem to face and not to sweep under the rug as it has been so far. We have to address the problem, but it is a problem that has a solution," available at <https://www.ft.com/content/8b4b71d0-2926-11e6-8ba3-cdd781d02d89?mhq5j=e5>.

- 1) Are the Agrarian Reform Bonds a valid sovereign debt of Peru?
- 2) Does Peru report the Agrarian Reform Bond debt to the IMF? If so, what is the amount reported by Peru? If not, why doesn't Peru report the debt?
- 3) Will Peru disclose the amount and form of consideration that it is offering to pay an individual bondholder prior to such individual bondholder permanently waiving its rights to legal action and submitting its bonds to a lengthy administrative process?
- 4) How much of the Agrarian Reform Bond debt has Peru paid to bondholders under the Supreme Decrees issued in January 2014, February 2017 and August 2017? What percent of the overall Agrarian Reform Bonds outstanding as of January 1, 2014 have elected to participate in these various Supreme Decrees?
- 5) Are the aforementioned Supreme Decrees based on a forged court decision issued in July 2013 by Peru's Constitutional Tribunal?

### **Conclusion**

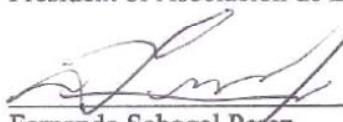
Peru's egregious conduct regarding the Agrarian Reform Bonds demonstrates that Peru is not in a state of readiness for accession to the OECD and that it is not committed to the OECD core values and principles, which should cause the OECD serious concerns as it considers Peru's application for accession. In fact, we urge you to place Peru's prospective OECD invitation on hold, at least until it reports the amount of outstanding Agrarian Reform Bond debt in its financial reporting, and resolves its ongoing default.

On behalf of our organizations and the thousands of bondholders we represent, we thank you for your attention. Should you need additional information, we or representatives of our organizations would be happy to travel to Paris to meet with you in person. Since admission to the OECD requires consent of each member nation, we have copied each of the member nations' ambassadors to the OECD and to Peru. Some of these member nations have citizens and pension funds invested in the Agrarian Reform Bonds. We have also copied Peru's Minister of Economy and Finance Claudia Cooper Fort to provide her and the Peruvian government with a fair opportunity to respond to this letter. We kindly request that she extend the same courtesy to us when she responds.


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Ramon Remolina  
President of Asociación de Bonistas de la Deuda Agraria del Perú



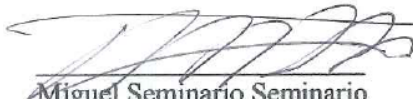
Fernando Sabogal Perez  
President of Asociación de Agricultores Expropiados por Reforma Agraria



Jose Antonio Llaveria  
Peruvian American Bondholders for Justice



Ana María Sardon de Carpio  
Agrarian Bondholders Association in Arequipa and Puno



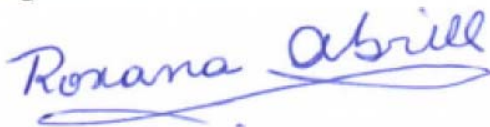
Miguel Seminario Seminario  
Agrarian Bondholders Association in Chiclayo and Piura



Luis Huguet Nicolini  
Agrarian Bondholders Association in Chancay, Huacho, Barranca and Pativilca



Oscar Alfredo Adrianzen Gereda  
Agrarian Bondholders Association in Cañete, Chincha, Pisco and Ica



Roxana Abrill  
Agrarian Bondholders Association in Cusco

CC: Hon. Claudia Cooper Fort, Minister of Economy and Finance of Peru  
Gabriela Ramos, Chief of Staff and Sherpa to the G20, OECD  
Juan Yermo, Deputy Chief of Staff of the OECD Secretary-General, OECD  
Omar Baig, Acting Executive Director, OECD  
Masamichi Kono, Deputy Secretary-General, OECD  
Mari Kiviniemi, Deputy Secretary-General, OECD  
Douglas Frantz, Deputy Secretary-General, OECD  
Brian Pontifex, Ambassador to the OECD, Australia  
Marlies Stubits-Weidinger, Ambassador to the OECD, Austria  
Jean-Joël Schittecatte, Ambassador to the OECD, Belgium  
Michelle d'Auray, Ambassador to the OECD, Canada  
Claudia Serrano Madrid, Ambassador to the OECD, Chile  
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Pekka Puustinen, Ambassador to the OECD, Finland  
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Kristján Andri Stefánsson, Ambassador to the OECD, Iceland  
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Jong-Won Yoon, Ambassador to the OECD, Korea  
Ivita Burmistre, Ambassador to the OECD, Latvia  
Martine Schommer, Ambassador to the OECD, Luxembourg  
Mónica Aspe, Ambassador to the OECD, Mexico  
Noé van Hulst, Ambassador to the OECD, The Netherlands  
Jane Coombs, Ambassador to the OECD, New Zealand  
Elin Østebø Johansen, Ambassador to the OECD, Norway  
Aleksander Surdej, Ambassador to the OECD, Poland  
Bernardo Lucena, Ambassador to the OECD, Portugal  
Irena Sodin, Ambassador to the OECD, Slovenia  
José Ignacio Wert, Ambassador to the OECD, Spain  
Annika Markovic, Ambassador to the OECD, Sweden  
Ulrich Lehner, Ambassador to the OECD, Switzerland  
Erdem Başı, Ambassador to the OECD, Turkey  
Christopher Sharrock, Ambassador to the OECD, United Kingdom  
Rupert Schlegelmilch, Ambassador to the OECD, European Union  
Nicholas McCaffrey, Australian Ambassador to Peru  
Andreas Rendl, Austrian Ambassador to Peru  
Koenraad Lenaerts, Belgian Ambassador to Peru  
Gwyneth Kutz, Canadian Ambassador to Peru  
Roberto Ibarra, Chilean Ambassador to Peru



Pavel Bechny, Czech Ambassador to Peru  
Mika Koskinen, Finnish Ambassador to Peru  
Antoine Grassin, French Ambassador to Peru  
Jorg Ranau, German Ambassador to Peru  
Yerassimos Davaris, Greek Ambassador to Peru  
Gabor Kaleta, Hungarian Ambassador to Peru  
Raphael Shlomo Singer, Israeli Ambassador to Peru  
Mauro Marsini, Italian Ambassador to Peru  
Tatsuya Kabutan, Japanese Ambassador to Peru  
Keun Ho Jang, Korean Ambassador to Peru  
Ernesto Campos, Mexican Ambassador to Peru  
Wiebe de Boer, Dutch Ambassador to Peru  
Izabela Matusz, Polish Ambassador to Peru  
Helena Almeida Coutinho, Portuguese Ambassador to Peru  
Ernesto De Zulueta, Spanish Ambassador to Peru  
Anna Ferry, Swedish Ambassador to Peru  
Hans Ruedi Bortis, Swiss Ambassador to Peru  
Ferda Akkerman, Turkish Ambassador to Peru  
Anwar Choudhury, U.K. Ambassador to Peru  
Krishna R. Urs, U.S. Ambassador to Peru

Enclosures