

**The Implications of Peru's Agrarian Reform Bond Default  
on Peru's Prospective Accession to the OECD**

Dr. Hans J. Blommestein\*

November 2017

\* Dr. Hans J. Blommestein was the Head of Public Debt Management at the OECD from 2001 to 2016, and supervised the activities of the Financial Affairs Division of the OECD from 1998 to 2000. He has also served as an advisor or member of the Governance Board of the OECD-Italian Treasury-World Bank Public Debt Management Network, the G20 Working Group on Local Currency Bond Markets, the Steering Committee of the OECD Project on African Public Debt Management and Bond Markets, and the Technical Advisory Group of the Debt Management Facility of the World Bank. He received his Ph.D. from the Free University of Amsterdam. From 2005 to 2014 he was the PwC Professor of Finance at Tilburg University in the Netherlands and, prior to that, the CSCE Professor of Economics at the University of Twente in the Netherlands.

The opinions expressed and arguments employed in this study are those of the author and therefore reflect his own views.

## Table of Contents

I. EXECUTIVE SUMMARY .....	1
II. BACKGROUND.....	3
A. Overview of Peru’s Agrarian Reform Bonds and Current Default.....	3
B. The Peruvian Courts’ and Congress’s Directives that Peru Must Pay Current Value to Resolve the Agrarian Reform Bond Default.....	4
C. Peru’s Recent Attempts to Repudiate the Agrarian Reform Bond Debt .....	6
D. Peru’s Ongoing Failure to Properly Report the Agrarian Reform Bond Debt .....	12
III. PERU’S ECONOMIC DEVELOPMENT FROM THE 1990s THROUGH PRESENT .....	14
IV. THE OECD ACCESSION PROCESS AND REQUIREMENTS FOR MEMBERSHIP .....	18
A. Overview of the Accession Process.....	18
B. Framework for the Consideration of Prospective Members .....	19
1. State of Readiness .....	19
2. Country’s Commitment to OECD Values and Membership Obligations.....	20
C. The OECD’s Approach to Public Debt.....	21
1. OECD’s Legal Instruments Relevant to the Treatment of Debt Instruments .....	22
2. OECD’s Leading Practices on Public Debt Management .....	23
D. The OECD’s Approach to Expropriation .....	25
V. ANALYSIS OF PERU’S PROSPECTS FOR ACCESSION TO OECD.....	25
A. Peru’s Interest in OECD Accession and Participation in OECD Bodies.....	25
B. Peru’s Failure to Comply with the OECD Accession Requirements .....	28
1. State of Readiness .....	28
2. Commitment to the OECD Core Values.....	29
3. Adherence to OECD Legal Instruments and Leading Practices.....	30
4. No Valid Justifications for Peru’s Conduct .....	31
VI. CONCLUSION.....	36

## I.

### EXECUTIVE SUMMARY

1. Peru has made clear that it aspires to become a full member of the Organisation for Economic Co-operation and Development (“**OECD**”). As Peru’s current President, Pedro Pablo Kuczynski, announced shortly after taking office in 2016, Peru seeks to become a member of the OECD by 2021 and accession to the OECD is one of the administration’s “top priorities.”<sup>1</sup>

2. In order to become an OECD member, Peru will be required to complete the accession process. The OECD does not have a set of strict metrics that it uses to decide which countries can become members. Instead, accession to the OECD results from a rigorous but fluid process intended to evaluate whether a prospective member embodies the OECD’s core values, namely, the democratic principles based on the rule of law and human rights, and adherence to open and transparent market-economy principles.

3. While the accession process remains fluid, the OECD has recently developed a Framework for the Consideration of Prospective Members (the “**Framework**”). Pursuant to the Framework, the OECD focuses on two main questions in assessing a country’s prospective accession: (1) whether a country’s economy, legal and financial system, and other institutions are in a state of readiness for the OECD, and (2) whether the country is committed to the OECD values and membership obligations. This evaluation may also include OECD legal instruments and leading practices related to financial market principles and, in relevant cases, to public debt management.

4. Despite Peru’s economic progress, the country does not meet some of the key requirements for OECD membership, due to long-standing debt obligations that it has repeatedly failed to address or disclose (the “**Agrarian Reform Bonds**”), as described in more detail below. These actions affect more than four thousand former landowners,<sup>2</sup> whose land was expropriated, as well as Peruvian-American U.S. citizens<sup>3</sup> and hundreds of foreign pension funds.<sup>4</sup>

5. While Peru’s highest court, the Constitutional Tribunal, acknowledged Peru’s obligation to repay the Agrarian Reform Bonds over 16 years ago, Peru has largely failed to do

---

<sup>1</sup> Alvaro Tassano, “Can Peru become a member of the OECD by 2021?,” *Peru This Week*, 2 August 2016, available at <http://mobi.peruthisweek.com/news-peru-member-of-the-oced-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).

<sup>2</sup> John Quigley and Veronica Espinosa, “Payday Looms on Dictator’s Defaulted Bonds in Peru: Andes Credit,” *Bloomberg News*, 17 July 2013, available at <https://www.bloomberg.com/news/articles/2013-07-17/payday-looms-on-dictator-s-defaulted-bonds-in-peru-andes-credit>.

<sup>3</sup> Antonio Llaveria, “Haunted By a Legacy of Betrayal, Peruvians Still Seek Justice,” *The Hill*, 12 November 2015, available at <http://thehill.com/blogs/congress-blog/foreign-policy/259887-haunted-by-a-legacy-of-betrayal-peruvians-still-seek>.

<sup>4</sup> Adam Behsudi, “Labor Union Calls out Peru Over Land Bond Dispute,” *Politico*, 11 April 2017, available at <http://www.politico.com/story/2017/04/labor-union-calls-out-peru-over-land-bond-dispute-237105>.

so. Instead, it continues to avoid payment, offering only opaque measures that fail to provide adequate compensation to bondholders and that are based on a 2013 decision from the Constitutional Tribunal, which was tainted by alleged forgery (the “**2013 Decision**”). Peru’s conduct with respect to the Agrarian Reform Bonds raises a number of issues for its OECD accession prospects. This conduct includes the following:

- Peru’s ongoing multibillion U.S. dollar (“**USD**”) default on the Agrarian Reform Bonds (*see ¶ 10*);
- Peru’s repeated failure to follow numerous Peruvian court decisions ordering repayment of the Agrarian Reform Bonds (*see ¶¶ 11-13*);
- Peru’s continued refusal to meaningfully address the repayment of the Agrarian Reform Bonds, including enacting Supreme Decrees that fail (i) to ensure transparency and participation by bondholders in the payment processes, and, (ii) to provide a methodology that would result in fair compensation in a reasonable period of time. To date, these Supreme Decrees have resulted in no payments to bondholders, and have been rejected as inadequate by the vast majority of such bondholders (*see ¶¶ 18-25*);
- Peru’s failure to properly report the amount of outstanding Agrarian Reform Bond debt to, among others, the International Monetary Fund (“**IMF**”), the U.S. Securities and Exchange Commission (“**SEC**”), the Luxembourg Stock Exchange, and credit rating agencies (*see ¶ 27-30*); and
- Peru’s failure to take corrective action in connection with allegations of forgery and misconduct related to the 2013 Decision, and Peru’s continued reliance upon the 2013 Decision as recently as 19 August 2017, notwithstanding an ongoing criminal inquiry into the 2013 Decision (*see ¶¶ 14-18, 22-23*).

6. Peru’s continuing refusal to provide fair compensation for the Agrarian Reform Bonds, to take remedial action regarding the allegations of forgery and misconduct associated with the 2013 Decision, and its failure to properly report the debt, is contrary to the OECD’s core values, and is inconsistent with several OECD legal instruments and leading practices. These actions are also symptomatic of shortcomings in public integrity, which the OECD itself has noted with concern in a recent review of Peru. Consequently, unless and until Peru appropriately resolves the issues regarding the Agrarian Reform Bonds in a satisfactory way, Peru should not be considered a viable candidate for full OECD membership.

## II.

### BACKGROUND

#### A. Overview of Peru's Agrarian Reform Bonds and Current Default

7. In October 1968, following a coup d'état, General Juan Velasco assumed control of the Peruvian government. Soon thereafter, the government enacted the Land Reform Act of 1969, which provided for the expropriation of all landholdings above a certain size.<sup>5</sup> This law required, among other things, that large estates be owned and operated as cooperatives, and provided compensation to the owners of the expropriated land primarily in the form of Agrarian Reform Bonds.<sup>6</sup> Further, pursuant to the Act, which was signed by General Velasco, and consistent with the Constitution of Peru, payment on the Agrarian Reform Bonds was guaranteed by the Peruvian state without reservation.<sup>7</sup>

8. From 1969 through 1979, the government expropriated nearly 23 million acres of land across nearly 16,000 individual lots—the equivalent of the size of Portugal.<sup>8</sup> Among its Latin American peers, Peru's expropriation was nearly double the amount of land expropriated in Venezuela's land reform process, and more than three times the amount of the land expropriated in each of Chile, Bolivia, Ecuador, Panama and Costa Rica in their respective land reform processes. In exchange for the land expropriated, with respect to 85 percent of the expropriated land, the government issued Agrarian Reform Bonds with an aggregate face value of more than 13 billion *soles de oro*.<sup>9</sup> With respect to the remaining 15 percent of the expropriated land, landholders were compensated in cash.<sup>10</sup>

---

<sup>5</sup> Decree Law N° 17716, Land Reform Act, 24 June 1969, Art. 175, available at <http://bonosagrarios.pe/wp-content/uploads/2016/02/Ex.-CE-01.pdf>; Lastarria-Cornhiel, Susana, "Agrarian Reforms of the 1960s and 1970s in Peru," in *Searching for Agrarian Reform in Latin America*, Ed. William C. Thiesenhusen, Unwin Hyman, 1989, at 138-139, available at [http://pdf.usaid.gov/pdf\\_docs/PNABC444.pdf](http://pdf.usaid.gov/pdf_docs/PNABC444.pdf).

<sup>6</sup> Lastarria-Cornhiel, Susana, "Agrarian Reforms of the 1960s and 1970s in Peru," in *Searching for Agrarian Reform in Latin America*, Ed. William C. Thiesenhusen, Unwin Hyman, 1989, at 139-140, available at [http://pdf.usaid.gov/pdf\\_docs/PNABC444.pdf](http://pdf.usaid.gov/pdf_docs/PNABC444.pdf).

<sup>7</sup> See Decree Law N° 17716, Land Reform Act, June 24, 1969, Art. 175, available at <http://bonosagrarios.pe/wp-content/uploads/2016/02/Ex.-CE-01.pdf>; see also Political Constitution of Peru 1933, Art. 29, as amended by Law N° 15242 of 1964, available at <http://bonosagrarios.pe/wp-content/uploads/2016/02/Ex.-CE-03.pdf>.

<sup>8</sup> Peru Ministerio de Agricultura y Riego, "Titulacion agraria en el Peru," available at <https://www.minag.gob.pe/portal/marco-legal/69-marco-legal/titulacion-y-creditos/409-titulacion-agraria-en-el-peru>.

<sup>9</sup> Porzecanski, Arturo C., "Peru's Selective Default: A Stain on Its Creditworthiness," American University Working Paper Series, Paper No. 2016-1, 28 January 2016 ("Porzecanski"), p. 3, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2728395##](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2728395##); Opinion issued on Draft Laws N° 578/2001-CR, N° 7440/2002-CR, N° 8988/2003-CR, N° 10599/2003-CR N° 11459/2004-CR, and N° 11971/2004-CR, available at <http://bonosagrarios.pe/wp-content/uploads/2016/02/Ex.-CE-12.pdf>.

<sup>10</sup> Porzecanski, *supra* note 9, p. 2, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2728395##](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2728395##).

9. Beginning in the mid-1970s, severe inflation plagued the Peruvian economy. From 1973 through 1996, prices increased by an average of 132 percent per annum.<sup>11</sup> In response, Peru redenominated its currency twice: first in 1985 from *soles de oro* to *intis*, with one *inti* worth 1,000 *soles de oro*, and again in 1991, from *intis* to *soles*, with one *sol* worth 1,000,000 *intis*.<sup>12</sup> Peru's rapid inflation resulted in near-complete devaluation of the face value of the Agrarian Reform Bonds, which were denominated in *soles de oro*.

10. The Peruvian government stopped making payments on the Agrarian Reform Bonds in the late 1980s. In 1992, it liquidated the Agrarian Bank, the entity responsible for repaying the Agrarian Reform Bonds.<sup>13</sup> As of 2005, an estimated 2.5 billion *soles de oro* of principal remained unpaid on the Agrarian Reform Bonds.<sup>14</sup>

### **B. The Peruvian Courts' and Congress's Directives that Peru Must Pay Current Value to Resolve the Agrarian Reform Bond Default**

11. In March 2001, more than sixteen years ago, Peru's Constitutional Tribunal—the country's highest constitutional authority—formally acknowledged Peru's obligation to compensate the holders of outstanding Agrarian Reform Bonds (the "**2001 Decision**") in an amount equal to the "current value" of the debt. Quoting Article 70 of the Peruvian Constitution, the Constitutional Tribunal stated:

*No person may be stripped of their property except for the exclusive reasons of national security or public necessity, declared by law, and upon payment in cash of fair compensation which shall include compensation for potential damage.*<sup>15</sup>

The Tribunal held that "merely nominal payment" would not suffice to satisfy this requirement, pointing to the "current value principle inherent in property" under Peruvian law and to an earlier legislative decree mandating that, in cases of expropriation, "[t]he value of the expropriated lands shall be paid at market value and in cash."<sup>16</sup>

---

<sup>11</sup> Lima Consumer Price Index, available at <https://estadisticas.bcrp.gob.pe/estadisticas/series/mensuales/resultados/PN01270PM/html>.

<sup>12</sup> Central Reserve Bank of Peru, Billetes y Monedas, available at <http://www.bcrp.gob.pe/billetes-y-monedas/unidades-monetarias/tabla-de-equivalencias.html>.

<sup>13</sup> Porzecanski, *supra* note 9, p. 3, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2728395##](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2728395##); Decree Law N° 25478, 8 May 1992, available at <http://bonosagrarios.pe/wp-content/uploads/2016/02/Ex.-CE-07.pdf>.

<sup>14</sup> Porzecanski, *supra* note 9, p. 10, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2728395##](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2728395##); Opinion issued on Draft Laws N° 578/2001-CR, N° 7440/2002-CR, N° 8988/2003-CR, N° 10599/2003-CR N° 11459/2004-CR, and N° 11971/2004-CR, *supra* note 9, available at <http://bonosagrarios.pe/wp-content/uploads/2016/02/Ex.-CE-12.pdf>.

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

<sup>16</sup> *Id.* at 3-4.

12. In the years following the landmark 2001 Decision, multiple Peruvian courts, and the Peruvian Congress, confirmed Peru's obligation to pay the current value of the Agrarian Reform Bonds. For example, in a 2004 decision, the Constitutional Tribunal reiterated that the current value principle applies to the Agrarian Reform Bonds.<sup>17</sup> In 2006, Peru's Supreme Court confirmed that the Agrarian Reform Bonds value must be updated using the consumer price index ("**CPI**"), as did other Peruvian civil courts.<sup>18</sup> Similarly, in 2006, Peru's Congress approved a bill directing the government to update the value of the Agrarian Reform Bonds using CPI.<sup>19</sup> Likewise, in July 2011, the Permanent Commission of Congress approved a Land Reform Bond Debt Swap Bill that would have updated the value of the Agrarian Reform Bonds using CPI.<sup>20</sup> Ultimately, however, then-President Alan García failed to sign the bill.<sup>21</sup> While Congress was studying the 2011 draft bill to pay the Agrarian Reform Bonds, then-Minister of Economy and Finance, Ismael Benavides, publicly stated that the Government was studying alternatives to pay the Bonds.<sup>22</sup>

13. Numerous Peruvian bondholders have obtained final judgments that recognize Peru's obligation to pay the Agrarian Reform Bonds at current value. By way of example, on September 17, 2015, Peru published a list of 45 Peruvian legal proceedings relating to the Agrarian Reform Bonds in which Peru is a party and final judgments have been issued.<sup>23</sup> According to Peru's Ministry of Economy and Finance (the "**MEF**"), 365 million *soles* (or USD

---

<sup>17</sup> Constitutional Tribunal, Decision, File N° 0009-2004-AI/TC, 2 August 2004, "Foundations" Section, ¶ 17, available at <https://www.scribd.com/document/250592348/Expropiacion-Por-El-Tc>.

<sup>18</sup> E.g., Supreme Court Decision, 12 July 2006, available at <http://bonosagrarios.pe/wp-content/uploads/2016/01/Corte-Suprema-Casacion-1002-2005-del-12-de-julio-de-2006.pdf>; Supreme Court, Constitutional and Social Law Chamber, Cassation Ruling N° 2146-2006-LIMA, September 6, 2007; Supreme Court, Constitutional and Social Law Chamber, Cas. N° 1958-2009, January 26, 2010, available at <http://bonosagrarios.pe/wp-content/uploads/2016/01/Corte-Suprema-Casacion-1958-2009-del-26-de-enero-de-2010.pdf>.

<sup>19</sup> Land Bonds Bill, 27 March 2006, Art. 8, available at [http://www2.congreso.gob.pe/Sicr/RelatAgenda/proapro20112016.nsf/ProyectosAprobadosPortal/41A14C3F80592FCA05257FF8006D4732/\\$FILE/578SeguridadJuridicaReformaAgraria.pdf](http://www2.congreso.gob.pe/Sicr/RelatAgenda/proapro20112016.nsf/ProyectosAprobadosPortal/41A14C3F80592FCA05257FF8006D4732/$FILE/578SeguridadJuridicaReformaAgraria.pdf).

<sup>20</sup> Opinion of the Agrarian Commission of Congress on Draft Bills N°s 456/2006-CR, 3727/2008-CR and 3293/2008-CR, 16 June 2011.

<sup>21</sup> "Alan García Observará Proyecto de Ley de Pago de Bonos de la Reforma Agraria," *La República*, 21 July 2011, available at <http://larepublica.pe/economia/558079-alan-garcia-observara-proyecto-de-ley-de-pago-de-bonos-de-la-reforma-agraria>; Congress of Peru, Permanent Committee, Debate Transcript, 28 June 2011, p. 61.

<sup>22</sup> Marienella Ortiz, "Banco de Crédito Enjuicia al Estado por Deuda de US\$27 Millones," *El Comercio*, 24 December 2010, available at <http://archivo.elcomercio.pe/economia/peru/banco-credito-enjuicia-al-estado-deuda-us27-millones-noticia-689019>.

<sup>23</sup> Memorandum 1379-2015-MINAGRI-OGA, 17 September 2015, available at <http://bonosagrarios.pe/wp-content/uploads/2016/01/Memo1379-2015.pdf>.

111 million) remained unpaid pursuant to these judgments as of June 2015.<sup>24</sup> Further, these proceedings account for only a small number of at least 450 lawsuits filed by bondholders.<sup>25</sup>

### C. Peru's Recent Attempts to Repudiate the Agrarian Reform Bond Debt

14. Pursuant to the 2013 Decision, the Constitutional Tribunal reaffirmed that the outstanding Agrarian Reform Bonds must be repaid at their updated, current value.<sup>26</sup> However, the Constitutional Tribunal instructed the Executive Branch to calculate the current value of the Agrarian Reform Bonds using a “dollarization” method, which the Constitutional Tribunal acknowledged would result in a lower valuation than the valuation derived under the alternative CPI method. The Constitutional Tribunal based this instruction on the rationale that repayment using CPI, unlike repayment using dollarization, would result in a “serious impact on the Budget of the Republic, to the point of making impracticable the very payment of the debt.”<sup>27</sup> There are no public pleadings from the MEF to support this rationale, which presumably would have had significant consequences for Peru with respect to the debt capital markets and credit rating agencies. The 2013 Decision was issued just a few days after President Humala had publicly warned the Tribunal to “abstain from issuing rulings on sensitive issues ... such as, for example, the land reform bond[s].”<sup>28</sup>

15. The 2013 Decision was later alleged to be tainted by forgery. In March 2015, a bondholder alleged in a criminal complaint that the 2013 Decision had been illegally tampered with, casting doubt on its legitimacy.<sup>29</sup> Soon thereafter, a senior Justice of the Constitutional Tribunal joined the complaint as an aggrieved party, alleging that his signature had been forged using white out to fraudulently transform the draft majority opinion that endorsed calculating the bonds' current value by the use of a CPI method into a dissenting opinion that endorsed a dollarization method.<sup>30</sup> A forensic report prepared by the Institute of Legal Medicine and

---

<sup>24</sup> *Id.*

<sup>25</sup> See Matt Wirz, “Hedge Fund Challenges Peru on Land Bonds,” *The Wall Street Journal*, 15 January 2016, available at <https://www.wsj.com/articles/hedge-fund-challenges-peru-on-land-bonds-1452853981>.

<sup>26</sup> Constitutional Tribunal Decision, 16 July 2013, available at <http://tc.gob.pe/jurisprudencia/2013/00022-1996-AI%20Resolucion.pdf>.

<sup>27</sup> *Id.* ¶ 25.

<sup>28</sup> “Ollanta Humala pidió al TC ‘abstenerse a dar fallos en temas sensibles,’” *El Comercio*, 9 July 2013, available at <http://archivo.elcomercio.pe/politica/gobierno/ollanta-humala-pidio-al-tcabstenerse-dar-fallos-temas-sensibles-noticia-1601511>.

<sup>29</sup> “¡Escándalo! Fiscalía Confirma Adulteración de Sentencia en el Tribunal Constitucional,” *Diario Exitosa*, 6 July 2015, available at <http://www.radioexitosa.pe/actualidad/exp164149-escandalo-fiscalia-confirma-adulteracion-de-sentencia-en-el-tribunal-constitucional>; “OCI No Facilita Investigación de Fraudulento Voto en el TC,” *Diario Exitosa*, 1 July 2015, available at <https://issuu.com/exitosanoticias/docs/521>; Criminal Complaint of Augusto Pretel, March 30, 2015, available at <http://bonosagrarios.pe/wp-content/uploads/2016/02/Ex.-CE-30.pdf>.

<sup>30</sup> “Peruvian Judge Files Complaint Over Bond Ruling,” *Financial Times*, 27 October 2015; “A Hedge Fund Seeks its Fortune on an Old Frontier,” *The Washington Post*, 9 September 2016, available at [https://www.washingtonpost.com/business/economy/a-hedge-fund-seeks-its-fortune-on-an-old-frontier/2016/09/09/335ad65e-744a-11e6-8149-b8d05321db62\\_story.html?utm\\_term=.56296801dd81](https://www.washingtonpost.com/business/economy/a-hedge-fund-seeks-its-fortune-on-an-old-frontier/2016/09/09/335ad65e-744a-11e6-8149-b8d05321db62_story.html?utm_term=.56296801dd81); Solicito incorporación como agraviado de Carlos Mesia Ramirez, Investigación 119-2015, 23 October 2015, available at

Forensic Sciences upon request of the Lima Prosecutor's Office later confirmed that white out had been used to fabricate the dissenting opinion.<sup>31</sup>

16. In December 2015, prosecutors charged the Court Secretary of the Constitutional Tribunal with falsifying court documents in relation to the 2013 Decision.<sup>32</sup> The following month, a judge denied the Court Secretary's motion to dismiss the action and ruled that the criminal proceeding would continue.<sup>33</sup> In addition to these criminal proceedings, which remain pending, Peru's Congress recently began investigating and commenced a formal process against the former Chief Justice, Óscar Urviola.<sup>34</sup> To date, the 2013 Decision nevertheless remains in effect, and is publicly available on the Constitutional Tribunal's website with evidence of the alleged forgery visible.<sup>35</sup>

17. The alleged forgery has had material consequences. In particular, it is my understanding that the allegedly fabricated dissent enabled Chief Justice Urviola to allege that there was a three-to-three tie, which enabled him to issue a "casting vote" in favor of the decision endorsing the dollarization method.<sup>36</sup> Further, as described below, Peru has continued to rely on

---

<http://bonosagrarios.pe/wp-content/uploads/2016/01/Carlos-Mesia-Solicito-incorporacion-como-agraviado-23-October-2015.pdf>.

<sup>31</sup> Institute of Legal Medicine and Forensic Sciences, Expert Report N° 12439-12454/2015, available at <http://bonosagrarios.pe/wp-content/uploads/2016/01/Informe-Pericial-Instituto-de-Medicina-Legal-y-Ciencias-Forenses-Agosto-2015.pdf>.

<sup>32</sup> "Ministerio Público Denuncia Adulteración de Resolución del TC Sobre Bonos de la Deuda Agraria," *Gestión*, 8 December 2015, available at <https://gestion.pe/politica/ministerio-publico-denuncia-adulteracion-resolucion-tc-sobre-bonos-deuda-agraria-2150594>; "Nuevos Documentos Comprueban Escandalosos Casos de Corrupción Dentro del TC," *PanAmericana*, 20 November 2015, available at <https://panamericana.pe/buenosdiasperu/politica/233737-reacciones-encuesta-proetica-corrupcion-pais>; "Bonos Agrarios: Escándalo de Corrupción en el Tribunal Constitucional," *PanAmericana*, 13 November 2015, available at <https://panamericana.pe/m/lascosascomoson/locales/196344-bonos-agrarios-escandalo-corrupcion-tribunal-constitucional>; "3 Exmagistrados del TC Dicen que Fallo de Bonos Agrarios Debe Anularse," *Política*, 4 November 2015, available at <https://diariocorreo.pe/politica/3-exmagistrados-del-tc-dicen-que-fallo-de-bonos-agrarios-debe-anularse-630282/>.

<sup>33</sup> See, e.g., "PJ investiga a relator del TC por falsificación de documentos," *El Comercio*, 7 January 2016, available at <http://elcomercio.pe/politica/justicia/pj-investiga-relator-tc-falsificacion-documentos-noticia-1869235>; "Juzgarán a Ex Relator del TC por Adulterar Fallo Sobre Bonos," *La República*, 7 January 2016, available at <http://larepublica.pe/politica/908439-juzgaran-a-ex-relator-del-tc-por-adulterar-fallo-sobre-bonos>.

<sup>34</sup> "Declaran Procedente Acusación por Prevaricato en Contra de Óscar Urviola, Ex Presidente del TC," *Gestión*, 18 July 2017, available at <https://gestion.pe/politica/declaran-procedente-acusacion-prevaricato-contra-oscar-urviola-ex-presidente-tc-2195354>.

<sup>35</sup> Constitutional Tribunal Decision, 16 July 2013, *supra* note 26, available at <http://tc.gob.pe/jurisprudencia/2013/00022-1996-AI%20Resolucion.pdf>.

<sup>36</sup> As noted by former Constitutional Tribunal Justice, Delia Revoredo, there are other procedural complications with the 2013 Decision, and in particular Chief Justice's "casting vote," beyond just the alleged forgery. See Expert Report of Delia Revoredo, 2 June 2016, ¶ 66, available at [http://perubonds.org/wp-content/uploads/resources/expert\\_report\\_of\\_delia\\_revoredo.pdf](http://perubonds.org/wp-content/uploads/resources/expert_report_of_delia_revoredo.pdf); see also "Nuevos documentos comprueban escandalosos casos de corrupción dentro del TC" (Video at minute 5:30), available at <https://panamericana.pe/lascosascomoson/locales/196771-nuevos-documentos-comprueban-escandalosos-casos-corrupcion-tc>

the 2013 Decision in subsequent actions, including actions that almost completely devalue the Agrarian Reform Bonds.

18. In particular, the MEF cited the 2013 Decision as the basis to issue two Supreme Decrees in early 2014 (the “**2014 Decrees**”).<sup>37</sup> The 2014 Decrees, executed by former President Humala and former Finance Minister Luis Castilla, purported to establish a process to value and pay the Agrarian Reform Bonds. In fact, under the formula specified by the 2014 Decrees, the Agrarian Reform Bonds were essentially worthless.

19. For example, in a 2015 analysis prepared in connection with a petition brought by the Land Reform Bondholders Association (“**ABDA**”) before the Constitutional Tribunal, Deloitte Peru estimated that the total value of the debt under the dollarization methodology specified in the 2014 Decrees was between USD 12 million and USD 24 million as of December 31, 2014.<sup>38</sup> This valuation range is orders of magnitude smaller than Deloitte Peru's estimated economic value of the expropriated lands of over USD 42 billion.<sup>39</sup> By contrast, other experts “estimated conservatively” that the current value of the total Agrarian Reform Bond debt was approximately USD 5.1 billion as of December 2014.<sup>40</sup> Another expert characterized the methodology specified in the 2014 Decrees as “conceptually nonsensical” and the resulting valuation as “nonsensical updated land bond values.”<sup>41</sup> This expert demonstrated that the current value of one representative Agrarian Reform Bond was over USD 16,000 under the CPI method and less than one USD penny under the 2014 Decrees’ dollarization method.<sup>42</sup> Based on this wide

---

<sup>37</sup> Supreme Decree No. 17-2014-EF, 18 January 2014, available at <https://www.mef.gob.pe/es/por-instrumento/decreto-supremo/10941-decreto-supremo-n-017-2014-ef/file>; Supreme Decree No. 19-2014-EF, 22 January 2014, available at <https://www.mef.gob.pe/es/por-instrumento/decreto-supremo?start=1425&limit=10&limitstart=1510>.

<sup>38</sup> See Land Reform Bondholders Association’s Application before the Constitutional Tribunal, 16 March 2015, ¶ 9, n.7, available at <http://bonosagrarios.pe/wp-content/uploads/2015/03/Peticion-de-ABDA.pdf> (citing Deloitte, *Comparative Analysis of Supreme Decrees No. 017-2014-EF and No. 019-2014-EF and Economic Value of Land Expropriated During Peruvian Agrarian Reform*, March 2015).

<sup>39</sup> *Id.*

<sup>40</sup> Ismael Benavides, et al., “On the Costs and Benefits of Restructuring the Selective Default of the Peruvian Land Debt,” 17 February 2015, 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>41</sup> Expert Report of Sebastian Edwards, 2 June 2016, ¶ 154, available at <http://bonosagrarios.pe/wp-content/uploads/2016/06/Edwards-Expert-Report-2016.06.02.pdf>; see also Expert Report of Ivan Alonso and Italo Muñoz, February 2015, pp. 2-10, available at <http://bonosagrarios.pe/wp-content/uploads/2015/03/Reporte%20pericial%20de%20Alonso.pdf>.

<sup>42</sup> For example, an individual bond, calculated using the 2014 Supreme Decrees, yields an updated value, as of 2013, of less than 0.01 soles. Expert Report of Sebastian Edwards, 2 June 2016, ¶ 127, available at <http://bonosagrarios.pe/wp-content/uploads/2016/06/Edwards-Expert-Report-2016.06.02.pdf>; Expert Report of Ivan Alonso and Italo Muñoz, February 2015, pp. 2-10, available at <http://bonosagrarios.pe/wp-content/uploads/2015/03/Reporte%20pericial%20de%20Alonso.pdf>.

disparity, former Peruvian Finance Minister Ismael Benavides has described the 2014 Decrees as an “attempt[] to further expropriate bondholders.”<sup>43</sup>

20. The 2014 Decrees also set forth a priority order of payment, under which entities that acquired the bonds for “speculative purposes” were given lowest repayment priority.<sup>44</sup> It is my understanding that the probable effect of this provision is that, foreign institutional bondholders, because they are most likely to be judged to have acquired the bonds for “speculative purposes,” will generally be paid only after all other bondholders are paid.

21. On 28 July 2016, just prior to taking office, Peru’s recent Finance Minister, Alfredo Thorne, conceded that Peru has swept the issue of the Agrarian Reform Bonds “under the rug.”<sup>45</sup> Nevertheless, shortly after taking office, in August 2016 President Pedro Pablo Kuczynski publicly repudiated Peru’s obligation to repay current bondholders. In a televised interview with *Latin Finance*, President Kuczynski stated the following in English:

*These land reform bonds were issued in the 1970s, they’re under Peruvian law, not internationally recognized bonds. And we have a very good team of lawyers. These folks think they can buy something for a cent and make 100. It doesn’t work that way. This is not funded debt like the Argentine bonds were that were actually issued. This is something quite different... We will look at it when the issue comes up. They’ve hired lobbyists; they’re making a big fuss. And we’re not stupid. We know what to do. We’ll face the music if there is music. . . .*<sup>46</sup>

22. In February 2017, Peru issued a third Supreme Decree offering “clarification” to its valuation methodology (the “**February 2017 Decree**”).<sup>47</sup> However, the February 2017 Decree, executed by President Kuczynski, did not provide the full mathematical formula that would be used to calculate the value of the Agrarian Reform Bonds, making it impossible for bondholders to know with certainty how much Peru was offering to pay. I have been informed that certain

---

<sup>43</sup> Ismael Benavides, et al., “On the Costs and Benefits of Restructuring the Selective Default of the Peruvian Land Debt,” 17 February 2015, *supra* note 40, 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>44</sup> Supreme Decree No. 17-2014-EF, 18 January 2014, *supra* note 37, available at <https://www.mef.gob.pe/es/por-instrumento/decreto-supremo/10941-decreto-supremo-n-017-2014-ef/file>; Supreme Decree No. 19-2014-EF, 22 January 2014, *supra* note 37, available at <https://www.mef.gob.pe/es/por-instrumento/decreto-supremo?start=1425&limit=10&limitstart=1510>.

<sup>45</sup> Robin Wigglesworth and Andrews Schipani, “Peru Hits Back at US Hedge Fund Over \$1.6 Billion Claim,” *Financial Times*, 3 June 2016, available at <http://www.ft.com/cms/s/0/8b4b71d0-2926-11e6-8ba3-cdd781d02d89.html#axzz4LNHM0j1h>.

<sup>46</sup> Katie Llanos-Small, “Peru’s PPK: ‘I don’t think we owe [Gramercy] anything’ – Exclusive,” *Latin Finance*, 22 August 2016, available at [http://www.latinfinance.com/Article/3579991/Peru-PPK-I-dont-think-we-owe-\[Gramercy\]-anything---Exclusive.html](http://www.latinfinance.com/Article/3579991/Peru-PPK-I-dont-think-we-owe-[Gramercy]-anything---Exclusive.html).

<sup>47</sup> Supreme Decree No. 34-2017-EF, 28 February 2017, available at <https://www.mef.gob.pe/es/por-instrumento/decreto-supremo/15619-decreto-supremo-n-034-2017-ef/file>.

bondholders requested a copy of the underlying formula from the February 2017 Decree, but that Peru refused to provide it. In addition, according to the February 2017 Decree, bondholders could be compensated in cash only up to 100,000 *soles* (approximately USD 30,900), which may be paid in installments over a period of up to eight years. The balance of any compensation in excess of this amount was payable in the form of additional government bonds and/or land, with the Peruvian government unilaterally determining the land's value.<sup>48</sup>

23. Most recently, in August 2017, Peru issued yet another Supreme Decree, again executed by President Kuczynski, setting forth the procedures and formula for payment of the Agrarian Reform Bonds (the "**August 2017 Decree**").<sup>49</sup> As in the previous Supreme Decrees, the August 2017 Decree explicitly cited the tainted 2013 Decision as the controlling legal authority, notwithstanding ongoing Peruvian criminal proceedings and investigations related to the forgery allegations. In effect, the new formula provided in the August 2017 Decree does not appear to effectively and reasonably address the value of the Agrarian Reform Bonds, and neither does the formula specified in a second, corrected Supreme Decree issued a week later in August 2017.<sup>50</sup> For example, even under the latest formula, the value of each Agrarian Reform Bond—once "dollarized"—is updated using the U.S. one-year Treasury rate. Even under a dollarization methodology, an Agrarian Reform Bond remains a Peruvian asset and a bondholder should be compensated using a long-term Peruvian rate of return, not a short-term U.S. rate of return.

24. Further, the August 2017 Decree retains the procedural shortcomings contained in the prior Supreme Decrees, requiring bondholders to deliver their bonds to the MEF and to waive their rights to judicial proceedings in exchange for a process under which eventual payment of an uncertain amount, in an uncertain form, may only occur many years later, if ever. It also allows Peru to unilaterally determine the form of payment—which may consist of illiquid investments such as land or non-marketable securities—if the parties cannot agree.<sup>51</sup> This may lead to "biased" payment values, which is a particular concern when valuing illiquid forms of payment. The August 2017 Decree also maintains the priority order for cash payments specified in the 2014 Decrees, which as noted above, will likely result in foreign institutional bondholders being paid after *other* bondholders.

25. It is my understanding that the process outlined in the 2014 Decrees and amended in the February and August 2017 Decrees is so flawed and so unsatisfactory that foreign bondholders as well as domestic bondholders, represented by the leading Peruvian bondholder organizations, ABDA and the Expropriated Landowners Association (ADAEPRA), which together comprise several thousand Peruvian bondholders, have declined to participate. As

---

<sup>48</sup> *Id.*

<sup>49</sup> Supreme Decree No. 242-2017-EF, 19 August 2017, available at <https://www.mef.gob.pe/es/por-instrumento/decreto-supremo/16304-decreto-supremo-n-242-2017-ef/file>.

<sup>50</sup> Supreme Decree No. 242-2017-EF, 26 August 2017, available at <https://www.mef.gob.pe/es/normatividad-sp-9867/por-instrumento/decretos-supremos/16357-fe-de-erratas-208/file>.

<sup>51</sup> Supreme Decree No. 242-2017-EF, 19 August 2017, *supra* note 49, available at <https://www.mef.gob.pe/es/por-instrumento/decreto-supremo/16304-decreto-supremo-n-242-2017-ef/file>.

recently as September 2017, these organizations formally criticized the current process as “unconstitutional” for violating property rights enshrined in the Peruvian Constitution and strongly encouraged the MEF to revoke the latest Supreme Decree.<sup>52</sup> In addition, in October 2017, a group of Peruvian American bondholders sent a letter to the President of the Council of Ministers, Mrs. Mercedes Aràoz Fernández, criticizing the recent Supreme Decree. In this letter, the bondholders condemned the Decree for “continu[ing] to value the bonds at a fraction of their value,” and for using the July 2013 ruling by the Constitutional Tribunal, which was “tainted with forgery and is currently under criminal investigation,” as the cornerstone of the valuation.<sup>53</sup>

26. Peru has attempted to defend the legitimacy of its various Supreme Decrees by stating that it has “authenticated” over 10,000 Agrarian Reform Bonds under the current process.<sup>54</sup> However, this attempted defense is misleading. First, by “authenticate,” it seems that Peru is merely referring to its process of physically inspecting the bonds to ensure that they are not forged and that the bondholder has legal title to the bond. It does not mean that, nearly four years after initiating the process, Peru has taken any steps toward payment of the Agrarian Reform Bonds. Second, based upon a July 2015 letter issued by the MEF, only 228 bondholders, had participated in this process as of that date.<sup>55</sup> Third, according to the same letter, the 8,855 Agrarian Reform Bonds that had been submitted through this process as of that date—which appear to represent the vast majority of the 10,000 Agrarian Reform Bonds Peru states it has authenticated—have an aggregate face amount of approximately 136 million *soles de oro*.<sup>56</sup> Based on a 2006 report issued by the Peruvian Congress, the total face value of all outstanding Agrarian Reform Bonds is approximately 2.4 billion *soles de oro*.<sup>57</sup> Accordingly, the Agrarian Reform Bonds submitted at that time accounted for approximately five percent of the total face value of the outstanding Agrarian Reform Bonds. Even more telling is the fact that after almost four years, Peru has not repaid one Agrarian Reform Bond under its current process, and Peru has yet to disclose how much money will be repaid for a single Agrarian Reform Bond.

---

<sup>52</sup> See Letter from ABDA to Minister of Economy and Finance Claudia Cooper Fort, 27 September 2017, available at <http://www.abdaperu.org/web/noticia/837/abda-envia-carta-a-mef-no-participara-en-procedimiento-del-ds-no-242-2017-ef>; Letter from ADAEPRA to Minister of Economy and Finance Claudia Cooper Fort, 27 September 2017, available at <http://bonosdeudaagraria.blogspot.pe/2017/10/compartiendo-iniciativas-con-asociados.html>.

<sup>53</sup> See Letter from Peruvian American bondholders to President of the Council of Ministers Mrs. Mercedes Aràoz Fernández, 13 October, 2017 available at <http://bonosagrarios.pe/wp-content/uploads/2017/10/Letter-to-the-President-of-the-Council-of-Ministers-of-Peru.pdf>.

<sup>54</sup> See *Gramercy Funds Management v. Republic of Peru*, UNCITRAL Arbitration, Response of the Republic of Peru at 2 (6 September 2016), available at <https://www.italaw.com/cases/3879>.

<sup>55</sup> Letter from the Ministry of Economy and Finance, 14 July 2015, available at <http://bonosagrarios.pe/wp-content/uploads/2016/07/2.-MEF-letter-3986-of-July-14-2016.pdf>.

<sup>56</sup> *Id.*

<sup>57</sup> Land Bonds Bill, 27 March 2006, Art. 8, *supra* note 19, available at [http://www2.congreso.gob.pe/Sicr/RelatAgenda/proapro20112016.nsf/ProyectosAprobadosPortal/41A14C3F80592FCA05257FF8006D4732/\\$FILE/578SeguridadJuridicaReformaAgraria.pdf](http://www2.congreso.gob.pe/Sicr/RelatAgenda/proapro20112016.nsf/ProyectosAprobadosPortal/41A14C3F80592FCA05257FF8006D4732/$FILE/578SeguridadJuridicaReformaAgraria.pdf).

#### **D. Peru’s Ongoing Failure to Properly Report the Agrarian Reform Bond Debt**

27. Thus, nearly half a century after the Land Reform Act of 1969, and almost two decades after the landmark 2001 Decision, Peru has yet to repay the outstanding Agrarian Reform Bonds. Further, under the August 2017 Decrees, the repayment of the Agrarian Reform Bonds threatens to extend for years—if not decades—into the future. Despite this longtime outstanding obligation, which Peru acknowledged even in the allegedly tainted 2013 Decision, Peru has not reported the Agrarian Reform Bond debt in its recent Central Bank statistics, to the IMF, or in recent SEC filings.

28. In a June 2017 report, Jaime Jaramillo-Vallejo, the former Senior Financial Sector Expert in the Monetary and Capital Markets Department of the IMF, observed that “there is no evidence” that Peru reported the Agrarian Reform Bonds since 2001 “despite being required to do so.”<sup>58</sup> Mr. Jaramillo-Vallejo noted that Peru's failure to report the debt to the IMF violates Peru's IMF membership obligations. As Mr. Jaramillo-Vallejo explained:

*The lack of evidence that Peru reported the [Agrarian Reform Bonds] cannot be explained by asserting that these liabilities are contingent. In fact, at least the Peruvian Congress and the Judiciary have made clear that the [Agrarian Reform Bonds] constitute a “current,” and not a “contingent,” liability; therefore, they ought to be reported to the IMF. Regardless, even contingent liabilities would need to be reported to the IMF....*<sup>59</sup>

29. In addition, Peru has made a number of misleading statements about the Agrarian Reform Bonds in its SEC prospectuses and prospectus supplements. Professor John C. Coffee, one of the world’s leading experts on securities law and a professor at Columbia University Law School, issued a report on Peru’s SEC filings, concluding that “Peru has described its debt history in material misstatements that falsely gloss over its debt and deny that ‘a dispute’ even exists.”<sup>60</sup> Professor Coffee goes on to state that “although other sovereign issuers have defaulted, I am aware of no instance in which they have done so in quite this lurid, covert and seemingly unlawful fashion.”<sup>61</sup> The following assertions constitute what Professor Coffee describes as “the clearest example of a misstatement,” because Peru neglected to make any mention of the Agrarian Reform Bonds in an October 2015 SEC prospectus supplement:

*Since the Brady restructuring in 1997, Peru has, except as described below, timely serviced its external debt without default.*

---

<sup>58</sup> Jaime Jaramillo-Vallejo, “Peru’s Agrarian Reform Bonds and the IMF,” June 2017, ¶ 7, available at <http://www.abdaperu.org/web/noticia/838/abda-envia-carta-a-fmi-gobierno-del-peru-oculta-deuda-de-reforma-agraria>.

<sup>59</sup> *Id.* ¶ 9.

<sup>60</sup> John C. Coffee, Jr., Legal Opinion to GFM, 11 January 2016, p. 12, available at <http://perubonds.org/resource/analysis-of-perus-bond-prospectuses-filed-with-the-u-s-securities-and-exchange-commission-sec>.

<sup>61</sup> *Id.* at 6.

*. . . . Since the Brady Bond restructuring, Peru has been in default on payments to [certain creditors that failed to participate in the Brady restructuring]. As of December 31, 2011, there were no further scheduled amortizations or interest payments on these debts. None of these creditors has submitted claims against Peru for overdue amounts.*

*As of the date of this prospectus, Peru is unaware of any other claims filed against it, in Peru or abroad, for overdue debt payments and Peru is not involved in any disputes with its internal or external creditors.*<sup>62</sup>

30. As stated immediately above, Peru reported that it had no “disputes” with its creditors despite the existence of, at the time, over 400 ongoing local judicial proceedings, 47 final judgments, and ongoing criminal proceedings pertaining to the allegations of misconduct surrounding the 2013 Decision, all of which were directly related to Peru’s dispute with holders of Agrarian Reform Bonds.<sup>63</sup> Further, bondholders had made frequent and public criticisms of the Supreme Decrees in the press prior to the filing of the October 2015 prospectus, including at least one article on 11 October 2015— just 16 days prior to the filing of the prospectus containing the statement above—which has a direct quote on the dispute from Peru’s then current Finance Minister, Alonso Segura.<sup>64</sup> As such, and as noted by Professor Coffee, Peru’s statement above appears to be “categorically false.”<sup>65</sup> Even worse, almost immediately

---

<sup>62</sup> See Republic of Peru, Prospectus Supplement, 27 October 2015, p. 1, available at <https://www.sec.gov/Archives/edgar/data/77694/000119312515353938/d58194d424b3.htm>.

<sup>63</sup> See John C. Coffee, Jr., Legal Opinion to GFM, 11 January 2016, p. 13, n.47, available at <http://perubonds.org/resource/analysis-of-perus-bond-prospectuses-filed-with-the-u-s-securities-and-exchange-commission-sec>.

<sup>64</sup> See Paul Kilby & Davide Scigliuzzo, “Peru will stick to local law in debt dispute: Finance Minister,” *Reuters*, 11 October 2015, available at <http://www.reuters.com/article/peru-bonds-gramercy/peru-will-stick-to-local-law-in-debt-dispute-finance-minister-idUSL1N12A0J220151011> (quoting Segura as responding to bondholder criticism of the Supreme Decrees by saying “[w]hether some bondholders like it or not, Peru respects the law and we expect others to respect it as well”); see also Andres Schipani & Robin Wigglesworth, “Hedge Fund Threatens Peru over Debts to Former Landowners,” *Financial Times*, 9 October 2015, available at <https://www.ft.com/content/87b557e8-6e96-11e5-8171-ba1968cf791a>; “Deuda Agraria: ABDA Pide al Tribunal Constitucional que Se Reevalúe Cálculo Hecho por el MEF,” *Peru21*, 19 August 2015, available at <https://peru21.pe/economia/deuda-agraria-abda-pide-tribunal-constitucional-reevalue-calculo-hecho-mef-192895>; Alejandro Tudela Chopitea, “¿Bonos sin Justo Abono?,” *Expreso*, 1 July 2015, available at <http://bonosagrarios.pe/wp-content/uploads/2015/07/Expreso-1.7.2015.pdf>; “Entrevista de Augusto Pretel Rada,” *Diario Exitosa*, 28 June 2015, available at <http://bonosagrarios.pe/wp-content/uploads/2015/07/Diario-Exitosa-28.6.2015.pdf>; “Bonistas Conforman Alianza para Cobrar Deuda Agraria,” *RPP Noticias*, 21 April 2015, available at <http://rpp.pe/economia/economia/bonistas-conforman-alianza-para-cobrar-deuda-agraria-noticia-789838>; “Expropiados de la Reforma Agraria Advierten que Solo les Pagarían el 0.5% del Valor de sus Tierras,” *Gestión*, 6 April 2015, available at <https://gestion.pe/economia/expropiados-reforma-agraria-reclaman-que-solo-se-les-pagaria-05-valor-sus-tierras-2128152>.

<sup>65</sup> John C. Coffee, Jr., Legal Opinion to GFM, 11 January 2016, p. 13, available at <http://perubonds.org/resource/analysis-of-perus-bond-prospectuses-filed-with-the-u-s-securities-and-exchange-commission-sec>.

following the publication of Professor Coffee's report in *The Wall Street Journal*, which included a response quote from Peru,<sup>66</sup> Peru filed a prospectus supplement with the SEC in February 2016, and made other filings in September 2016 and July 2017.<sup>67</sup> Although Peru acknowledged a potential investment treaty claim relating to the Agrarian Reform Bonds, the February 2016 prospectus supplement, and subsequent SEC filings in September 2016 and July 2017, still contain the *materially inaccurate statement* above.<sup>68</sup> In addition, Peru has filed a nearly identical prospectus with the Luxembourg Stock Exchange.<sup>69</sup>

### III.

#### PERU'S ECONOMIC DEVELOPMENT FROM THE 1990s THROUGH PRESENT

31. Peru has achieved remarkable economic progress since the instability and severe inflation of the mid-to-late-20<sup>th</sup> century. This dramatic turnaround is often traced to the economic reforms implemented by the government of President Alberto Fujimori in the early 1990s. These reforms, often referred to collectively as "Fujishock," encompassed a number of measures aimed at economic liberalisation, including floating the exchange rate, abolishing quantitative import restrictions, simplifying the tariff system and generally reducing tariffs, and allowing market forces to determine interest rates.<sup>70</sup>

32. Fujishock also encouraged private and foreign competition in economic activities previously reserved for the public sector, privatized government-owned businesses, and strengthened property rights.<sup>71</sup> On the heels of these initial reforms, the government enacted additional fiscal policies in the mid-1990s. These included simplifying the income tax and

---

<sup>66</sup> Matt Wirz, "Hedge Fund Challenges Peru on Land Bonds," *The Wall Street Journal*, 15 January 2016, available at <https://www.wsj.com/articles/hedge-fund-challenges-peru-on-land-bonds-1452853981>; Reynolds Holding, "Lima Beating," *Breaking Views*, 21 January 2016, available at <https://www.breakingviews.com/considered-view/peru-could-use-legal-tip-from-brazil-or-argentina/>.

<sup>67</sup> See e.g., SEC Prospectus Supplement, 25 February 2016, available at <https://www.sec.gov/Archives/edgar/data/77694/000119312516476149/d147643d424b5.htm>; E.g., Republic of Peru, Ex-99D of 18-K, 15 September 2016, available at <https://www.sec.gov/Archives/edgar/data/77694/000119312516710531/d260420dex99d.htm>; Republic of Peru, Ex-99D of 18-K, 6 July 2017, available at <https://www.sec.gov/Archives/edgar/data/77694/000119312517223195/d395329dex99d.htm>.

<sup>68</sup> *Id.*

<sup>69</sup> See Republic of Peru, Prospectus Supplement, 11 December 2015, available at <https://www.bourse.lu/security/XS1315181708/230649>.

<sup>70</sup> Rossini, Renzo and Alejandro Santos, "Peru's Recent Economic History: From Stagnation, Disarray, and Mismanagement to Growth, Stability, and Quality Policies," *Peru: Staying the Course of Economic Success*, Editors Alejandro Santos and Alejandro Werner, International Monetary Fund, 2015 ("Rossini, Renzo, and Santos"), pp. 15-16, available at <http://www.imf.org/external/np/seminars/eng/2015/perubook/index.htm>.

<sup>71</sup> *Id.* at 21; Dancourt, Oscar, "Neoliberal Reforms and Macroeconomic Policy in Peru," CEPAL Review, No. 67, April 1999, pp. 53, available at [http://repositorio.cepal.org/bitstream/handle/11362/10675/1/67051073I\\_en.pdf](http://repositorio.cepal.org/bitstream/handle/11362/10675/1/67051073I_en.pdf).

augmenting tax receipts by increasing taxes on petroleum products, the continued privatization of public enterprises, and relaxing labor market regulations to encourage employment.<sup>72</sup>

33. A number of macroeconomic factors demonstrate Peru's sustained resurgence in the decades following Fujishock, including (1) a low, stable rate of inflation, (2) balanced fiscal budgets, (3) sustained gross domestic product ("**GDP**") growth, (4) decreasing unemployment, (5) a declining rate of poverty and income inequality, (6) increasing foreign direct investment, (7) expanding international trade, and (8) growing reserves of foreign currency. These factors illustrate both Peru's dramatic rebound from the turmoil of the mid-to-late 20<sup>th</sup> century and its current and projected economic strength relative to other large economies in Latin America ("**comparable LatAm countries**").<sup>73</sup><sup>74</sup>

- **Inflation.** Since the mid-1990s, Peru has successfully curtailed inflation.<sup>75</sup> In contrast to the 1973 through 1996 period, during which prices escalated at a staggering average annual rate of 132 percent,<sup>76</sup> from 1997 through 2015, Peruvian inflation averaged 3 percent.<sup>77</sup> This average annual rate of inflation was lower than any of the comparable LatAm countries over the same period, and similar to that of OECD member countries.<sup>78</sup> Moreover, the IMF estimates that Peruvian inflation will remain at this moderate level through 2022 (the last year for which a projection was made).<sup>79</sup>
- **Balanced Fiscal Budgets.** From 2000 through 2014, Peru had an average budget surplus equivalent to 0.2 percent of its GDP. Among comparable LatAm countries, only Chile and Paraguay had an average budget surplus over the same period, with other peers running budget deficits of up to 3.3 percent of GDP. OECD member countries averaged a budget deficit equivalent to 2.0 percent of GDP over this period.<sup>80</sup>

---

<sup>72</sup> Rossini, Renzo, and Santos, *supra* note 70, pp. 70-71, available at <http://www.imf.org/external/np/seminars/eng/2015/perubook/index.htm>.

<sup>73</sup> I define the comparable LatAm countries as Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Uruguay, and Venezuela within South America, as well as Mexico. Of these countries, Chile and Mexico are currently members of the OECD. OECD Members and Partners, available at <http://www.oecd.org/about/membersandpartners/>.

<sup>74</sup> I have used recent data available from the IMF or the World Bank, typically from 2014 or 2015, in discussing these factors below.

<sup>75</sup> See **Exhibit 1A**.

<sup>76</sup> Lima Consumer Price Index, available at <https://estadisticas.bcrp.gob.pe/estadisticas/series/mensuales/resultados/PN01270PM/html>.

<sup>77</sup> IMF World Economic Outlook Database.

<sup>78</sup> See **Exhibit 1B**.

<sup>79</sup> IMF World Economic Outlook Database.

<sup>80</sup> See **Exhibit 2**.

- **Sustained GDP Growth.** Peru's real GDP has climbed steadily from the early 1990s through 2014, with the IMF estimating continued growth of 3.6 percent annually through 2022.<sup>81</sup> From 2000 to 2014, Peru's real GDP grew at an average annual rate of 5.5 percent, higher than any of the comparable LatAm countries. By way of comparison, OECD member countries averaged 2.8 percent growth in real GDP over the same period.<sup>82</sup>
- **Decreasing Unemployment.** Peru's unemployment rate decreased from a recent high of 9.6 percent in 2005 to 6.0 percent as of 2014, which compared favorably to the unemployment rates of comparable LatAm countries and OECD member countries.<sup>83</sup> The IMF estimates that Peru's unemployment rate will average 6.5 percent from 2015 through 2022.<sup>84</sup>
- **Declining Rate of Poverty and Income Inequality.** Peru's poverty rate, defined as the proportion of the population living on less than USD 3.10 per day, decreased from a recent high of 32.6 percent in 2001 to 9.0 percent in 2014. Peru's 2014 poverty rate is similar to that of comparable LatAm countries.<sup>85</sup> Income inequality in Peru also decreased over this time period.<sup>86</sup>
- **Increasing Foreign Direct Investment.** From 1991 to 2015, foreign direct investment in Peru increased from essentially zero to USD 7.8 billion, equivalent to 4 percent of Peru's 2015 GDP.<sup>87</sup> Since 2000, growth in foreign direct investment in Peru has far outpaced that of comparable LatAm countries.<sup>88</sup>
- **Expanding International Trade.** From 1991 to 2015, Peru's trading activity rose from USD 9.2 billion, representing 26 percent of GDP, to USD 85.2 billion, representing 45 percent of GDP.<sup>89</sup> From 2000 to 2015, Peru's average annual growth in trade volume was second only to that of Bolivia among comparable countries.<sup>90</sup>
- **Growing Reserves of Foreign Currency.** From 1991 to 2015, Peru's foreign reserves increased from USD 3.1 billion to USD 61.6 billion. In 1991, Peru's

---

<sup>81</sup> See Exhibit 3A.

<sup>82</sup> See Exhibit 3B.

<sup>83</sup> See Exhibits 4A and 4B.

<sup>84</sup> IMF World Economic Outlook Database.

<sup>85</sup> See Exhibits 5A and 5B.

<sup>86</sup> World Bank, World Development Indicators Database, available at <https://data.worldbank.org/data-catalog/world-development-indicators>.

<sup>87</sup> See Exhibit 6A.

<sup>88</sup> See Exhibit 6B.

<sup>89</sup> See Exhibit 7A.

<sup>90</sup> See Exhibit 7B.

reserves represented 15 percent of its external debt, whereas in 2015, this ratio was more than 93 percent.<sup>91</sup> As of 2015, only Bolivia held more reserves relative to external debt than Peru among comparable LatAm countries, while Brazil, Mexico, Colombia, Paraguay, Argentina, Venezuela, and Ecuador held significantly smaller reserves as a percent of external debt than Peru.<sup>92</sup>

34. Despite these advances, compliance with many of the OECD's core values and leading practices remains problematic. For example, public sector integrity remains a concern in Peru. As demonstrated in a February 2017 OECD report (the "**OECD Integrity Review of Peru**"), several indicators suggest that Peru's public sector integrity lags behind OECD countries in many respects:

- "Perception of corruption in Peru remains higher than in OECD member countries."<sup>93</sup>
- "Peru scores lower [in the World Development Indicators] than the average of OECD and Latin American and Caribbean (LAC) countries in all sub-indicators, except Regulatory Quality, where Peru's score is better than average but remains still below the OECD average."<sup>94</sup>
- On resilience against corruption, "Peru scores . . . lower than the average of selected OECD countries [in the Index of Public Integrity, which measures a country's resilience against corruption]."<sup>95</sup>
- Peru's scores are "significantly below the OECD average" on "Ethics and corruption," "Undue influence" and "Government efficiency."<sup>96</sup>
- "In Peru, corruption is again the third most important problem after 'crime/insecurity' and 'unemployment.'"<sup>97</sup>

35. The OECD Integrity Review of Peru specifically highlights concerns about the judiciary and its independence:

- "While there is no statutory requirement for political involvement in the appointment process, judicial independence from political interference remains a concern in Peru. [...] These concerns played out in practice: in 2013 various media outlets, including

---

<sup>91</sup> See **Exhibit 8A**.

<sup>92</sup> See **Exhibit 8B**.

<sup>93</sup> OECD Integrity Review of Peru (2017), p. 19, available at <http://www.oecd.org/countries/peru/oecd-integrity-review-of-peru-9789264271029-en.htm>.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 20.

<sup>96</sup> *Id.* at 22.

<sup>97</sup> *Id.* at 23.

Human Rights Watch, reported that six constitutional court judges were nominated and appointed by Congress, which voted without considering the individual credentials of the nominees.”<sup>98</sup>

- “Judicial independence from the undue influence of interested parties to cases is also a major concern in Peru.”<sup>99</sup>
- “[T]here are several ongoing cases which indicate a high level of judicial corruption in Peru.”<sup>100</sup>

#### IV.

### THE OECD ACCESSION PROCESS AND REQUIREMENTS FOR MEMBERSHIP

#### A. Overview of the Accession Process

36. The OECD does not have a set of strict metrics that it uses to decide which countries can become members. Instead, accession to the OECD results from a rigorous but fluid process intended to evaluate whether a prospective member embodies the OECD’s core values, namely, the democratic principles based on the rule of law and human rights, and adherence to open and transparent market-economy principles.

37. A country seeking to become an OECD member must persuade the existing OECD members, who vote on the application, that it is committed to these core values—not only in words, but also demonstrated by actions. Beyond ensuring that newly admitted members conform to the core values of the OECD, the goal of the accession process is to increase the policy convergence of countries considered for membership with existing members, and to encourage the adoption of leading OECD practices and policies.

38. Typically, prospective OECD members engage with the OECD years before requesting accession by adhering to important OECD legal instruments, and adopting crucial OECD leading practices. Sometimes, as was the case for Peru in 2014, this enhanced involvement with the OECD is accomplished through an OECD Country Program (“**Country Program**”). I describe Peru’s Country Program in more detail below.

39. The formal accession process usually starts with the candidate country presenting a request to become an OECD member. The OECD Council (the “**Council**”), which comprises all OECD member countries, then decides whether to open accession discussions and sets the terms, conditions and process for accession.

40. Once the Council indicates that it is in favor of starting the accession process, the OECD staff prepares a roadmap, which details conditions, criteria and specific policy reviews

---

<sup>98</sup> *Id.* at 214.

<sup>99</sup> *Id.* at 215.

<sup>100</sup> *Id.* at 216.

that OECD Technical Committees will carry out to evaluate whether a country is suitable for OECD membership (the “**Accession Roadmap**”). This procedure is tailored to the particular situation of the country in question; therefore, the proposed committees in a given Accession Roadmap will vary according to the circumstances. The Accession Roadmap is submitted to the Council for its approval by consensus.

41. Once the accession process has begun, the OECD consults Technical Committees in accordance with the Accession Roadmap. These are usually “peer review” committees, which use leading OECD policy practices as assessment benchmarks. The peer review committees assess the candidate country’s willingness and ability to implement the OECD legal instruments (including Codes, Rules, Declarations, Conventions and Guidelines) and assume the obligations of membership. The peer review committees base this assessment on the country’s position with respect to the relevant OECD instruments and standards—*i.e.*, whether the country accepts, rejects or accepts subject to reservations or declarations these instruments and standards—and on the extent to which the country’s policies comply with OECD leading practices.

42. During the accession process, the peer review committees may recommend changes to bring the candidate country’s legislation, policy and/or practices into closer alignment with OECD legal instruments and/or to bring the candidate country’s policies into closer alignment with OECD practices. For example, the Investment Committee will typically discuss the implementation of the “Declaration and Decisions on International Investment and Multinational Enterprises” and the twin “Codes of Liberalisation of Capital Movements and of Current Invisible Operations.” Pursuant to a country’s Accession Roadmap, the OECD may also request a review of a candidate country’s public debt management using OECD’s leading practices as a benchmark.

## **B. Framework for the Consideration of Prospective Members**

43. While the accession process remains fluid, and governed by general guiding principles rather than formal criteria, the OECD has recently developed an evidence-based Framework, which provides OECD members with a consistent approach in deciding whether to begin accession discussions for a prospective member.<sup>101</sup> In particular, the OECD focuses on two main questions in assessing a country’s prospective accession: (1) whether a country’s economy, legal and financial system, and other institutions are in a state of readiness for the OECD, and (2) whether the country is committed to the OECD principles and membership obligations.

### **1. State of Readiness**

44. The OECD focuses on two main areas in evaluating a country’s readiness to join the OECD. *First*, the OECD reviews a country’s economic and public governance systems, and in particular whether the country has a robust rules-based, open market economy, which includes

---

<sup>101</sup> Report of the Chair of the Working Group on the Future Size and Membership of the Organisation to Council, Framework for the Consideration of Prospective Members, Meeting of the OECD Council at Ministerial Level, Paris, 7-8 June 2017, available at <https://www.oecd.org/mcm/documents/C-MIN-2017-13-EN.pdf>.

(1) progress on international cooperation regarding a Policy Framework for Investment, (2) accession to the Convention on Combating Bribery of foreign public officials, and (3) adherence to OECD corporate governance principles. The OECD evaluates whether a country adheres to the OECD's legal instruments with respect to these characteristics.

45. *Second*, the OECD assesses the stability and transparency of the financial system, as evidenced by progress in adhering to the key obligations of the OECD Codes of Liberalisation of Cross-Border Capital Movements and current so-called invisible transactions (*i.e.*, services). The OECD also reviews whether the financial market is sufficiently open, efficient and transparent.

46. In evaluating a country's state of readiness, the OECD also considers the country's ability, capacity and engagement to take part in the OECD accession process and bodies, taking into account both prior participation and future prospects. This includes promoting OECD core principles and the use of leading OECD practices, as well as the country's ability to participate in future OECD policy groups, forums, and other key bodies.

47. As discussed in greater detail below, Peru's treatment of the Agrarian Reform Bonds casts serious doubt on its state of readiness for OECD accession, including its commitment to a rules-based, transparent, open market economy; its adherence to OECD legal instruments and leading practices; and its ability to promote OECD core principles such as the rule of law.

## 2. Country's Commitment to OECD Values and Membership Obligations

48. The OECD also focuses heavily on a country's commitment to uphold the OECD's core values, namely, "the values of democracy based on the rule of law and human rights, and adherence to open and transparent market-economy principles," as a community of member nations.<sup>102</sup> This inquiry is complementary to the question of readiness, with its focus on the country's engagement with the OECD, and the country's compatibility with, and value to, the OECD members.

49. The Framework (as described in the OECD's 2004 Noboru Report) lays out four specific criteria to assess a country's commitment to OECD values and membership obligations:<sup>103</sup>

- **Like-Mindedness** is defined as "those countries who broadly share values ('more-like-us') and assesses whether the candidate is "able to make a substantial contribution by enhancing the competence of OECD's work through the sharing of its high-quality policy know-how based on common values."

---

<sup>102</sup> OECD 50th Anniversary Vision Statement, Meeting of the OECD Council at Ministerial Level, Paris, 25-26 May 2011, p. 2, available at <https://www.oecd.org/mcm/48064973.pdf>.

<sup>103</sup> The OECD's 2004 Noboru Report elaborated on these four criteria for enlarging Membership. OECD Strategy for Enlargement and Outreach, 13 May 2004, pp. 16-18, available at <http://www.oecd.org/globalrelations/globalrelationsstrategy/37434513.pdf>.

- **Significant Player** is defined as a “country that has the capacity to contribute effectively to peer learning/influencing across all key OECD committees or whose policies matter for Members because they have, through economic interdependence, significant impact on the economic, social and environmental performance of OECD countries as well as on the shaping of the international economic order.”
- **Mutual Benefit** is the idea that “accession of any country to the OECD be advantageous to both the current OECD members and the new member.” Because a new Member “should strengthen the role of the Organisation and improve the effectiveness of its functional processes, this concept serves as an umbrella criterion for deciding whether the country is ‘like-minded enough’ and ‘significant enough’ to be an OECD member.”
- **Global Considerations** refers to the OECD goal “to develop policies of global value (role as pathfinder of globalisation),” and its recognition that the OECD would “benefit from diversity in approaches to issues within the broad concept of ‘likemindedness.’”

50. The Noboru Report concludes that “while ‘like-mindedness’ and ‘significant player’ focus on defining the eligibility of an individual candidate, ‘global considerations’ concerns the overall balance of the membership. Also, while the first two criteria, together with ‘mutual benefit’, work as ‘selective’ elements of the membership composition, ‘global considerations’ is ‘reflective’ of the overall composition of membership.”<sup>104</sup>

51. Finally, the Framework notes that the OECD will evaluate the “level, nature, and breadth of the political commitment to the Membership Obligations,” and will ensure that the prospective member will “use the accession process to drive overall domestic reform.”<sup>105</sup>

52. Peru’s conduct with respect to the Agrarian Reform Bonds—including its continued failure to repay and report the Agrarian Reform Bonds, and the forgery allegations surrounding the 2013 Decision—runs counter to the OECD’s core values, as discussed in greater detail in Section V.B below.

### C. The OECD’s Approach to Public Debt

53. Although the particular requirements and considerations for OECD accession may vary depending on the circumstances, the question of whether a candidate country’s public debt management strategy and practices are consistent with OECD leading practices is typically of great importance for its accession prospects. This question may arise prior to accession discussions, in evaluating the country’s state of readiness, or may form part of the Accession

---

<sup>104</sup> *Id.* at 18.

<sup>105</sup> Report of the Chair of the Working Group on the Future Size and Membership of the Organisation to Council, Framework for the Consideration of Prospective Members, Meeting of the OECD Council at Ministerial Level, Paris, 7-8 June 2017, p. 5, *supra* note 101, available at <https://www.oecd.org/mcm/documents/C-MIN-2017-13-EN.pdf>.

Roadmap. To facilitate an assessment of a country's public debt management strategy and practices, the OECD provides authoritative and transparent information on technical and policy issues regarding public debt management. The OECD has also created multiple bodies and groups to review public debt management issues and to publish its leading practices.

54. As discussed in greater detail in Section V.B below, Peru's treatment of the Agrarian Reform Bonds does not comport with the OECD's leading practices on public debt, including the requirements that a country's financial markets be open, transparent, and fair to both domestic and foreign investors.

### **1. OECD's Legal Instruments Relevant to the Treatment of Debt Instruments**

55. The OECD legal instruments consist of Codes, Declarations, Rules and Conventions that the OECD uses to disseminate rules and frameworks governing key topics. Several legal instruments are directly (or indirectly) relevant for the treatment of debt instruments. In particular, the OECD's "Legal Instruments on International Investment and Trade in Services" is the key set of legal instruments relating to the treatment of debt instruments, and consists of: (1) the OECD Codes of Liberalisation of Capital Movements; and (2) the Declaration and Decision on International Investment and Multinational Enterprises.<sup>106</sup>

#### **(a) Codes of Liberalisation of Capital Movements**

56. The Codes of Liberalisation of Capital Movements are legally binding rules applicable to all OECD members, stipulating progressive, nondiscriminatory liberalisation of capital movements, including debt instruments. The purpose of the Codes is to provide a framework for countries to remove barriers to the movement of capital with an eye towards achieving effective economic cooperation between countries.

57. The Codes establish three core principles that adhering countries must fulfill when imposing restrictions on capital movements: (1) *nondiscrimination*, which requires countries to grant the benefit of liberalisation measures to all other adherents and apply restrictions in a nondiscriminatory fashion; (2) *transparency*, which requires countries to report up-to-date information on barriers to capital movements and trade in services; and (3) *standstill*, which requires countries to avoid taking new restrictive measures or introducing more restrictive measures except in accordance with the Codes.<sup>107</sup>

58. These Codes carry with them additional expectations, which include maintaining an open and transparent regime for foreign direct investment, liberalising long-term capital movements, *including debt instruments*, and ensuring fair and transparent implementation of

---

<sup>106</sup> The Legal Instruments on International Investment and Trade in Services also includes the Convention on Combating Bribery of Foreign Officials in International Business Transactions; because this is of little or no relevance to public debt or the Agrarian Reform Bonds, I do not discuss it here.

<sup>107</sup> OECD Codes of Liberalisation, New Governance Arrangements, p. 5, *available at* <https://www.oecd.org/investment/investment-policy/Codes-liberalisation-governance.pdf>.

practices.<sup>108</sup> The OECD does *not* specify exactly how a government must manage its public debt, but expects governments to be open, transparent, and fair with both domestic and foreign investors.

### **(b) Declaration and Decision on International Investment and Multinational Enterprises**

59. The Declaration and Decision on International Investment and Multinational Enterprises is a commitment by adhering countries (i) to provide an open and transparent environment for international investment and (ii) to encourage the positive contribution multinational enterprises can make to economic and social progress.<sup>109</sup>

60. The Declaration generally focuses on international trade and its impact on multinational enterprises, but the key elements of the Declaration highlight the need for market integrity, fair treatment of domestic and foreign enterprises, and transparency. For example, adhering countries undertake a commitment to national treatment, under which foreign-controlled enterprises operating in the country must be treated no less favorably than domestic enterprises in like situations.<sup>110</sup>

## **2. OECD's Leading Practices on Public Debt Management<sup>111</sup>**

61. The Committee on Financial Markets ("**CMF**"), together with its Working Party on Public Debt Management ("**WPDM**"), provides authoritative information on technical and policy issues in the area of public debt management. While the CMF and WPDM are not directly responsible for OECD legal instruments relevant to these topics and issues, they oversee the development of the OECD's leading practices regarding financial market topics and public debt issues. In recent years, OECD leading practices have emphasized investor relations and communications strategy, as well as increasing transparency.

### **(a) Working Party on Public Debt Management Leading Practices**

62. Over the years, the WPDM has compiled a unique and up-to-date pool of knowledge on leading practices in the area of public debt management, including leading practices for

---

<sup>108</sup> *Id.*

<sup>109</sup> OECD Declaration and Decisions on International Investment and Multinational Enterprises, available at <http://www.oecd.org/investment/investment-policy/oecddeclarationanddecisions.htm>.

<sup>110</sup> OECD National Treatment for Foreign-Controlled Enterprises, available at <http://www.oecd.org/daf/inv/investment-policy/nationaltreatmentinstrument.htm>.

<sup>111</sup> For more in-depth discussion, see, for example, Blommestein, Hans J. and Paul Malvey, eds. (2002), *Debt Management and Government Securities Markets in the 21st Century*, OECD Publishing, available at <http://www.oecd.org/finance/public-debt/debtmanagementandgovernmentsecuritiesmarketsinthe21stcentury.htm>; OECD, *OECD Sovereign Borrowing Outlook 2016*, available at <http://www.oecd.org/daf/fin/public-debt/Sovereign-Borrowing-Outlook-in-OECD-Countries-2016.pdf>. (various issues); Blommestein Hans J. (2005), ed., *Advances in Risk Management of Government Debt*, OECD Publishing, available at [http://www.oecd-ilibrary.org/finance-and-investment/advances-in-risk-management-of-government-debt\\_9789264104433-en](http://www.oecd-ilibrary.org/finance-and-investment/advances-in-risk-management-of-government-debt_9789264104433-en).

efficient and liquid primary and secondary local currency (government) bond markets. These practices, which function as *de facto* global standards, are inspired by, and subject to, the core principles of the OECD—the enforcement of the rule of law, support for democratic institutions, and the liberalisation of markets—as well as the OECD’s guiding legal instruments. The WPDM assesses the leading practices on a regular basis, and such leading practices evolve over time.

63. The WPDM leading practices are not a set of prescriptive practices or a blueprint; rather, they are a set of procedures and techniques for public debt management that the WPDM members believe are effective for meeting current challenges faced by governments. They are aimed at developing liquid, efficient, and stable primary and secondary markets, with the intended effect of leading to lower borrowing costs for governments.<sup>112</sup> These practices focus on transparency, predictability and the avoidance of excessive risks by the government issuing the public debt instruments.<sup>113</sup> In recent years, the leading practices have focused heavily on investor relations, communication, and transparency.

#### **(b) Investor Relations, Communication, and Transparency**

64. The global financial crisis in 2008 triggered a surge in government borrowing needs. Due to increased funding requirements, a more complex investment climate, and a need for diversification of the investor base, it has become a leading practice for Debt Management Offices (“**DMOs**”<sup>114</sup>) to place greater emphasis on investor relations and communication strategy. Likewise, the OECD now places greater weight on transparency; the purpose is to enhance disclosure policies, accountability, and the use of proper accounting standards. The leading practices on transparency include clear communication of a DMO’s goals and strategies, a strong legal framework, and proper and comparable accounting standards.

65. The OECD advises governments issuing debt to strengthen their reputation and expand their ability to continue to issue debt by enhancing the consistency of debt policy, improving the predictability of debt-related decisions, and increasing transparency to public debt markets. The leading practices include timely repayment of debt, to support a sound reputation, which in turn results in good access to primary debt markets at the lowest borrowing costs.

66. OECD leading practices recommend that countries clearly disclose and explain the allocation of responsibilities within the DMO, the objectives of public debt management, and the operational procedures for raising, managing and retiring public debt. OECD leading practices encourage governments to increase the transparency of (1) debt management strategies,

---

<sup>112</sup> Blommestein, Hans J. and Paul Malvey, eds. (2002), *Debt Management and Government Securities Markets in the 21st Century*, OECD Publishing, *supra* note 111, available at <http://www.oecd.org/finance/public-debt/debtmanagementandgovernmentsecuritiesmarketsinthe21stcentury.htm>.

<sup>113</sup> OECD, OECD Sovereign Borrowing Outlook 2016, *supra* note 111, available at <http://www.oecd.org/daf/fin/public-debt/Sovereign-Borrowing-Outlook-in-OECD-Countries-2016.pdf>.

<sup>114</sup> DMOs are agencies within the executive branch of a sovereign government that are responsible for advising the country’s finance ministry on matters related to its debt management policy, the issuance of securities, and financial market issues associated with government debt management.

(2) borrowing operations, (3) methods for the calculation of central government debt figures, (4) measures for rollover risk, (5) the maturity structure of the debt portfolio, and (6) the use of derivatives by DMOs.

67. In addition, OECD leading practices require countries to create a suitable legal framework that supports accountability and transparency, including the implementation of adequate financial legislation related to sovereign finance and clearly defined budget procedures. Transparency about standards and measures of portfolio risk allows a better understanding of risk-based debt management strategies, and provides information to the market regarding a government's plans and debt strategies. The OECD also stresses adherence to proper accounting standards, and in particular the use of common definitions, measures and statistics, which makes data more easily comparable across countries. DMOs are therefore encouraged to enhance the transparency of definitions and measures of government debt.

68. One important aspect of transparency is a country's Debt Management Strategy ("**DMS**"), which consists of the government's objectives, borrowing plans, funding strategies, risk management targets and other policies for the management of its domestic and foreign debt. DMOs formulate a preferred DMS with targets for the composition of preferred debt portfolios. Disclosing quantitative benchmarks means making public numerical targets for each risk indicator—a practice that benefits investors and other stakeholders, while making debt management more predictable.

#### **D. The OECD's Approach to Expropriation**

69. The OECD recognizes that in certain circumstances, governments have the right to take private property for public purposes. However, when a government expropriates property, it must grant timely, adequate, and effective compensation. The OECD has noted that, in the context of expropriation, "the right to fair compensation and due process is uncontested and is reflected in all international investment agreements."<sup>115</sup> As such, an expropriation without fair compensation is inconsistent with OECD guidance and leading practices.

### **V.**

## **ANALYSIS OF PERU'S PROSPECTS FOR ACCESSION TO OECD**

### **A. Peru's Interest in OECD Accession and Participation in OECD Bodies**

70. Senior Peruvian officials have signaled on several occasions that accession to the OECD is one of Peru's key objectives. Shortly after taking office in 2016, President Kuczynski announced that Peru seeks to become a member of the OECD by 2021 and that accession is one of the administration's "top priorities."<sup>116</sup> President Kuczynski has reaffirmed this position

---

<sup>115</sup> OECD Policy Framework for Investment, "Expropriation Laws and Review Processes," available at <https://www.oecd.org/investment/toolkit/policyareas/investmentpolicy/expropriationlawsandreviewprocesses.htm>.

<sup>116</sup> Alvaro Tassano, "Can Peru become a member of the OECD by 2021?," *Peru This Week*, 2 August 2016, *supra* note 1, available at <http://mobi.peruthisweek.com/news-peru-member-of-the-oecd-by-2021-110096/>; "Peru: A

while in office, notably 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>117</sup> Peru has also established commissions within the Executive Branch and Parliament to oversee the accession process.<sup>118</sup>

71. While Peru's campaign to participate in OECD bodies and to move toward full accession has accelerated in recent years, its interest in the OECD goes back to 1998, when it first approached the OECD seeking cooperation in the field of investment policy. In July 2008, Peru became the 41<sup>st</sup> country to adhere to the Declaration and Decision on International Investment and Multinational Enterprises. Adherents to this Declaration commit to providing national treatment to foreign investors and promoting responsible international business conduct. As a part of the adherence process, the OECD conducted a thorough examination of Peru's investment policy.<sup>119</sup> The examination found that Peru's commitment to political and economic stability led to significant growth and foreign investment since 2002.<sup>120</sup> However, it did not address or consider public debt repayment or reporting, and was conducted before the 2013 Decision.

72. In addition to adhering to the Declaration and Decision on International Investment and Multinational Enterprises, starting in 2008, Peru also joined a number of committees and other bodies responsible for overseeing the implementation of the OECD rules and guidelines. These include (1) the Investment Committee (since 2008); (2) the Development Center (since 2009); (3) the Competition Committee (since 2011); (4) the Consumer Policy Committee (since 2012); (5) the Working Group on Bribery and International Business Transactions (since 2014); and (6) the Global Forum on Transparency and Exchange of Information for Fiscal Purposes (since 2014).

73. In 2014, Peru was also one of the first countries to engage with the OECD through a Country Program, a mechanism intended to assist a very limited number of countries in adopting the OECD standards and practices (although explicitly not intended to be a commitment related to accession).<sup>121</sup>

74. Peru's Country Program is an ambitious expansion of its involvement with the OECD. It is centered on five key policy areas: (1) identifying obstacles to economic growth and

---

Reliable Partner for the OECD," GOVERNMENT OF PERU, *supra* note 1, 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>117</sup> "The Economist: President Kuczynski's trip to favor Peru's OECD accession," 7 June 2017, available at <http://www.andina.com.pe/Ingles/noticia-the-economist-president-kuczynskis-trip-to-favor-perus-oecd-accession-669970.aspx>.

<sup>118</sup> "Peru: A Reliable Partner for the OECD," GOVERNMENT OF PERU, *supra* note 1, 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>119</sup> OECD Investment Policy Reviews: Peru (OECD, 2008), available at <http://www.oecd.org/countries/peru/oecdinvestmentpolicyreviewsperu.htm>.

<sup>120</sup> *Id.*

<sup>121</sup> OECD, "Peru," available at <http://www.oecd.org/latin-america/countries/peru/>.

development;<sup>122</sup> (2) improving public governance;<sup>123</sup> (3) anti-corruption measures and enhanced transparency;<sup>124</sup> (4) enhancing human capital and productivity;<sup>125</sup> and (5) improving environmental standards.<sup>126</sup> As a part of the Country Program, Peru commissioned 19 policy reviews and studies seeking the OECD's advice and guidance on improvements in the five key policy areas.

75. Pursuant to the Country Program, Peru also committed to a number of OECD legal instruments.<sup>127</sup> In particular, Peru is in the process of adhering to the twin Codes of Liberalisation of Capital Movements and Liberalisation of Current Invisible Operations. The two Codes constitute legally binding rules, stipulating progressive, nondiscriminatory liberalisation of capital movements. Peru is the first non-OECD country to ask to adhere to these Codes.<sup>128</sup>

76. In January 2017, the OECD's Secretary General, Angel Gurría, noted that "the speed and intensity with which the OECD's collaboration with Peru has increased in just a few years has been remarkable."<sup>129</sup> He further noted that "the government has been implementing the recommendations that have emerged from [the Country Program] to reform the Peruvian

---

<sup>122</sup> Specifically: (1) Multi-Dimensional Country Review; and (2) Territory Development Review.

<sup>123</sup> Specifically: (1) Public Governance Review; (2) Regulatory Policy Review; (3) Support to implementing best international practice in Regulatory Impact Analysis; (4) Public Procurement Review; (5) Assessment of Statistics and Statistical System; and (6) Capacity Building Program on international tax system (with emphasis on transfer pricing in the context of the OECD's tax and development program).

<sup>124</sup> Specifically: (1) Public Sector Integrity Review; and (2) Regional Consultations on Base Erosion and Profit Shifting (BEPS).

<sup>125</sup> Specifically: (1) Skills Beyond School Vocational Education and Training (VET) Review; (2) Skills Strategy Project; (3) Investing in Youth Report; (4) Review of Health System (with a focus on the attainment of universal health coverage); (5) Review of health sector data and statistics; (6) Inclusion of Peru in the Trade in Value Added (TiVA) database; (7) Statistical Co-operation (to develop the statistical infrastructure for TiVA and related indicators); and (8) Adherence review under the OECD Codes of Liberalisation.

<sup>126</sup> Specifically: Environmental Performance Review.

<sup>127</sup> Specifically: (1) Council's Recommendation to Improve Ethical Conduct in Public Services including Principles to Address Ethical Issues in Public Service; (2) Council's Recommendation on OECD Guidelines for Managing Conflict of Interest in the Public Service; (3) Council's Recommendation on Public Governance Principles in Public-Private Partnerships; (4) OECD Action Plan for Youth; (5) Codes of Liberalisation of Capital Movements and Codes of Liberalisation of Current Invisible Operations; (6) OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; (7) Declaration on Propriety, Integrity and Transparency in the Conduct of International Business and Finance; (8) Recommendation of the Council on Principles for Transparency and Integrity in Lobbying; (9) Convention on Mutual Administrative Assistance in Tax Matters as amended by the 2010 Protocol; (10) Declaration on Automatic Exchange of Information in Tax Matters; (11) Recommendation of the Council on the new Standard on Automatic Exchange of Financial Account Information; and (12) Declaration on Green Growth.

<sup>128</sup> Special Meeting of the OECD Council – Introduction of Mr. Fernando Zavala, President of the Council of Ministers of Peru, Paris, 16 January 2017, available at <http://www.oecd.org/about/secretary-general/special-meeting-of-the-oecd-council-introduction-of-fernando-zavala-president-of-the-council-of-ministers-of-peru.htm>.

<sup>129</sup> *Id.*

economy and the public administration.”<sup>130</sup> Despite these positive indicators, the OECD should think twice before admitting Peru as an OECD member.

## **B. Peru’s Failure to Comply with the OECD Accession Requirements**

77. Peru’s 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. Its conduct also runs counter to certain OECD legal instruments and leading practices. Given the lack of justification for Peru’s failure to repay and report the Agrarian Reform Bonds, Peru’s conduct should cause the OECD serious concern as it considers Peru’s application for accession.

### **1. State of Readiness**

78. Peru is not currently in full compliance with the OECD’s state of readiness requirements. In particular, its treatment of the Agrarian Reform Bonds (1) is in conflict with an open, transparent, rules-based economy, and (2) reflects poorly on Peru’s stated desire to begin the OECD accession process, including promoting OECD core principles.

79. First, Peru’s conduct with respect to the Agrarian Reform Bonds is in conflict with an open and transparent, rules-based economy. Despite the fact that over 16 years ago Peru’s Constitutional Tribunal reaffirmed the need to repay the Agrarian Reform Bonds at current value, the Agrarian Reform Bonds—a legally valid sovereign debt—still largely remain unpaid to date.

80. Far from taking an “open” and “rules-based” approach to addressing this obligation, Peru has instead responded with obfuscation and arbitrary action. In addition, the 2013 Decision instructing Peru’s MEF to use a controversial “dollarization” methodology to update the value of the Agrarian Reform Bonds is alleged to have resulted from forgery. Peru’s unwillingness to repay the Agrarian Reform Bonds continues despite the fact that such repayment appears far from impossible for Peru.

81. Peru’s most recent attempt to address the Agrarian Reform Bond issue in the August 2017 Decree does not affect this assessment. Like the previous decrees, it relies on the 2013 Decision, despite the forgery allegations surrounding it. In addition, the August 2017 Decree still does not appear to effectively and reasonably address the value of the Agrarian Reform Bonds, and does not compensate the bondholders at current value. The August 2017 Decree also continues to grant discretion to Peru to determine the form of payment if the parties cannot agree (which, per the August 2017 Decree, may consist of illiquid investments such as land or non-marketable securities).<sup>131</sup>

---

<sup>130</sup> *Id.*

<sup>131</sup> Supreme Decree No. 242-2017-EF, 19 August 2017, *supra* note 49, available at <https://www.mef.gob.pe/es/por-instrumento/decreto-supremo/16304-decreto-supremo-n-242-2017-ef/file>; Supreme Decree No. 242-2017-EF, 26 August 2017, *supra* note 50, available at <https://www.mef.gob.pe/es/normatividad-sp-9867/por-instrumento/decretos-supremos/16357-fe-de-erratas-208/file>.

82. Peru's process for repaying bondholders—drawn out, non-transparent and tainted with allegations of fraud—should not come as a surprise to the OECD. As discussed above, the recent OECD Integrity Review of Peru found that Peru still faces significant challenges regarding corruption, rule of law, and judicial independence. The report notes that Peru lags behind OECD countries in these areas. For example, the perception of corruption in Peru remains higher than in OECD member countries.<sup>132</sup> Similarly, the report cites the World Bank Governance Indicators for Control of Corruption and Rule of Law, which rank Peru below the average of other Latin American countries and significantly below the average of OECD countries.<sup>133</sup> The report highlights Peru's need for improvement, stating, “[w]hile Peru has made important progress in strengthening its public integrity system, challenges remain, particularly the need to reinforce institutions and mitigate corruption risks.”<sup>134</sup> Peru's behavior with respect to the Agrarian Reform Bonds is consistent with its history of corruption and lack of transparency, and certainly does not represent progress toward strengthening public integrity.

83. Second, Peru's conduct generally demonstrates a lack of readiness by Peru with respect to its ability to take part in the OECD accession process, in particular its ability to promote the OECD core principles. As noted previously, this inquiry overlaps with the question of whether Peru has shown a commitment to uphold the OECD's core values, discussed below.

## **2. Commitment to the OECD Core Values**

84. Peru's conduct is inconsistent with Peru's commitment to uphold the OECD's core values, and in particular its commitments to the rule of law, human rights, and transparency. Before beginning the accession process, Peru must demonstrate that it is committed to, and complies with, these OECD core values.

85. The OECD has previously defined rule of law as encompassing four principles; namely, that (1) government actors “are accountable under the law,” (2) “the laws are clear, publicized, stable and just . . . and protect fundamental rights, including the security of persons and property,” (3) the process for enacting, administering and enforcing laws “is accessible, fair, and efficient,” and (4) justice “is delivered timely by competent, ethical, and independent representatives.”<sup>135</sup>

86. The alleged irregularities surrounding the 2013 Decision, and the government's continued reliance on that decision, undermine the core value of adherence to the rule of law, as does the government's refusal to comply with obligations to provide fair compensation for the

---

<sup>132</sup> OECD Integrity Review of Peru (2017), p. 19, *supra* note 93, available at <http://www.oecd.org/countries/peru/oecd-integrity-review-of-peru-9789264271029-en.htm>.

<sup>133</sup> *Id.* at p. 20.

<sup>134</sup> *Id.* at p. 13.

<sup>135</sup> OECD, *Government at a Glance* (2017), p. 218, available at <http://www.oecd-ilibrary.org/docserver/download/4217001e.pdf?expires=1510196640&id=id&accname=guest&checksum=AD79A2B1281E7FA9CCEDE993964FCFA5>.

Agrarian Reform Bonds under its own law or to provide bondholders with meaningful opportunities to participate in the process.

87. Similarly, Peru's continued failure to grant fair compensation to bondholders interferes with the right to property that is recognized in international human rights treaties to which Peru is a party. This is even more pronounced in the case of original bondholders, where Peru's failure to repay its debt means that landowners have not been compensated for the government's expropriation of their property approximately half a century ago.

88. Finally, Peru's actions are inconsistent with the OECD's core value of transparency. In particular, Peru's failure to report the Agrarian Reform Bond debt, the unaddressed irregularities related to the 2013 Decision, and the lack of clarity surrounding the Supreme Decrees and the methods set forth thereunder undermine any suggestion that Peru is committed to transparency.

### **3. Adherence to OECD Legal Instruments and Leading Practices**

89. Peru's failure to report and repay the Agrarian Reform Bonds also breaches OECD's legal instruments. The Codes of Liberalisation of Capital Movements, for example, require non-discrimination and transparency, and the Declaration and Decision on International Investment and Multinational Enterprises requires that countries provide an open and transparent environment for international investment. Peru's conduct with respect to the Agrarian Reform Bonds has been and continues to be far from transparent. Further, like the previous decrees, which appear to contemplate foreign bondholders being paid after domestic bondholders, the August 2017 Decree is discriminatory.<sup>136</sup>

90. More generally, the OECD expects aspiring members to adopt the leading practices in many policy areas. Peru's failure to repay its creditors over such a long period and its failure to adhere to its own court rulings related to repayment of the Agrarian Reform Bonds run counter to the leading practices of OECD debt managers. The leading practices and principles regarding Public Debt Management are focused on transparency and predictability. They aim to create liquid, efficient, and stable primary and secondary markets, leading to low borrowing costs for the government. For example, OECD debt managers have emphasized on many occasions the importance of transparent and rules-based policies for raising, managing, retiring and trading sovereign debt. Peru's failure to repay the Agrarian Reform Bonds at current value is inconsistent with these leading practices.

91. Not only has Peru failed to manage and repay its public debt in a responsible fashion, it has also failed to report the Agrarian Reform Bond debt in its recent Central Bank statistics, to the IMF, to the SEC, and to the Luxembourg Stock Exchange.<sup>137</sup> As noted, one of the more

---

<sup>136</sup> Supreme Decree No. 242-2017-EF, Art. 18, 19 August 2017, *supra* note 49, available at <https://www.mef.gob.pe/es/por-instrumento/decreto-supremo/16304-decreto-supremo-n-242-2017-ef/file>.

<sup>137</sup> See John C. Coffee, Jr., Legal Opinion to GFM, 11 January 2016, *supra* note 60, available at <http://perubonds.org/resource/analysis-of-perus-bond-prospectuses-filed-with-the-u-s-securities-and-exchange-commission-sec>; Jaime Jaramillo-Vallejo, "Peru's Agrarian Reform Bonds and the IMF," June 2017, *supra* note 58, available at <http://www.abdaperu.org/web/noticia/838/abda-envia-carta-a-fmi-gobierno-del-peru-oculta->

recent leading practices emerging from the OECD's WPDM was an increased focus on, among other things, enhanced transparency and accountability. This leading practice resulted from the efforts of OECD members seeking to issue sovereign debt. These issuers recognized that they must have sound reputations both in domestic and international markets, as they compete to attract capital from a diversified investor base in highly competitive markets.<sup>138</sup> If Peru cannot abide by its basic member obligations to the IMF, there is serious doubt that it will be able to meet the more specific and operational standards of the OECD requiring transparency and accountability.

92. While transparency and accountability have many dimensions, one important dimension is the adoption of more transparent policies and operations by using common definitions, measures and statistics. For example, the publication of standardized measures of central government debt (stock measures) and cash borrowing requirements (flow measures) should increase transparency. Since the risk dimension of stock and flow measures is of great importance for debt managers, countries should employ standardized risk indicators. Against this backdrop, Peru's failure to report the Agrarian Reform Bond Debt violates OECD's leading practices on transparency.

93. Finally, Peru's actions are inconsistent with OECD guidance and leading practices on expropriation, which require governments that expropriate property to provide "timely, adequate and effective" compensation. Peru's continued failure to repay the Agrarian Reform Bonds means that the bondholders still have not received "timely, adequate and effective" compensation for the Peruvian government's expropriation of their property nearly half a century ago. Peru's attempt to devalue these property claims via the 2013 Decision and the 2014 and 2017 Decrees means that regardless of whether the initial expropriation was permissible, Peru's recent actions are not consistent with the OECD's guidance on expropriation.

#### **4. No Valid Justifications for Peru's Conduct**

94. On several occasions, Peruvian officials—including President Kuczynski—have sought to justify Peru's failure to repay and report the Agrarian Reform Bonds. In doing so, they have alleged that the well-established rules and leading practices regarding sovereign debt should not apply to Agrarian Reform Bonds for a number of reasons, including that: (1) the bonds' original purpose is "unique," (2) the bonds are governed by Peruvian law and subject to the jurisdiction of Peruvian courts, (3) the bonds were issued in an old and expired local currency, (4) the bonds are old, (5) the bonds were issued in bearer form, (6) the bonds were not sold by Peru on international markets, (7) some of the current bondholders are secondary purchasers who acquired the bonds for "speculative purposes," (8) there is uncertainty relating to the applicable formula for updating the Agrarian Reform Bonds, (9) other countries have previously avoided

---

[deuda-de-reforma-agraria](https://www.bourse.lu/security/XS1315181708/230649); Republic of Peru, Prospectus Supplement, 11 December 2015, available at <https://www.bourse.lu/security/XS1315181708/230649>.

<sup>138</sup> Hans J. Blommestein (2016) Transparency of Public Debt Statistics, Operations and Policies, OECD Sovereign Borrowing Outlook, 2016; Hans J. Blommestein (2017), "Impact of regulatory changes on government bond market liquidity," *Journal of Financial Regulation and Compliance*, Vol. 25 Issue: 3, pp.307-317, available at <https://doi.org/10.1108/JFRC-01-2017-0001>.

similar obligations, and (10) Peru has received investment grade ratings.<sup>139</sup> However, as described below, none of these points changes the basic fact that the Agrarian Reform Bonds have always been a proper sovereign debt of Peru that—like all such debt—must be repaid in full and in a timely fashion. Hence, these Agrarian Reform Bonds are subject to the whole range of OECD leading practices on public debt.

- **The “unique” purpose of the Agrarian Reform Bonds.** While Peru’s current government may point to the agrarian reform of the 1960s and 1970s as a distinguishing feature, the reality is that governments issue bonds for a great variety of reasons, often to fund public projects. While the merits of agrarian reform per se can be debated, the Agrarian Reform Bonds, like many other government-issued bonds in Peru and elsewhere, were used to finance a project that the government believed would benefit the Peruvian economy. Regardless of whether agrarian reform is less common or successful than other types of publicly funded projects, the specific reason for issuing the Agrarian Reform Bonds is not particularly germane to Peru’s unconditional guarantee to repay the Agrarian Reform Bonds at the time that they were issued, or the subsequent jurisprudence ordering payment at current value.
- **The Agrarian Reform Bonds are governed by Peruvian law and subject to the jurisdiction of Peruvian courts.** The fact that the Agrarian Reform Bonds were issued under Peruvian law does not affect the applicability of OECD leading practices on public debt to the Agrarian Reform Bonds, or the OECD principle to respect the rule of law. Many sovereign bonds are issued under local law; for example, local-law sovereign bonds are prevalent among OECD countries.<sup>140</sup> In fact, Peru itself frequently issues local law bonds to the international debt capital markets, including USD 3 billion as recently as July 2017 and September 2016.<sup>141</sup> Regardless of the governing law, sovereign bonds are issued for the purpose of financing government policies and operations and with the guarantee of the sovereign that they will be repaid, like any other government debt. Further, the obligation to respect the rule of law applies equally to Peru’s obligation to follow its own domestic laws.<sup>142</sup>
- **The Expired Currency of the Agrarian Reform Bonds.** The fact that Peru issued the Agrarian Reform Bonds in a now-defunct currency, *soles de oro*, that has since

---

<sup>139</sup> See e.g., “Peru’s PPK: ‘I don’t think we owe [Gramercy] anything,’” *Latin Finance*, 22 August 2016, available at [http://www.latinfinance.com/Article/3579991/Perus-PPK-I-dont-think-we-owe-\[Gramercy\]-anything-Exclusive.html](http://www.latinfinance.com/Article/3579991/Perus-PPK-I-dont-think-we-owe-[Gramercy]-anything-Exclusive.html); see also *Gramercy Funds Management v. Republic of Peru*, UNCITRAL Arbitration, Response of the Republic of Peru (6 September 2016), available at <https://www.italaw.com/cases/3879>.

<sup>140</sup> See e.g., OECD, *Sovereign Borrowing Outlook*, various issues.

<sup>141</sup> Colin Post, “Peru Refinances Govt Debt with Historic Local-Currency Bond,” *Peru Reports*, 5 October 2016, available at <https://perureports.com/2016/10/05/peru-refinances-government-debt-historic-local-currency-bond/>; “Peru: Government Sells US\$ 3.1 Billion in 2032 Bond Denominated in Soles,” *Business Insider*, 18 July 2017, available at <http://markets.businessinsider.com/news/interestrates/PERU-Government-Sells-US-3-1-Billion-In-2032-Bond-Denominated-In-Soles-1002184667>.

<sup>142</sup> OECD 50th Anniversary Vision Statement, Meeting of the OECD Council at Ministerial Level, Paris, 25-26 May 2011, p. 2, available at <https://www.oecd.org/mcm/48064973.pdf>.

been twice re-denominated, does not affect the applicability of OECD leading practices on public debt to the Agrarian Reform Bonds. Peru is one of many countries that has redenominated its currency, generally as a result of high inflation—a list that includes Israel (1980), Brazil (1967, 1986, 1989, 1993, 1994), and Russia (1998). Redenomination of a currency does not absolve a country of paying its debts in full and in a timely fashion. Bonds issued in any currency, even if redenominated as a result of hyperinflation, are still debts of the issuing country that investors (creditors) expect to be honored. Naturally, they are (and remain) subject to the full range of OECD leading practices. To suggest that countries can merely switch currencies to avoid debt obligations is nonsensical.

- **The Age of the Agrarian Reform Bonds.** By their nature, bonds are longer-term investment instruments. Bonds derive their value from the creditor’s belief that the sovereign issuing the debt will honor its commitment to pay the debt, as agreed, upon maturity. In recent years, Britain, Canada and Italy have sold 50-year bonds, while Argentina, Mexico, Belgium and Ireland have issued 100-year debt. The age of a bond does not diminish the sovereign’s responsibility to pay. Furthermore, even if age was a reasonable excuse not to repay a debt, the current “age” of the Agrarian Reform Bonds is due in part to Peru’s failure to resolve this matter since the mid to late 1990s, when Peru resolved its other defaulted debt with multilateral and international creditors. Bondholders have actively challenged Peru’s failure to pay these claims for decades, and Peru’s courts and Congress have repeatedly backed the bondholders.
- **Bearer Form.** A government’s chosen form of issuance of a debt instrument has no effect on the government’s guarantee and obligation to repay the debt. While Peru’s decision to issue the Agrarian Reform Bonds in bearer form may have increased Peru’s administrative burden for processing payment, Peru acknowledged such bonds to be a legitimate government debt at the time of their issuance. The fact that bearer bonds have gone out of favor compared to contemporary forms of investment that are recorded electronically does not absolve Peru from its obligation to honor the Agrarian Reform Bond debt. The switch from ‘bearer bonds’ to bonds issued and registered in ‘book-entry form’ does *not* affect the obligations of a sovereign to repay its debt in full and in a timely fashion.
- **Domestic Issuance.** Many sovereign bonds, including nearly half of Peru’s overall debt stock, have been issued domestically.<sup>143</sup> There is no precedent for a sovereign to state that a government bond of domestic issuance is not a valid government obligation. The OECD core principle of rule of law draws no distinction between domestic and international issuance. Domestic bonds, like many assets, are freely transferrable. It is commonplace for bonds issued domestically to be purchased by foreign investors. For example, U.S. Treasury Bonds, which are issued in the United States, are also owned by non-U.S. investors.

---

<sup>143</sup> Peru has approximately USD 59 billion of bonds other than the Agrarian Reform Bonds outstanding, of which approximately \$26 billion are issued under Peruvian law. Source: Bloomberg, as of 25 October 2017.

- **Secondary Purchasers.** Whether the Agrarian Reform Bonds are currently held by the original bondholders or by secondary bondholders does not affect the applicability of OECD leading principles on public debt, nor does the fact that the Agrarian Reform Bonds were initially issued to landowners rather than to the general public. From an economic perspective, Peru acquired a large amount of land, with the issuance of the Agrarian Reform Bonds serving as compensation. In other words, rather than paying cash, Peru financed its land purchases with debt issued to the former landowners. Peru could have attempted to finance the land reform program by raising capital in some other way. The fact that it chose to raise that capital from local landowners does not distinguish Peru’s obligation to repay the Agrarian Reform Bonds from its obligation to repay any other government debt. Nor does the fact that some bondholders chose to resell the bonds at a negotiated price on the open market (as expressly authorized under Peruvian law<sup>144</sup>) change Peru’s obligation to repay these debts. The OECD leading practices on public debt apply to the Agrarian Reform Bonds regardless of whether they are held by the former landowners or other parties, and regardless of the price at which any of the Agrarian Land Bonds may have been sold in the secondary market.
- **Uncertainty Regarding the Applicable Formula for Updating the Debt.** While the 2001 Decision established that the Agrarian Reform Bonds must be paid at current value, it did not provide the specific formula for updating the value of the Agrarian Reform Bonds. Nor did it need to do so. As former Constitutional Tribunal Justice Delia Revoredo stated, “the normal method for calculating current value” in Peru is the CPI.<sup>145</sup> In 2006, Peru’s Supreme Court confirmed that the Agrarian Reform Bonds value must be updated using the CPI, as did other Peruvian civil courts.<sup>146</sup> Similarly, in both 2006 and 2011, Peru’s Congress approved bills directing the government to update the value of the Agrarian Reform Bonds using CPI.<sup>147</sup>
- **Failure of Other Countries to Pay their Debt.** The fact that some other countries may have previously avoided similar debt obligations does not justify Peru doing the same. The key objective of the OECD is to bring OECD member countries, as well as countries that wish to join the OECD through the accession process, into compliance with its leading practices. If Peru wishes to be a serious candidate for OECD

<sup>144</sup> Decree Law N° 22749, 13 November 1979, Art. 5, available at <http://bonosagrarios.pe/wp-content/uploads/2016/02/Ex.-CE-16.pdf>.

<sup>145</sup> Expert Report of Delia Revoredo, 2 June 2016, ¶ 36, *supra* note 36, available at [http://perubonds.org/wp-content/uploads/resources/expert\\_report\\_of\\_delia\\_revoredo.pdf](http://perubonds.org/wp-content/uploads/resources/expert_report_of_delia_revoredo.pdf).

<sup>146</sup> Supreme Court Decision, 12 July 2006, *supra* note 18, available at <http://bonosagrarios.pe/wp-content/uploads/2016/01/Corte-Suprema-Casacion-1002-2005-del-12-de-julio-de-2006.pdf>; Lima Court of Appeals, Fourth Chamber, Appeal on Proceeding N° 1275-95, 28 September 1995.

<sup>147</sup> Land Bonds Bill, 27 March 2006, Art. 8, *supra* note 19, available at [http://www2.congreso.gob.pe/Sicr/RelatAgenda/proapro20112016.nsf/ProyectosAprobadosPortal/41A14C3F80592FCA05257FF8006D4732/\\$FILE/578SeguridadJuridicaReformaAgraria.pdf](http://www2.congreso.gob.pe/Sicr/RelatAgenda/proapro20112016.nsf/ProyectosAprobadosPortal/41A14C3F80592FCA05257FF8006D4732/$FILE/578SeguridadJuridicaReformaAgraria.pdf); Opinion of the Agrarian Commission of Congress on Draft Bills N°s 456/2006-CR, 3727/2008-CR and 3293/2008-CR, June 16, 2011, p. 16, ¶ 3.

accession, it should not look to noncompliant countries as a justification for its own noncompliance, but rather seek to comply fully with OECD core principles and leading practices. As explained above, this includes adherence to OECD standards for repaying sovereign debt in a timely fashion.

- **Investment Grade Status.** Peru continues to rely on its favorable investment grade rating from several major credit rating agencies as a justification for its conduct with respect to the Agrarian Reform Bonds.<sup>148</sup> These credit ratings are irrelevant to Peru's clear obligation to repay its debts, consistent with OECD core principles and leading practices. These credit ratings also do *not* reflect an assessment by the major rating agencies that Peru has appropriately handled the Agrarian Reform Bonds. In fact, none of the major rating agencies have rated the Agrarian Reform Bonds. Several state that they need additional information in order to rate the Agrarian Reform Bonds, which presumably, Peru has been unwilling to provide.<sup>149</sup> Peru is still responsible for providing the agencies with the necessary information to rate the Agrarian Reform Bonds; without doing so, the country is touting investment grade ratings that do not take the Agrarian Reform Bonds into consideration. As has been well documented in the media, lesser known rating agencies have rated the Agrarian Reform Bonds in default and thus rated Peru in selective default.<sup>150</sup> At least one of these lesser known rating agencies has also been willing to factor in Peru's *unwillingness* to pay the Agrarian Reform Bonds, even if Peru *could* pay if it chose to do so.<sup>151</sup>

---

<sup>148</sup> "Peru Responds to Gramercy Notice of Arbitration and Advances Payment Process for Agrarian Reform Bonds," *MEF Notas de Prensa*, 6 July 2016, available at <https://www.mef.gob.pe/en/comunicados-y-notas-de-prensa/100-notas-de-prensa-y-comunicados/4557-peru-responds-to-gramercy-notice-of-arbitration-and-advances-payment-process-for-agrarian-reform-bonds>; see also "Gramercy Responds to False Accusations by Peruvian Government on Land Bonds," *PR Newswire*, 3 June 2016, available at <http://www.prnewswire.com/news-releases/gramercy-responds-to-false-accusations-by-peruvian-government-on-land-bonds-300279684.html>.

<sup>149</sup> See e.g., "Big rating agencies steer clear of Peru's defaulted debt," *Financial Times*, 2 June 2016, available at <https://www.ft.com/content/fa83aba4-283f-11e6-8ba3-cdd781d02d89>; see also Moody's Investors Service, FAQs on Peru's Bonos de la Deuda Agraria, December 18, 2015, available at <https://www.moody.com/credit-ratings/Peru-Government-of-credit-rating-601500>; Standard & Poor's, Supplementary Analysis: Republic of Peru, 30 September 2015, available at <http://www.alacrastore.com/s-and-p-credit-research/Supplementary-Analysis-Republic-of-Peru-1458085>. In April 2016, two U.S. Congressmen questioned the director of the SEC's Office of Credit Ratings about the failure of rating agencies to rate the Agrarian Reform Bonds. See Subcommittee on Capital Markets and Government Sponsored Enterprises Hearing, Continued Oversight of the SEC's Offices and Divisions, 21 April 2016, available at <https://www.youtube.com/watch?v=OVV0zneOIDS>.

<sup>150</sup> See Egan-Jones Assigns a First-time Rating of 'BB' to the Republic of Peru's International Bonds," 17 November 2015, available at <https://www.egan-jones.com/public/press/egan-jones-rates-peru-bonds.aspx>; Press Release, Peruvian Agrarian Debt Bonds, HR Ratings, 27 October 2015, available at [https://www.hrratings.com/pdf/Peruvian%20Agrarian%20Debt%20Reform%20Bonds%20Press%20Release\\_20151027.pdf](https://www.hrratings.com/pdf/Peruvian%20Agrarian%20Debt%20Reform%20Bonds%20Press%20Release_20151027.pdf).

<sup>151</sup> See Egan-Jones Assigns a First-time Rating of 'BB' to the Republic of Peru's International Bonds," 17 November 2015, available at <https://www.egan-jones.com/public/press/egan-jones-rates-peru-bonds.aspx>; see also "Fraud Charges in Peru Surround Two Very Different Bond Ratings," *ValueWalk*, 10 December 2015,

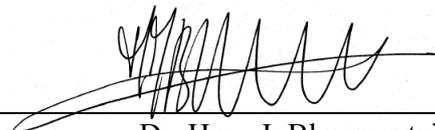
95. In short, the Agrarian Reform Bonds are no different than other types of bonds: they were issued by the government to finance government policies and operations and with the government's guarantee of timely repayment. Accordingly, like any other sovereign debt, they are subject to the OECD's standards for issuing and repaying public debt.

## VI.

### CONCLUSION

96. Peru's economy has become more developed and mature, and Peru has signaled its interest in joining the OECD. However, its conduct with respect to the Agrarian Reform Bonds—both in failing to report and failing to repay that debt in a timely manner—highlights that Peru does not fully adhere to the OECD's values and principles or conduct itself in accordance with OECD's leading practices relevant to public debt. As such, while Peru has indicated its desire to join the OECD in words, it has as of yet failed to demonstrate fully its commitment to the OECD's core principles by its actions. The OECD itself has recently noted concerns about Peru's public sector integrity, and Peru's conduct with respect to the Agrarian Reform Bonds reinforces these concerns.

97. The OECD's conditions for accession are not aspirational. Rather, the OECD requires that the applicant country shows evidence that it already meets these conditions or agrees to comply with the Acts and instruments concerning substantive policy in OECD countries. Because Peru's conduct with respect to the Agrarian Reform Bonds contravenes the OECD's core principles, it would be advisable for Peru's prospective OECD accession to be put on hold, at least until it reports the amount of outstanding Agrarian Reform Bond debt in its financial reporting, and resolves its ongoing dispute with creditors by providing fair compensation in a reasonable period of time.

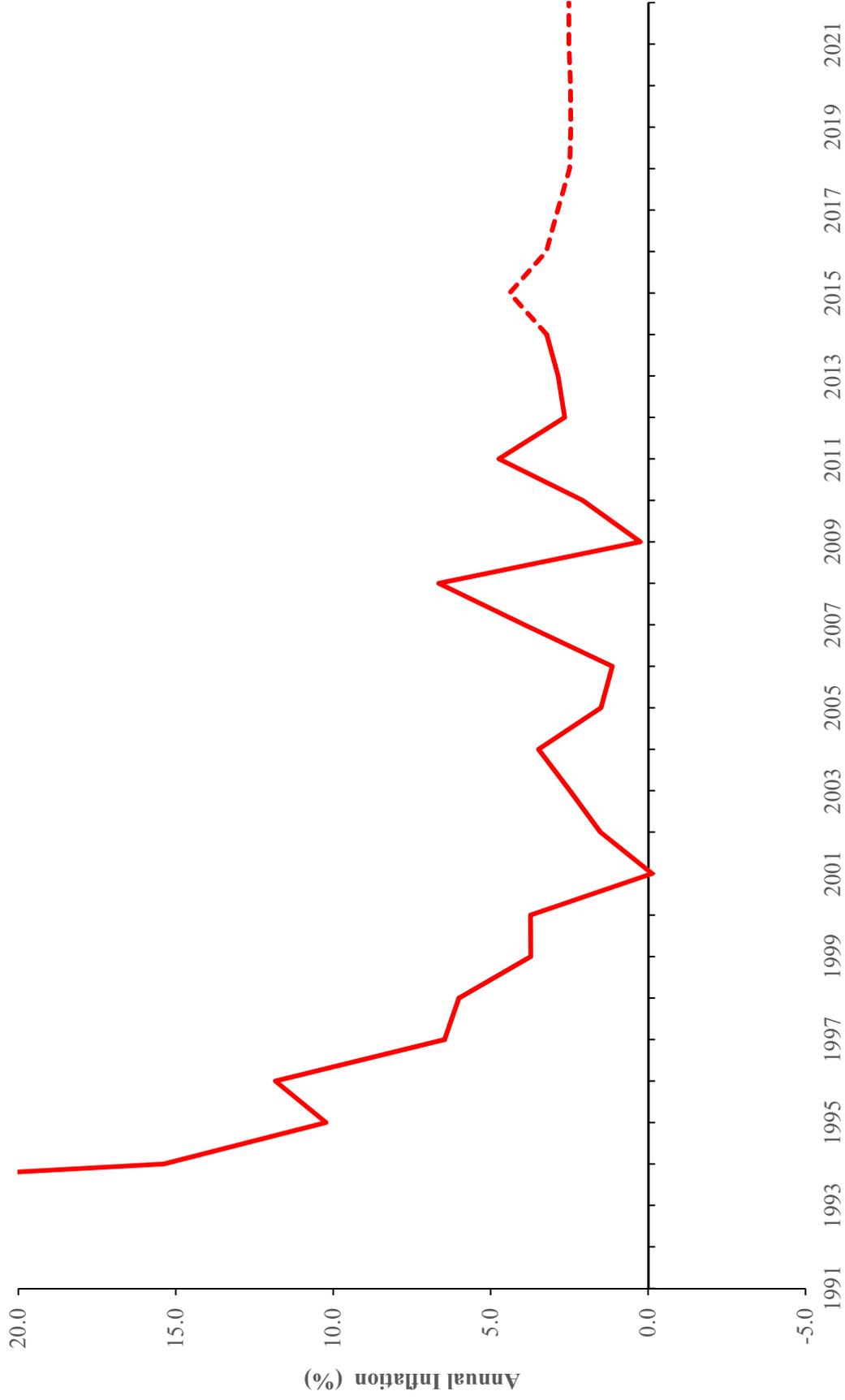


Dr. Hans J. Blommestein  
9 November 2017

---

available at <https://www.valuewalk.com/2015/12/peru-debt-rating/>; see also Moody's Investors Service, FAQs on Peru's Bonos de la Deuda Agraria, December 18, 2015; Standard & Poor's, Supplementary Analysis: Republic of Peru, 30 September 2015.

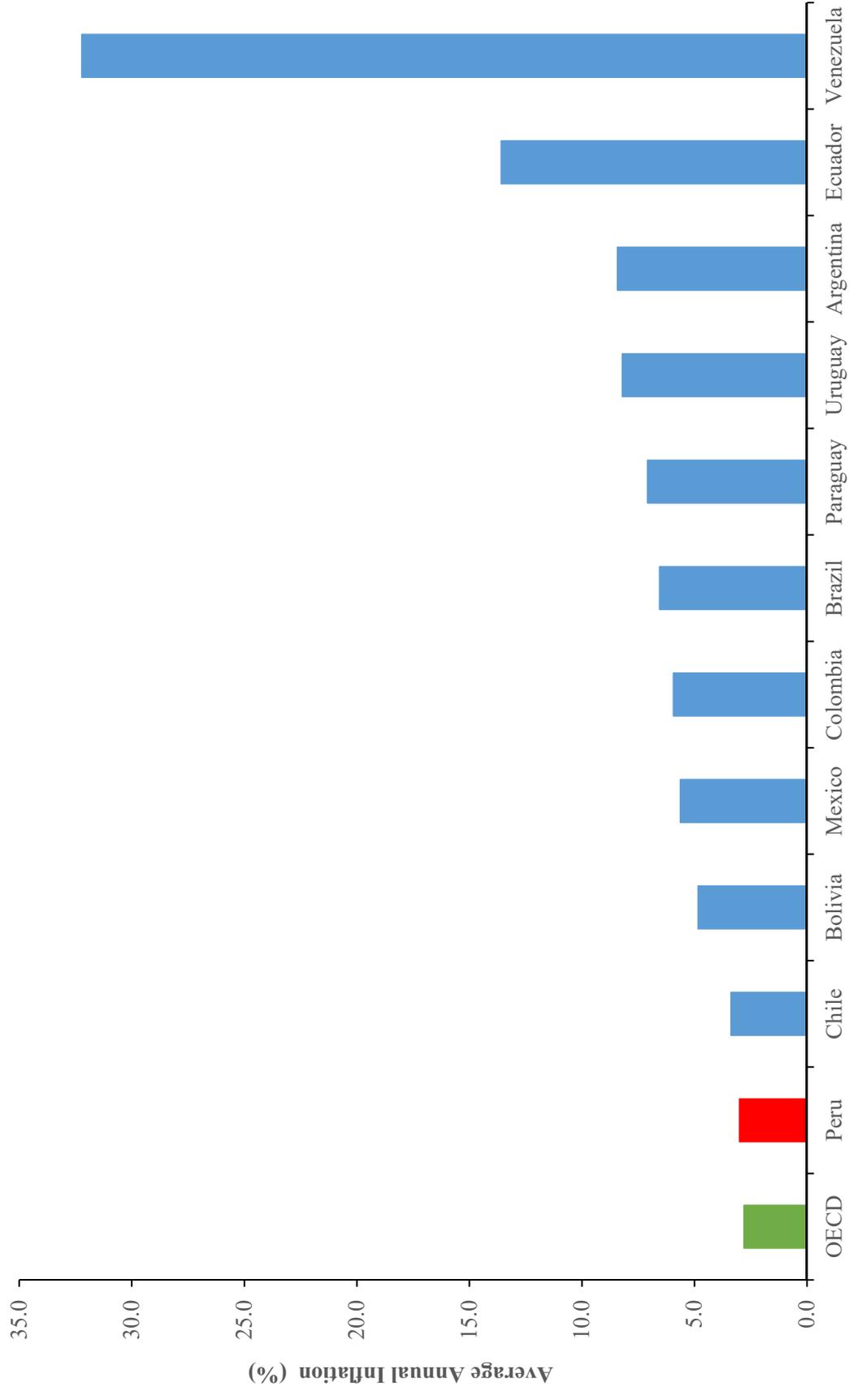
**Exhibit 1A**  
**Peru Inflation**  
**1991-2022**



**Note:** Projected values indicated with dashed line.

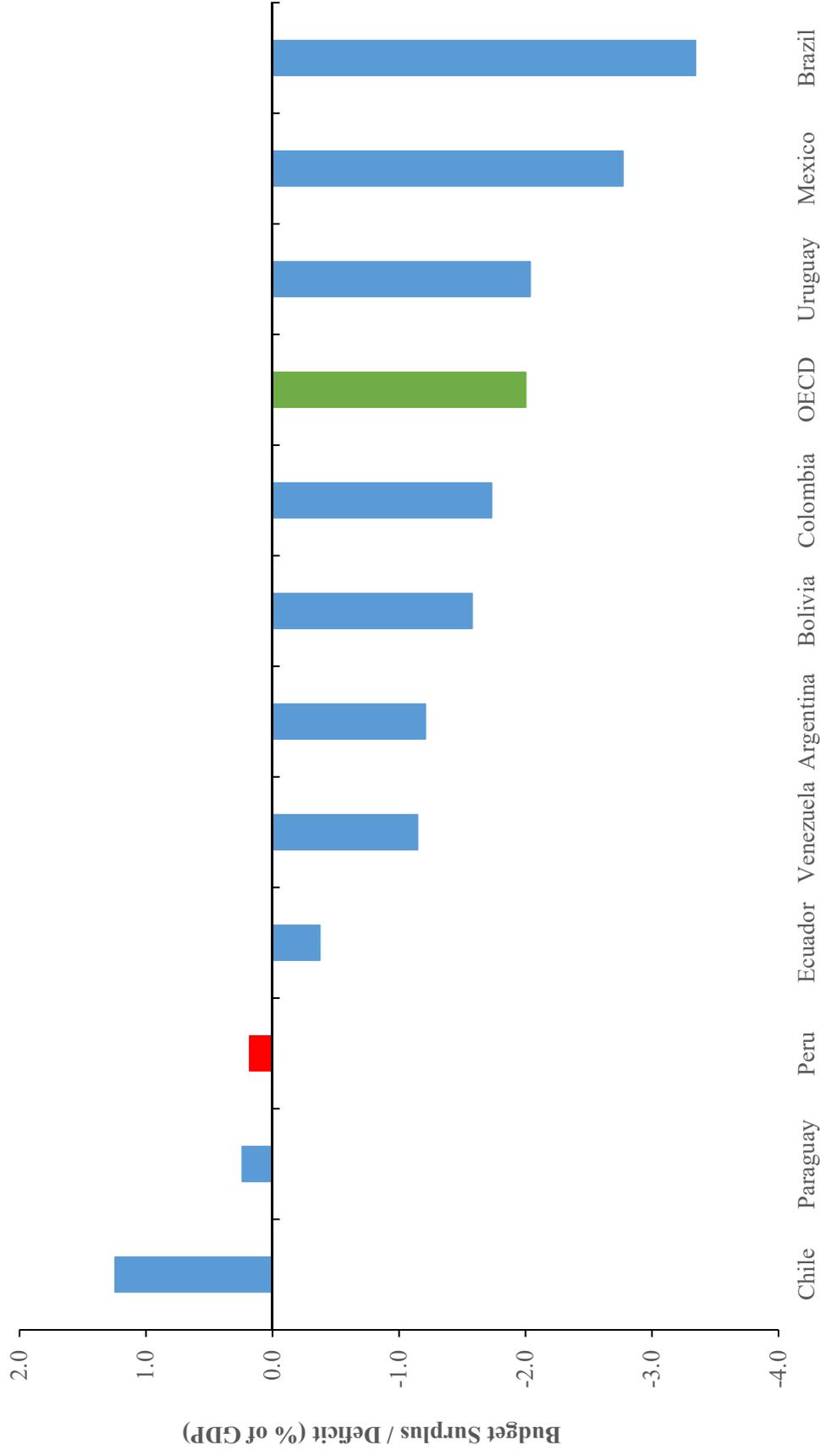
**Source:** International Monetary Fund, World Economic Outlook Database.

**Exhibit 1B**  
**Average Annual Inflation Among Comparable Countries**  
**1997-2015**



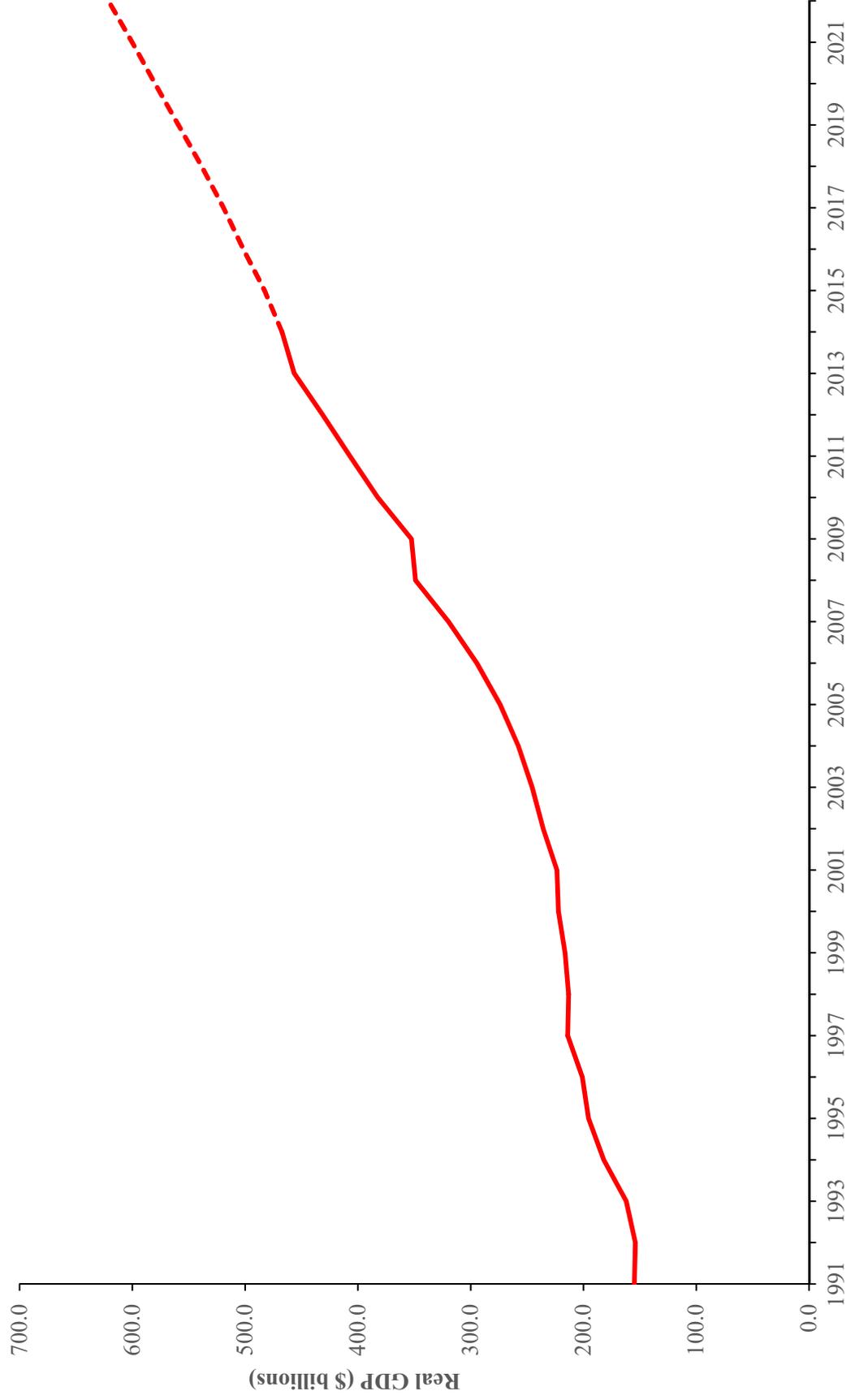
**Note:** Annual inflation for Peru in 2015 estimated by the IMF. Annual inflation for Argentina calculated from 1997 through 2014 due to unavailability of data.  
**Source:** International Monetary Fund, World Economic Outlook Database.

**Exhibit 2**  
**Average Budget Surplus / Deficit as a Percentage of GDP Among Comparable Countries**  
**2000-2014**



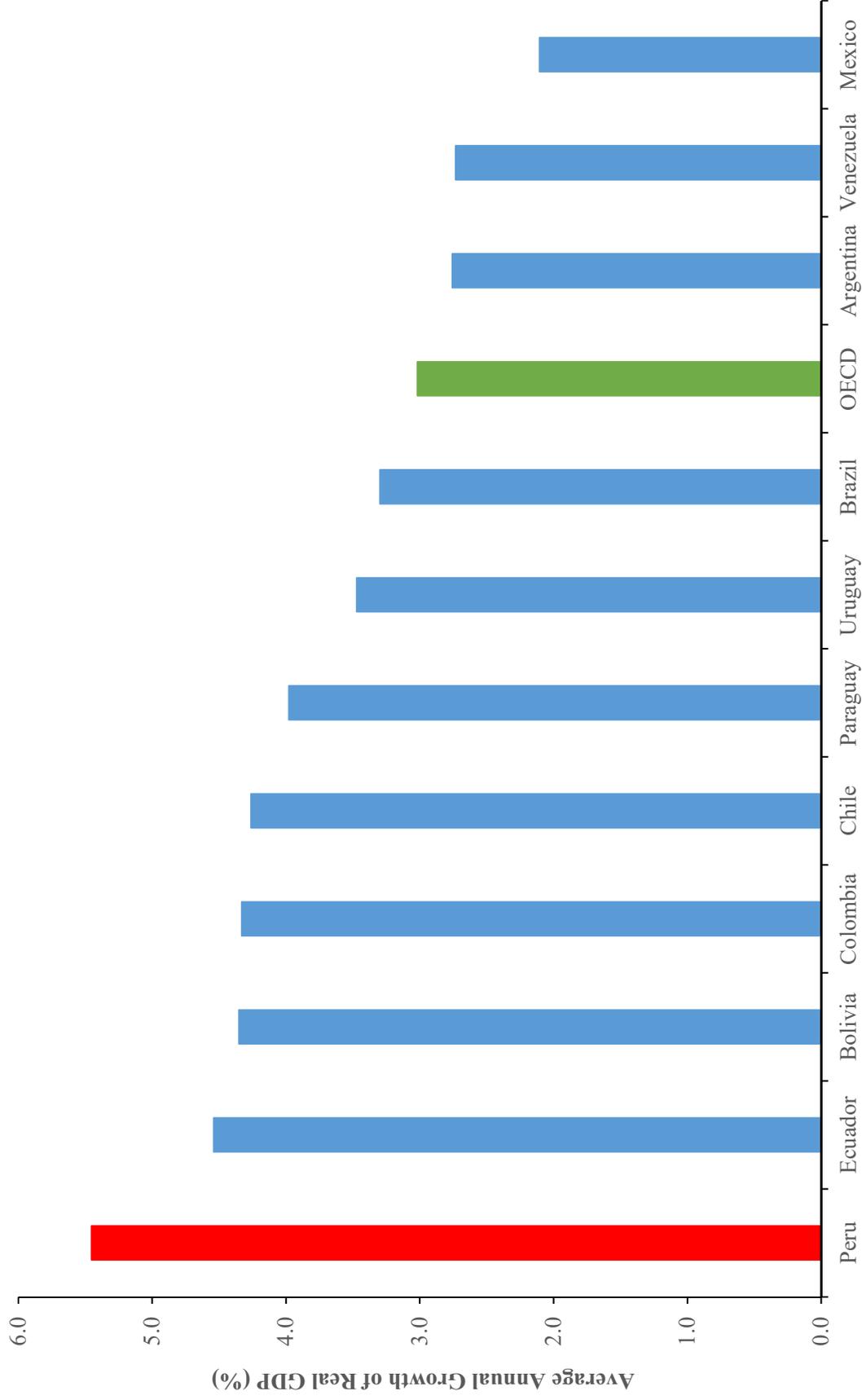
**Note:** Average budget surplus / deficit for Venezuela calculated from 2000 through 2009 due to unavailability of data.  
**Source:** International Monetary Fund, World Economic Outlook Database.

**Exhibit 3A**  
**Peru Real GDP**  
**1991-2022**



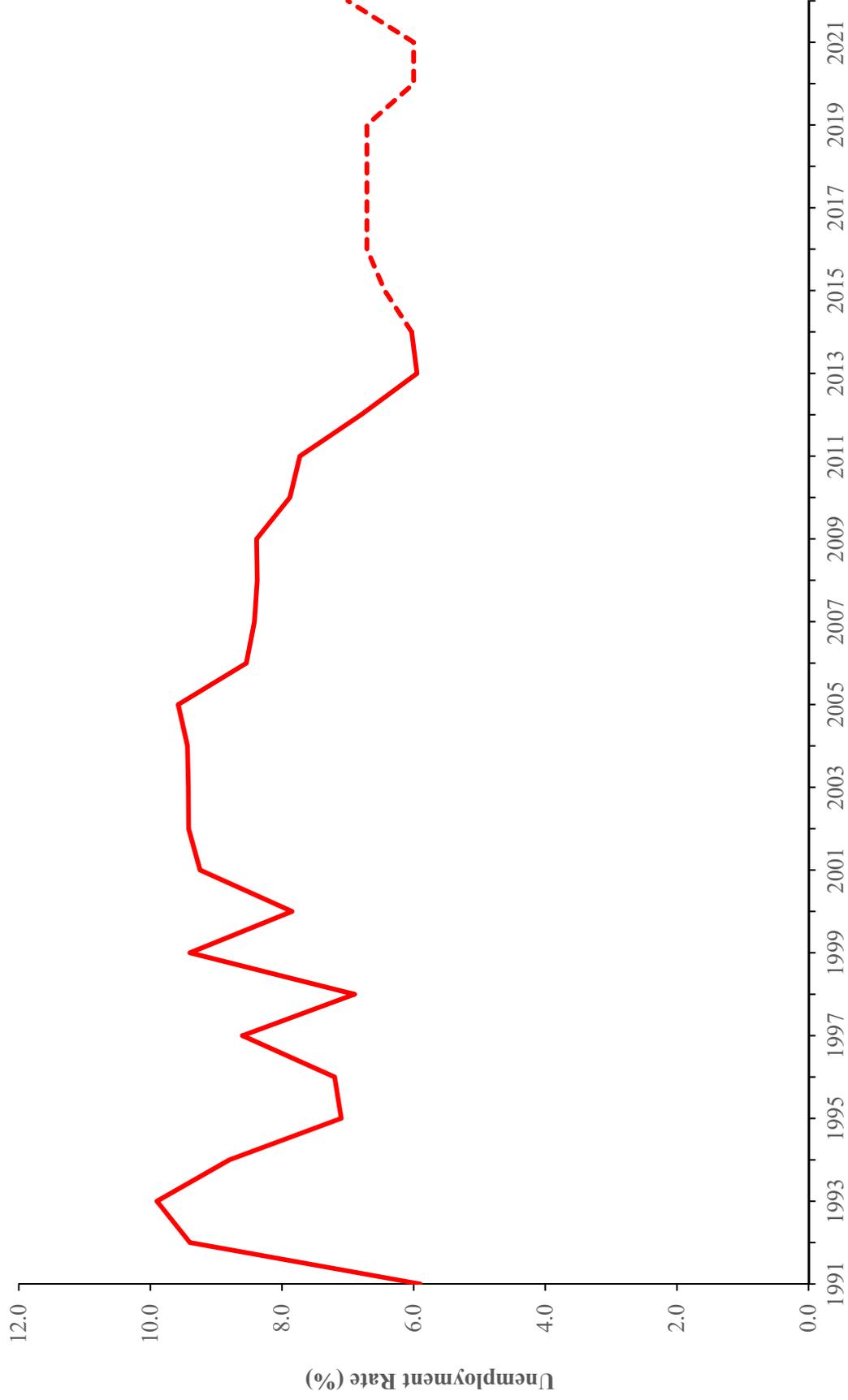
**Note:** Projected values indicated with dashed line.  
**Source:** International Monetary Fund, World Economic Outlook Database.

**Exhibit 3B**  
**Average Annual Growth of Real GDP Among Comparable Countries**  
**2000-2014**



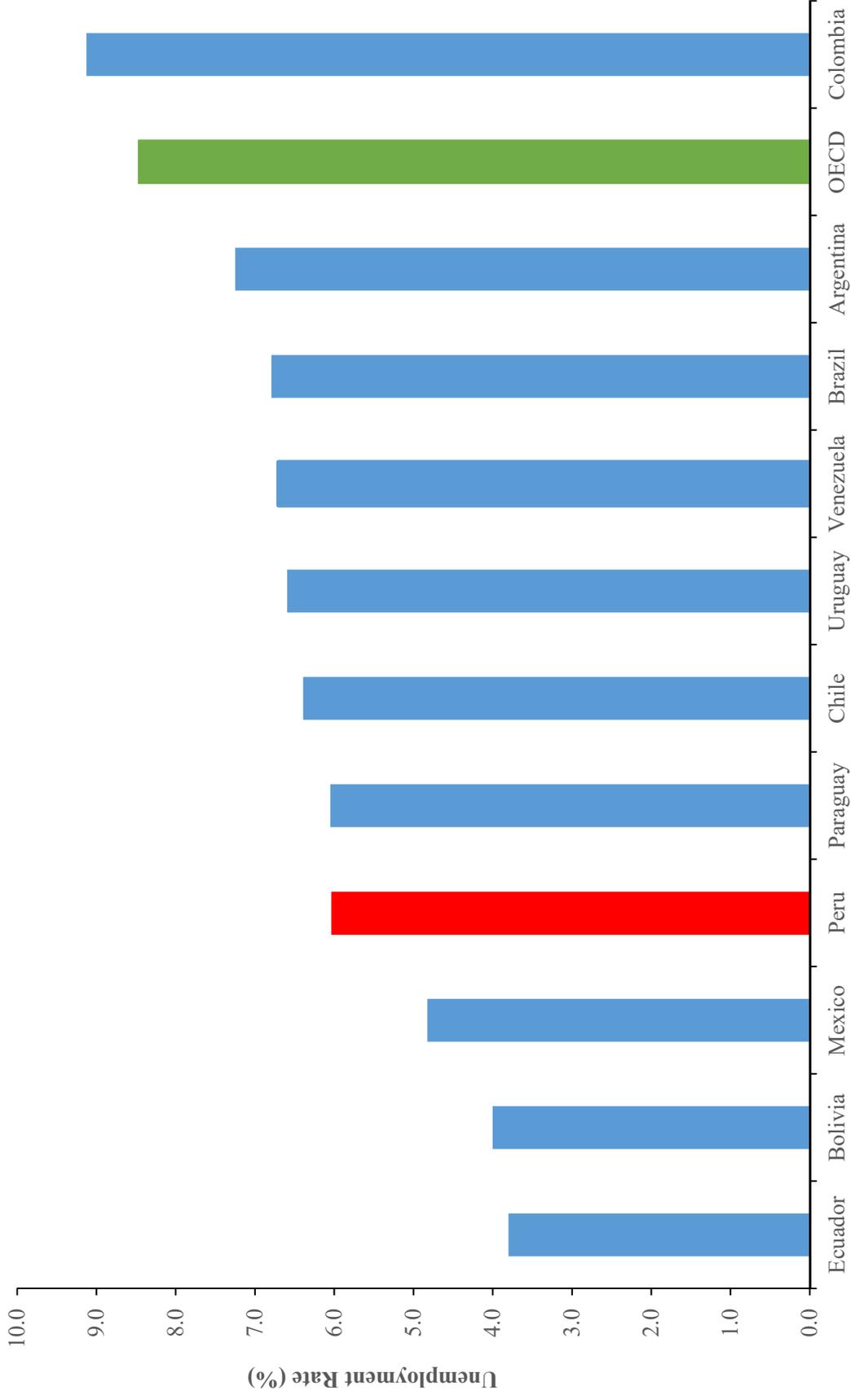
**Source:** International Monetary Fund, World Economic Outlook Database.

**Exhibit 4A**  
**Peru Unemployment Rate**  
**1991-2022**



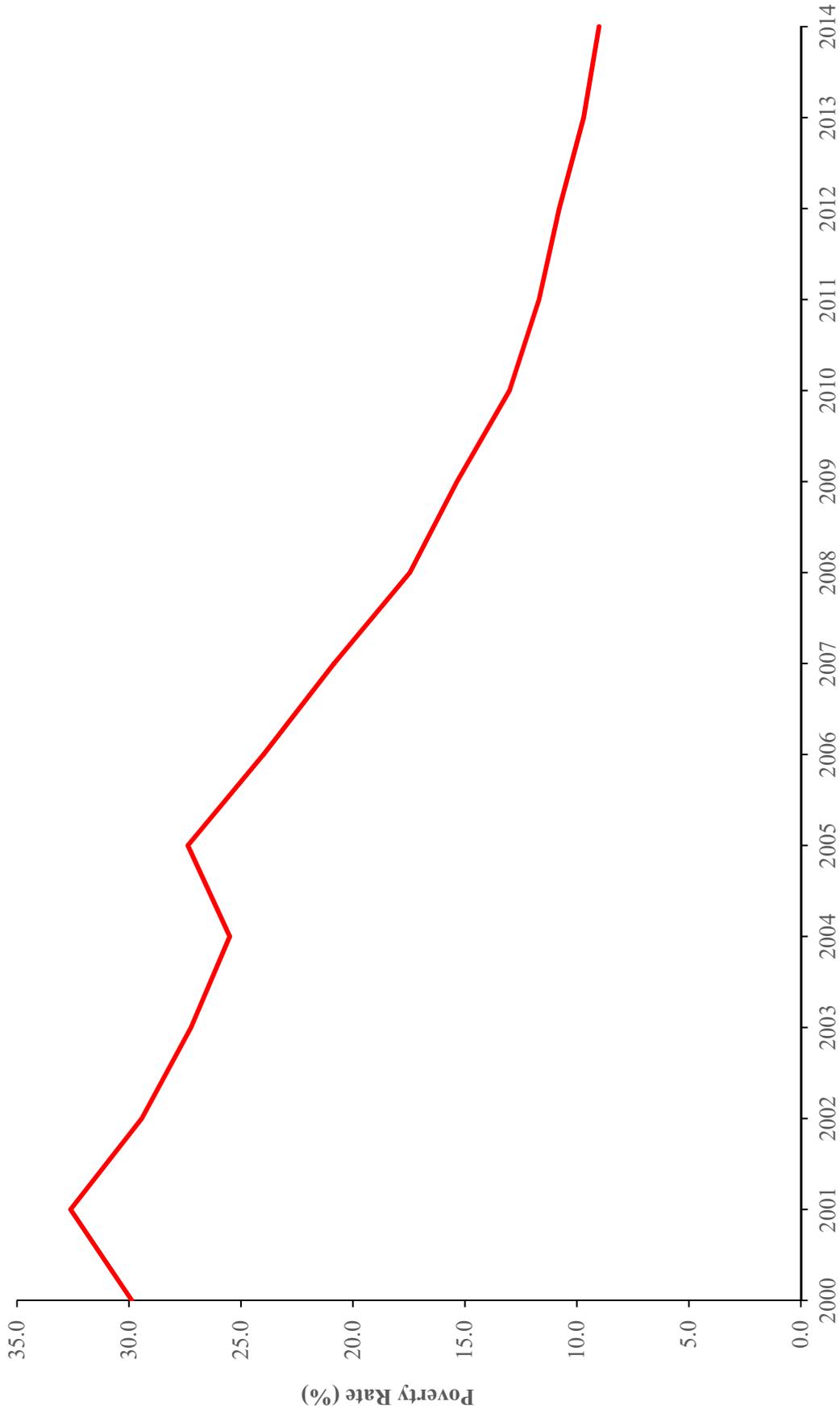
**Note:** Projected values indicated with dashed line.  
**Source:** International Monetary Fund, World Economic Outlook Database.

**Exhibit 4B**  
**Unemployment Rates Among Comparable Countries**  
**2014**



**Note:** 2014 unemployment rates for Bolivia and Venezuela are estimated by the IMF.  
**Source:** International Monetary Fund, World Economic Outlook Database.

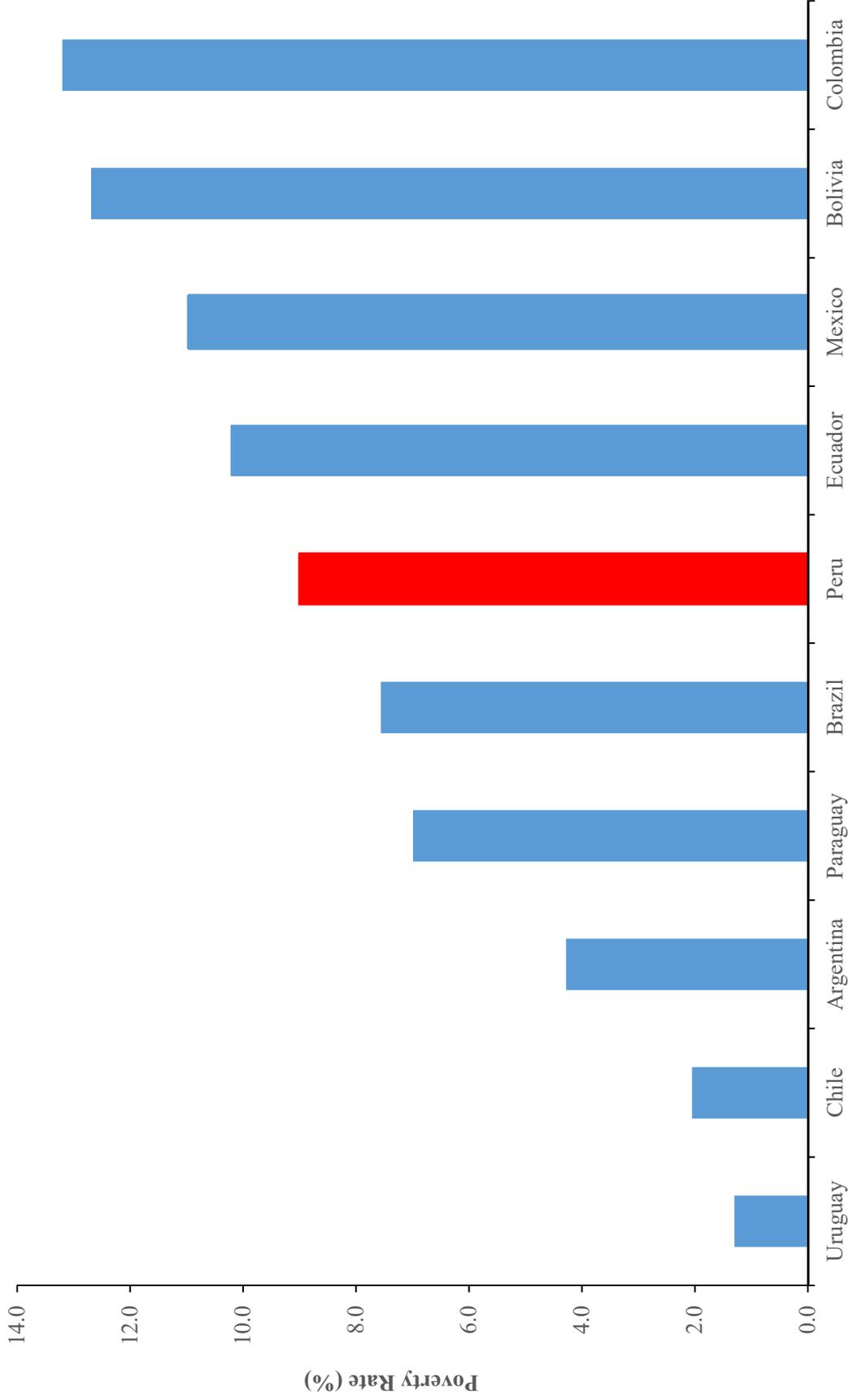
**Exhibit 5A**  
**Peru Poverty Rate**  
**2000-2014**



**Note:** Indicates the percentage of the population living on less than \$3.10 per day at 2011 international prices.

**Source:** World Bank, World Development Indicators Database.

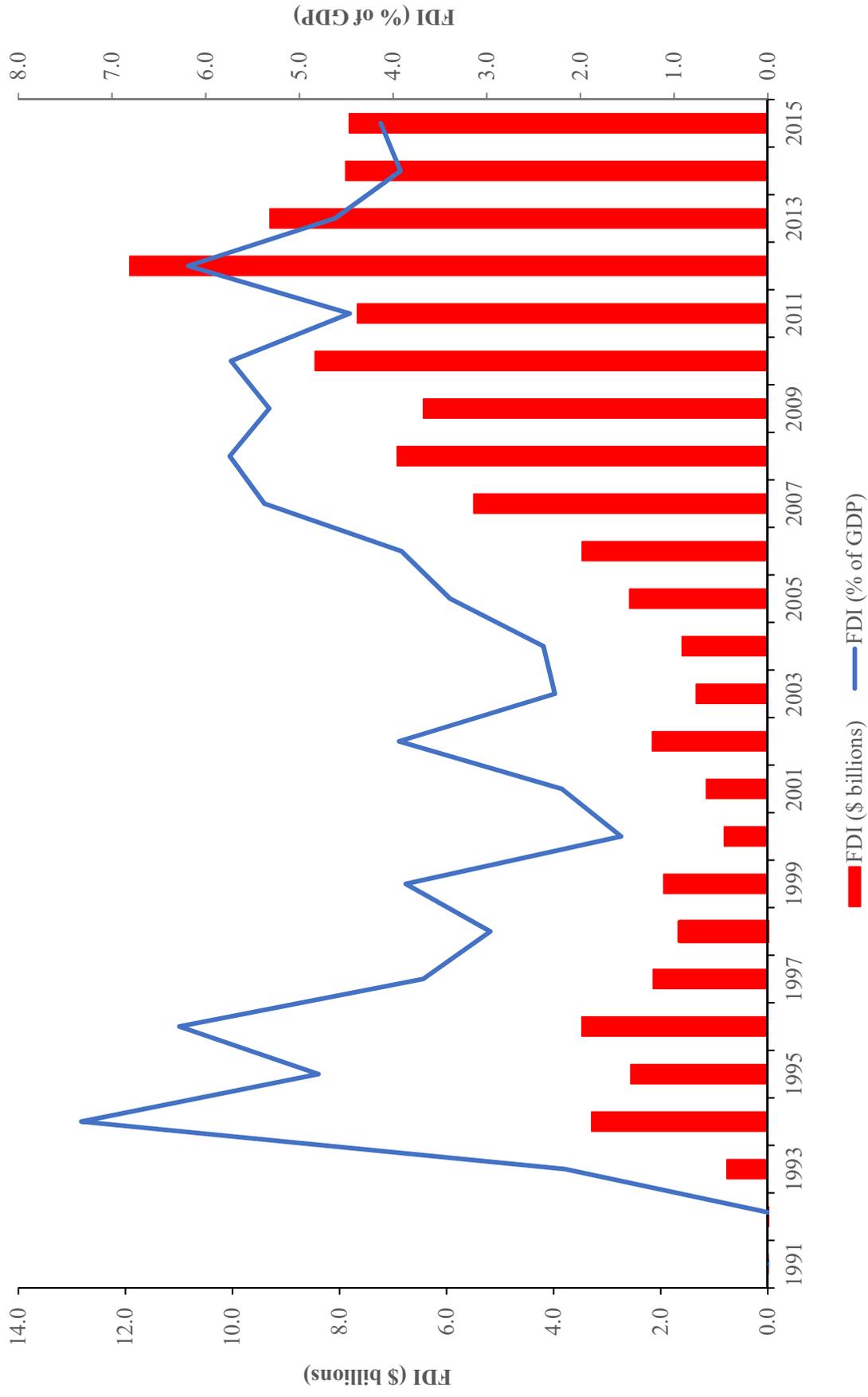
**Exhibit 5B**  
**Poverty Rates Among Comparable Countries**  
**2014**



**Notes:** Indicates the percentage of the population living on less than \$3.10 per day at 2011 international prices. Poverty rate for Chile is from 2013 due to unavailability of data. Data unavailable for Venezuela and OECD.

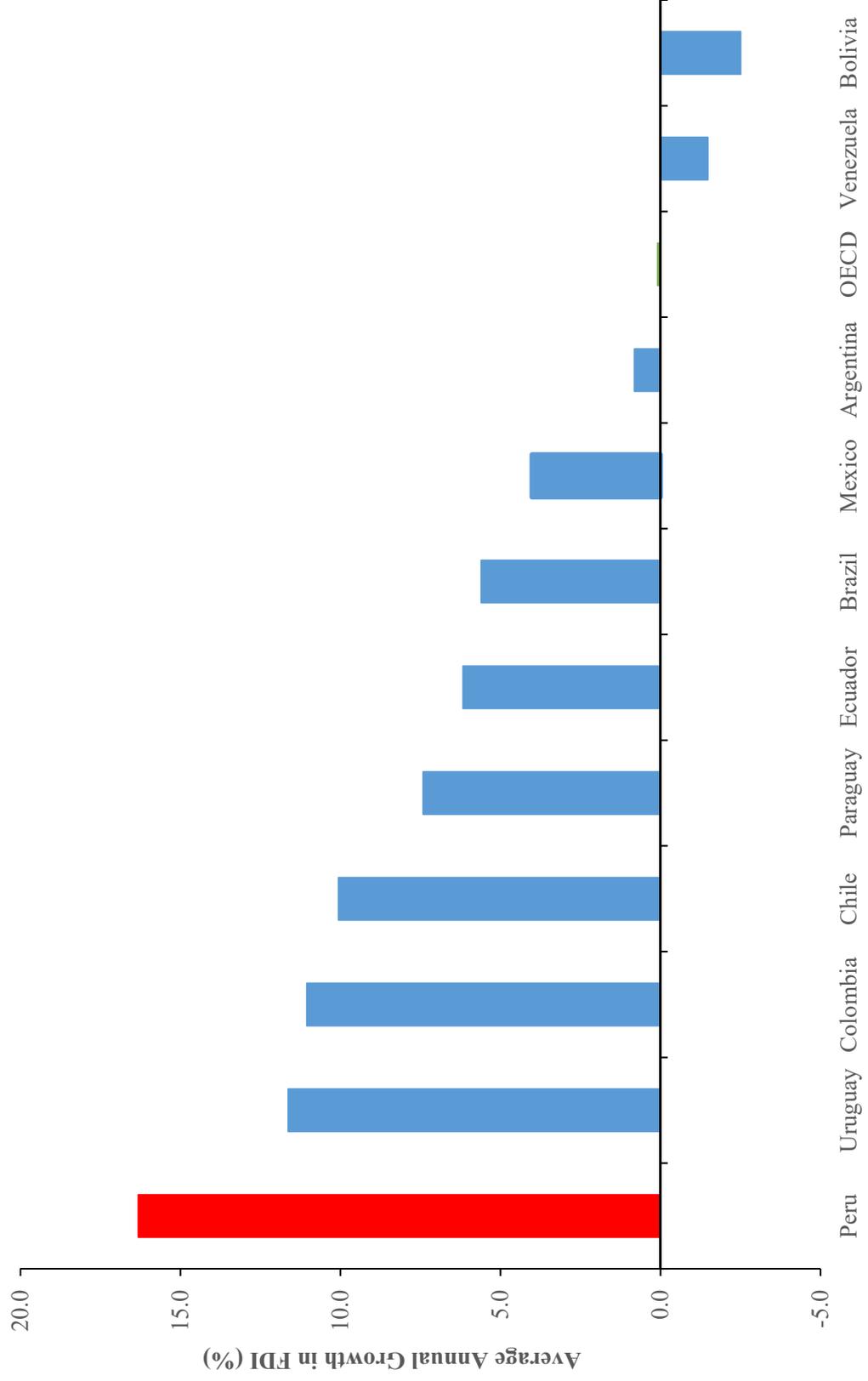
**Source:** World Bank, World Development Indicators Database.

**Exhibit 6A**  
**Foreign Direct Investment in Peru**  
**1991-2015**



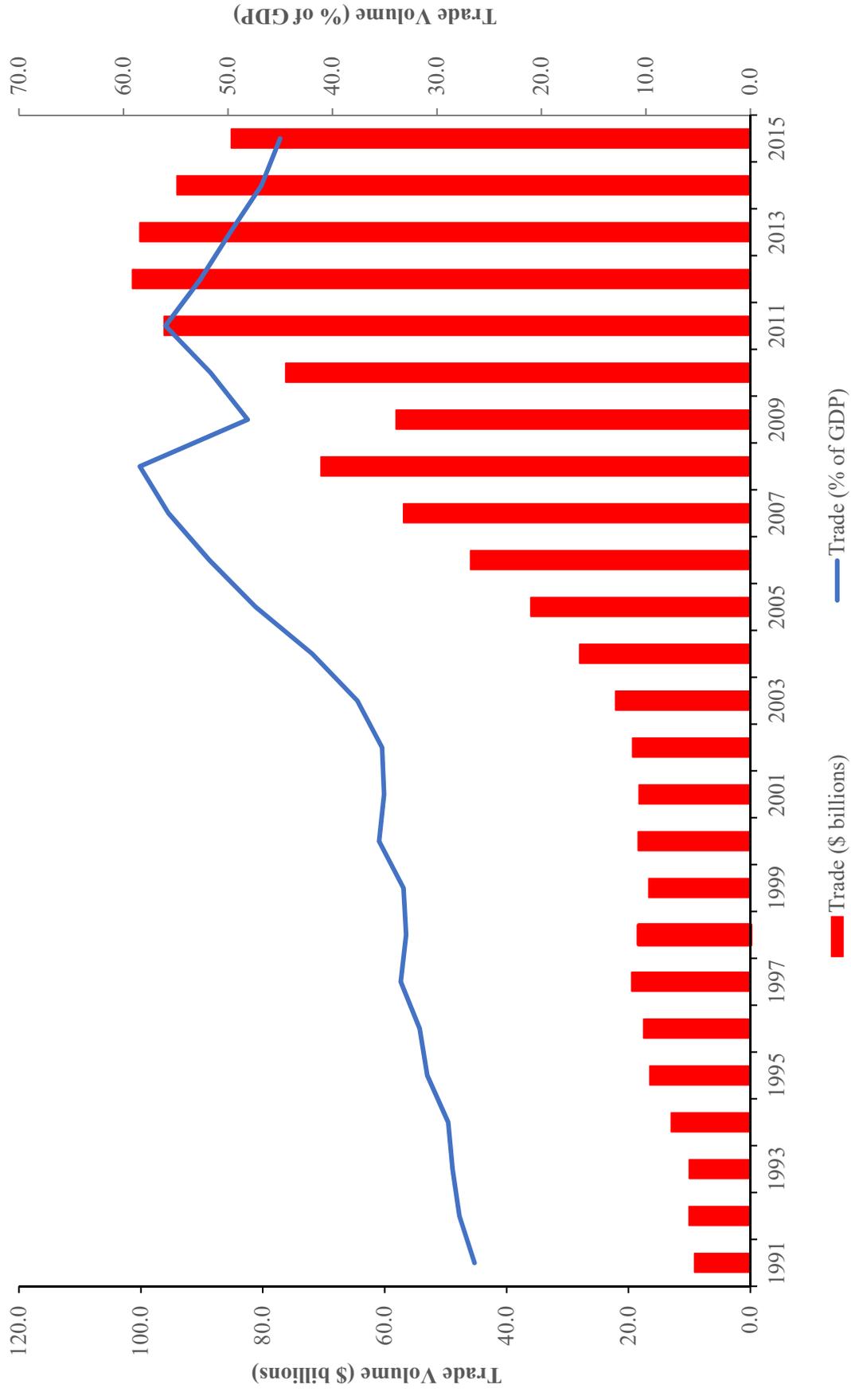
Source: World Bank, World Development Indicators Database.

**Exhibit 6B**  
**Average Annual Growth in Foreign Direct Investment in Comparable Countries**  
**2000-2015**



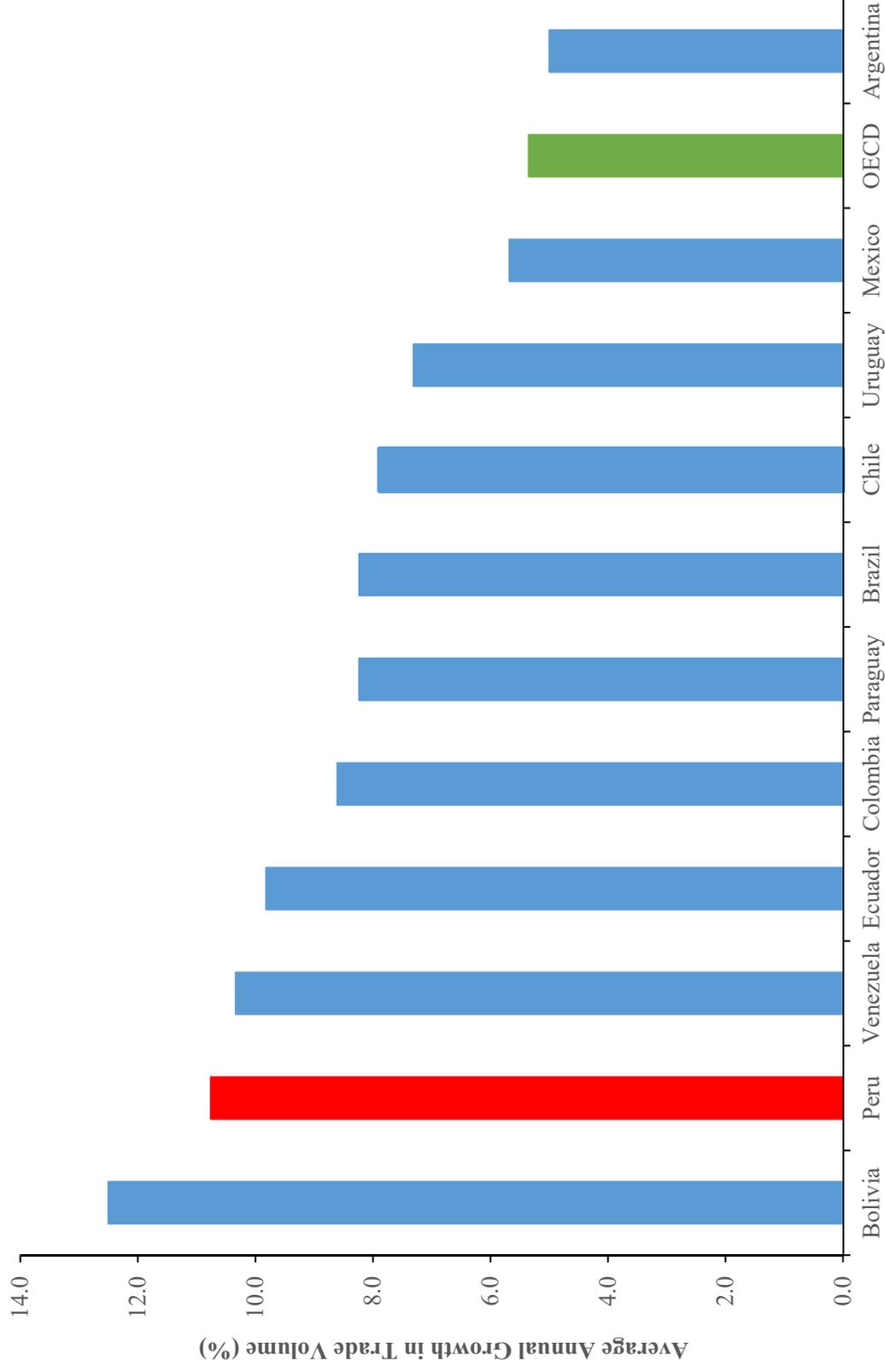
**Note:** Average annual growth rate for Ecuador calculated from 2001 through 2015 due to unavailability of data.  
**Source:** World Bank, World Development Indicators Database.

**Exhibit 7A**  
**Peru Trade Volume**  
**1991-2015**



**Note:** Trade volume is the sum of exports and imports of goods and services.  
**Source:** World Bank, World Development Indicators Database.

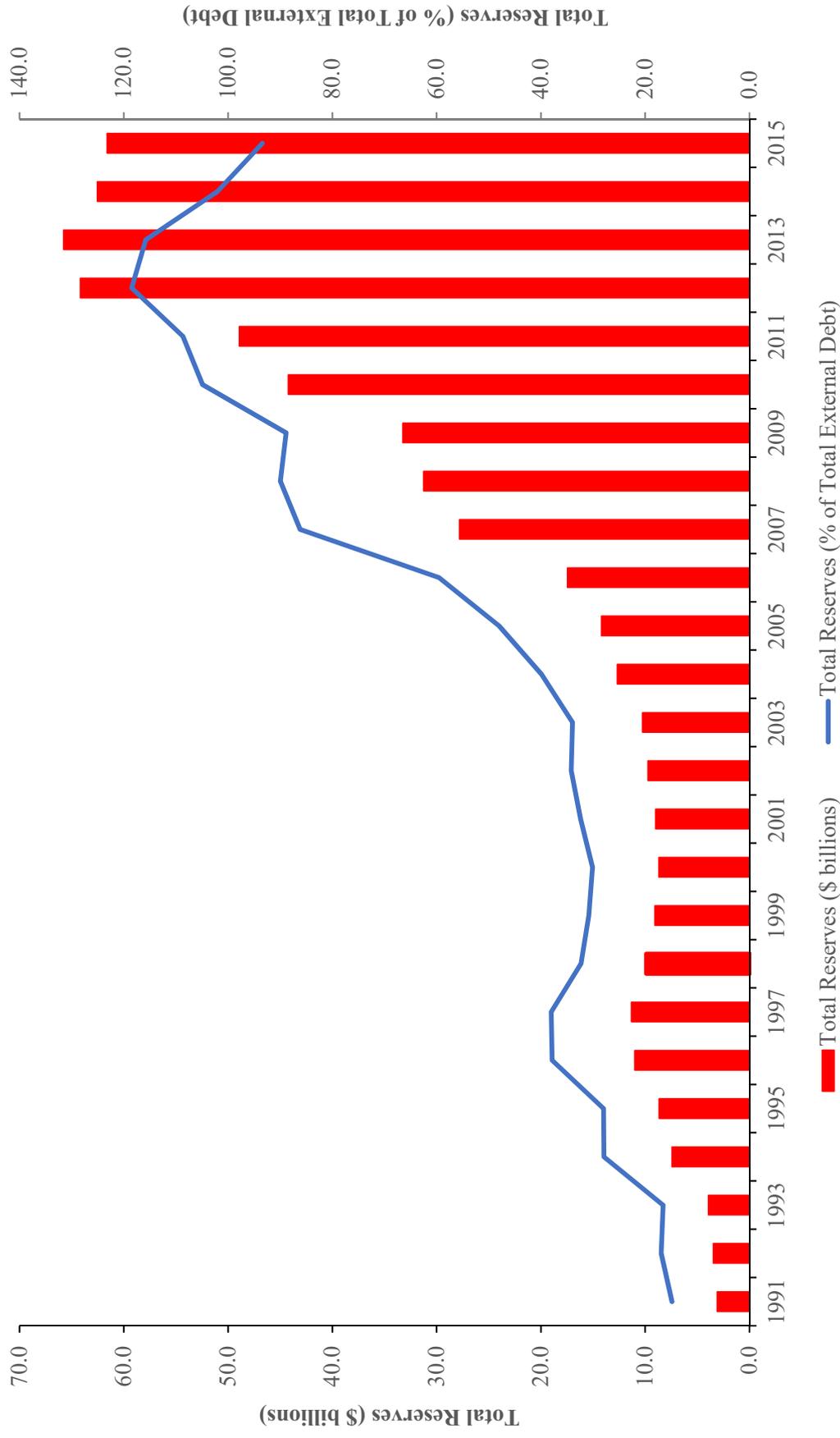
**Exhibit 7B**  
**Average Annual Growth in Trade Volume Among Comparable Countries**  
**2000-2015**



**Note:** Trade volume is the sum of exports and imports of goods and services. Average annual growth rate for Venezuela calculated from 2000 through 2013 due to unavailability of data.

**Source:** World Bank, World Development Indicators Database.

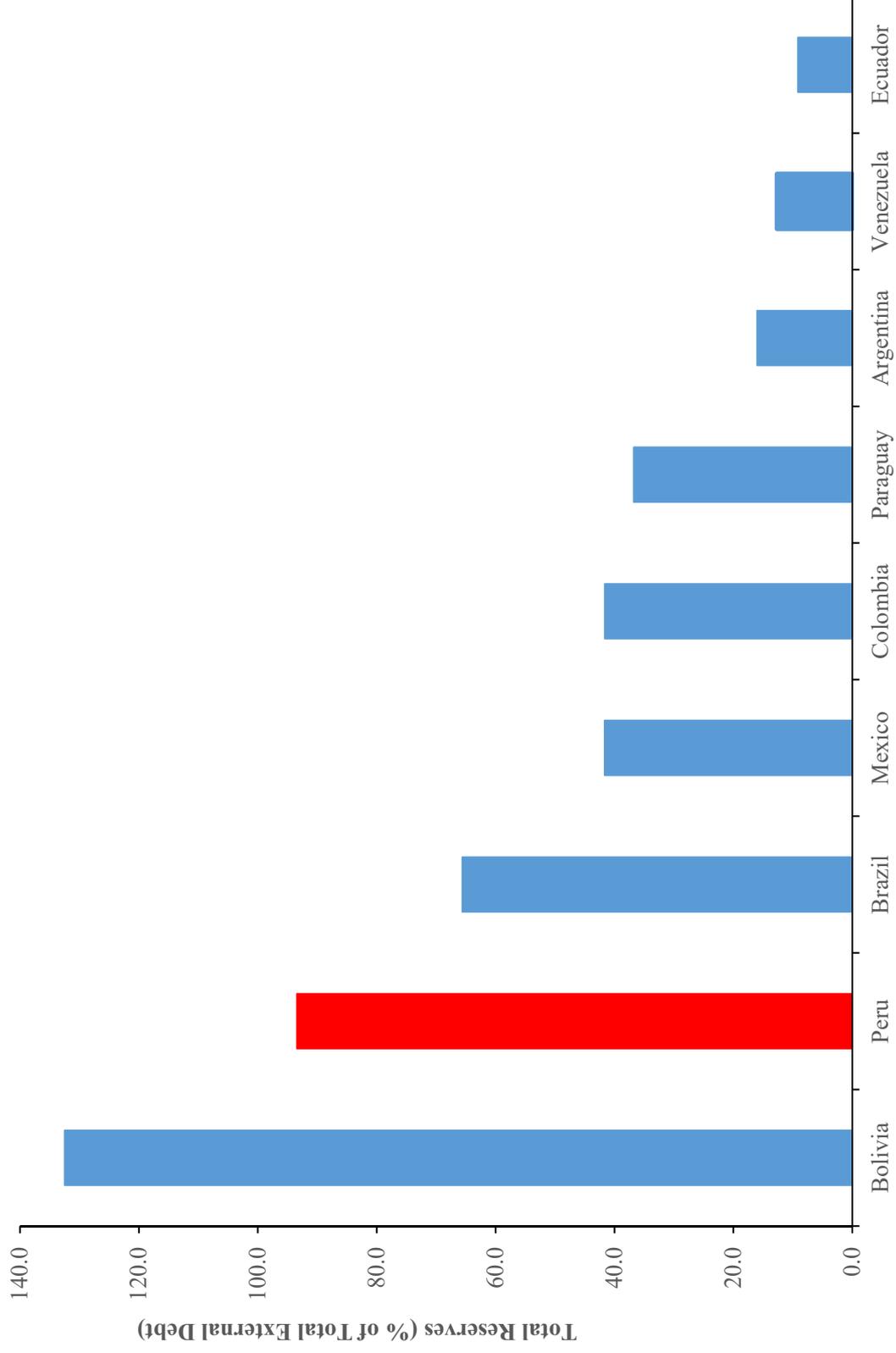
**Exhibit 8A**  
**Peru Total Reserves**  
**1991-2015**



**Note:** Total reserves comprise holdings of monetary gold, special drawing rights, reserves of IMF members held by the IMF, and holdings of foreign exchange under the control of monetary authorities.

**Source:** World Bank, World Development Indicators Database.

**Exhibit 8B**  
**Total Reserves as a Percentage of Total External Debt Among Comparable Countries**  
**2015**



**Note:** Data unavailable for Chile, Uruguay, and OECD.  
**Source:** World Bank, World Development Indicators Database.