

**PERU'S AGRARIAN REFORM BONDS
AND THE
INTERNATIONAL MONETARY FUND**

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I.

EXECUTIVE SUMMARY

Background

1. In the late 1960s and early 1970s, Peru expropriated a large amount of agricultural land as a result of its agrarian reform policies (the “**Agrarian Reform**”). To pay for the expropriated land, it issued Agrarian Reform Bonds (“**ARBs**”). The ARBs were denominated in Peru’s currency at the time, the *Sol*. In 1969, the value of the bonds issued was equivalent to about 3 percent of GDP.

2. In the 1980s and early 1990s, Peru experienced high inflation, and consequently undertook two currency re-denominations. These events reduced the nominal value of the ARBs to a miniscule fraction—one billionth—of their original value. The Peruvian Government is reported to have ceased servicing the ARBs in the early 1990s.

3. In 2001, the Constitutional Tribunal of Peru ordered that the remaining stock of ARBs, including arrears, be paid to bond holders using the Peruvian Civil Code’s current value principle, which protects debts against erosion in the purchasing power of the currency in which they were issued (the “**2001 Decision**”). While Peru has acknowledged the debt owed to ARB-holders, the ARBs remain to date for the most part unpaid. According to some estimates, their total current value represents approximately 4 percent of Peru’s GDP.

The IMF Regulatory Framework

4. All member countries of the International Monetary Fund (the “**IMF**” or the “**Fund**”), including Peru, are potentially subject to three sets of reporting obligations. *First*, all member countries have general reporting requirements under the IMF’s Articles of Agreement, based on their obligation to consult with the IMF about their macroeconomic policies--the IMF’s “surveillance” function. *Second*, countries that receive financial support from the IMF through IMF programs (also known as “**arrangements**”) are subject to more stringent reporting obligations related to the “conditions” the country must fulfill to have access to each tranche of financial support. *Third*, countries that have subscribed to the “Special Data Dissemination Standards” (“**SDDS**”), such as Peru, are also subject to additional reporting requirements.

5. The scope and form of the reporting obligations is set forth in a series of manuals adopted by the IMF in consultation with member countries. The manuals cover all areas of relevant macroeconomic information, including government finance statistics. In 2001, the IMF adopted a new methodology for compiling and reporting these government statistics, essentially shifting its focus from flows on a cash basis to stocks of assets and liabilities on an accrual basis.

6. The accuracy of reported information is extremely important for the IMF, and the IMF views a country’s failure to report its macroeconomic data properly as a serious issue that warrants remedial actions and even sanctions. In cases where the failure to report data accurately relates to a program condition (“**performance criterion**”) that allows a disbursement of IMF funds, the sanctions may go as far as requiring the country to return the funds received.

Peru's Reporting of the Agrarian Reform Bonds

7. Peru initially reported the issuance of the ARBs and its debt service, and may have continued to do so in subsequent years—at least until the sustained inflation and currency re-denominations rendered the value of the ARBs so low as to be immaterial. However, there is no evidence that Peru reported the ARBs from 2001 on, notwithstanding the fact that it was required to do so under the 2001 methodology. Hence, Peru does not appear to have complied with its reporting obligations to the IMF.

8. Even when Peru had arrangements with the IMF, there is no evidence that Peru reported data on the ARBs, despite being subject to more stringent reporting obligations. In addition, while Peru requested that the IMF issue Reports on Standards and Codes (“**ROSCs**”) on its government finance statistics under the higher standards of the SDDS rubric in 2003, 2004, and 2015, there is also no evidence that Peru provided data on the ARBs in connection with such Reports.

9. The lack of evidence that Peru reported the ARBs 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 ARBs 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 under the 2001 methodology.

10. This white paper is organized as follows. The *first* section examines the IMF's reporting obligations as they pertain to the ARBs. That section also sets forth the IMF's definition of the term “debt” and its methodology for reporting such debt, as well as the position of the IMF on principal and interest arrears with external private creditors. The *second* section analyzes Peru's reporting of the ARBs to the IMF since issuance until present.

II.

BACKGROUND

11. In the late 1960s and early 1970s, Peru undertook a major land reform program. Following the October 3, 1968 coup by the Peruvian Armed Forces, the de-facto military government issued Decree Law No. 17716 on June 24, 1969. This law introduced the Agrarian Reform, and led to the expropriation of a large amount of agricultural land—namely, an area equivalent to the size of Portugal. The expropriated land was then given to rural peasants and cooperatives.

12. To pay for the land, Peru issued the ARBs with values denominated in Peru's currency at the time, the *Sol*. The ARBs had fixed interest rates, terms of up to 30 years, and were initially non-negotiable.

13. In the 1980s and 1990s, high and sustained inflation and two monetary redenominations reduced the nominal value of the ARBs to a mere one billionth of their original value. The *first* redenomination took place on February 1, 1985, when the *Sol* was replaced by the *Inti* at a rate of *I/ 1* for *S/ 1,000*. The *second* redenomination took place on July 1, 1991, when the *Inti* was replaced by the *Nuevo Sol* at a rate of *NS/ 1* for *I/ 1,000,000*.¹

14. The Government of Peru initially serviced the ARBs, but is reported to have stopped doing so in the early 1990s. At the time Peru stopped servicing them, a large portion of the ARBs were still outstanding.

15. In March 2001, Peru's Constitutional Tribunal ordered the Peruvian Government to pay the ARBs debt according to the Peruvian Civil Code's current value principle.² This principle protects certain types of debt against erosion in the purchasing power of the currency in which the debt was originally denominated until they are paid in full.³ The Civil Code itself provides guidance on how the value can be restored and preserved, with explicit mention of anchoring the value to a real index published by the Central Reserve Bank of Peru.⁴ Moreover, in a 2005 report, the Agrarian Commission of Peru's Congress recommended the use of CPI to update the value of ARBs, noting that CPI is considered the "official" factor used by Peru to update its national accounts, and that no government or private agency has challenged the validity of its use for such purposes.⁵ Thus, the 2001 Decision formally restored the value of the stock of debt owed by Peru on the ARBs, and ordered that it would remain at an adjustable value until paid.

16. While the 2001 Decision did not elaborate on the methodology that should be used to calculate the ARBs' current value, it clearly stated: *first*, that the debt must be recognized at

¹ On November 2015, the name of the new currency was simplified to *Sol*.

² Constitutional Tribunal Decision dated March 15, 2001.

³ Articles 1235 and 1236 of the Peruvian Civil Code (1984, as updated in 1996).

⁴ Article 1235 of the Peruvian Civil Code (1984, as updated in 1996).

⁵ 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.

current value, and could no longer be disregarded as nominal; and *second*, that calculating current value should be a relatively straightforward process if done in accordance with the Civil Code (Article 1235).

17. Since 2001, multiple governmental bodies within Peru have reaffirmed the need to pay the ARBs and recognized the obligation to pay at current value. In a 2006 report, the Peruvian Congress calculated the current value of the stock of ARBs in accordance with the 2001 Decision, and concluded that its total value was about \$3.5 billion, or approximately 4 percent of Peru’s GDP at the time.⁶

18. In 2013, the Constitutional Tribunal issued a second decision reaffirming the obligation to pay the ARBs, but effectively altered the valuation approach.⁷ In 2014, Peru’s Ministry of Economy and Finance issued two Supreme Decrees proposing a payment mechanism for the outstanding ARBs, and issued an additional Supreme Decree revising this mechanism in 2017.⁸ Even though the Ministry acknowledged the ARBs as a current liability in its decrees, it does not transparently disclose the value of these liabilities within the published public debt statistics.

19. Despite these directives from Peru’s Constitutional Tribunal, Congress, and the Ministry of Economy and Finance over the previous 16 years, the ARBs remain, for the most part, unpaid.

III.

THE IMF REGULATORY FRAMEWORK

20. The IMF is an international institution created in 1944 and entrusted with overseeing the macroeconomic policies of its member countries, particularly policies related to their external sectors. The IMF’s mission is to ensure that these policies are compatible with global prosperity, and, in particular, with a well-functioning international payments system.

21. The IMF Articles of Agreement are the institution’s foundational text. Together with decisions and guidance from the IMF Executive Board—which has the power to interpret the Articles of Agreement—they establish the IMF’s regulatory framework. Peru became one of the initial signatories to the Articles of Agreement in 1944.⁹

22. The IMF regulatory framework establishes general reporting obligations for member countries, all of which are relevant to Peru’s reporting of the ARBs. In addition, the IMF has developed, through issuance of Manuals, a set of methodological rules that define the scope and content of the economic statistics to be reported, including central government debt. Those methodological rules cover all aspects of economic activity, from the system of national accounts,

⁶ See Benavides Ferreyros, Ismael, Cesar Peñaranda Castañeda, and Carlos Adrianzen Cabrera, “On the Costs and Benefits of Restructuring the Selective Default of the Peruvian Land Debt,” Lima, February 17, 2015.

⁷ Constitutional Tribunal Decision dated July 16, 2013.

⁸ Supreme Decree No. 17-2014-EF; Supreme Decree No. 19-2014-EF; Supreme Decree No. 34-2017-EF.

⁹ Articles of Agreement of the International Monetary Fund (“**IMF Articles of Agreement**”), July 1944, Countries Represented and Chairmen of Delegations.

through the monetary and fiscal accounts, to detailed information about the balance of payments and external indebtedness. The IMF has also developed specific policies addressing disputes relating to external obligations, in particular on arrears with private creditors.

A. General Reporting Obligations for IMF Member Countries

23. Under the IMF's regulatory framework, there are three sets of reporting obligations that potentially apply to member countries. *First*, all member countries are subject to obligations arising from the IMF's surveillance and member countries' consultation requirements. *Second*, member countries that benefit from IMF-supported programs are subject to more rigorous obligations for data that pertain to the macroeconomic framework and performance criteria agreed to under those programs. *Third*, subscribing member countries are subject to the higher reporting standards of SDDS.

1. The IMF Articles of Agreement

24. The Articles of Agreement grant the IMF power of surveillance over the economic and financial policies of member countries, and instruct member countries to consult with the IMF. These consultations are the mechanism through which member countries engage in policy discussions with the other member countries on their macroeconomic policy stance, based on the economic and financial data they provide for these purposes.

25. Through Executive Board guidance interpreting these Articles, the IMF has developed a set of rules defining the content of these consultations. This guidance includes, among others, a requirement to report central government debt. The IMF Executive Board has also set forth procedures to address potential breaches of reporting obligations, and has directed its staff to highlight cases of data shortcomings.

(a) Consultation Obligation and Surveillance

26. The Articles of Agreement require member countries to consult with the IMF on its economic and financial policies and explicitly grant the IMF the power to oversee the international monetary system. This oversight focuses on exchange rate policies, including the macroeconomic policies that support them. In practice, these consultations are labeled "Article IV Consultations."

27. *First*, Section 1 of Article IV requires all member countries to "collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates":

Recognizing that the essential purpose of the international monetary system is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that sustains sound economic growth, and that a principal objective is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability, each member

undertakes to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates.¹⁰

28. Specifically, each member is required, among other things, to (i) “endeavor to direct its economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability, with due regard to its circumstances” and (ii) “seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions.”¹¹

29. *Second*, Section 3 of Article IV grants the IMF the power to “oversee the international monetary system” and “the compliance of each member with its obligations [...]”¹² As such, the IMF “shall exercise firm surveillance over the exchange rate policies of members, and shall adopt specific principles for the guidance of all members with respect to those policies.”¹³ Reciprocally, member countries are required to provide to the IMF “the information necessary for such surveillance, and, when requested by the Fund, shall consult with it on the member’s exchange rate policies.”¹⁴

30. In addition to the general grant of surveillance power set forth in Article IV, Section 5 of Article VIII reiterates that “[t]he Fund may require members to furnish it with such information as it deems necessary for its activities [...]”¹⁵ In particular, this section requires member countries “to furnish the desired information in as detailed and accurate a manner as is practicable and, so far as possible, to avoid mere estimates” and allows the IMF to act as “a centre for the collection and exchange of information on monetary and financial problems, thus facilitating the preparation of studies designed to assist members in developing policies which further the purposes of the Fund.”¹⁶

31. While the Articles of Agreement appear to focus on external policies, the IMF Executive Board recognizes that external and domestic stability are intertwined and that the IMF surveillance encompasses both aspects of each country’s economy. Indeed, Executive Board Decision No. 15203 explicitly states that, in carrying out surveillance:

[T]he Fund will focus on those policies of members that can significantly influence present or prospective balance of payments and *domestic stability*.
The Fund will assess whether exchange rate policies are promoting balance of

¹⁰ International Monetary Fund, Articles of Agreement, amended effective January 26, 2016 by the modifications approved by the Board of Governors in Resolution No. 66-2, adopted December 15, 2010. The relevant portions of the Articles of Agreement cited here have not changed since the ARBs were first issued.

¹¹ Ibid, Art. IV, Section 1(i) and (ii).

¹² Ibid, Art. IV, Section 3(a).

¹³ Ibid, Art. IV, Section 3(b).

¹⁴ Ibid, Art. IV, Section 3(b).

¹⁵ Ibid, Art. VIII, Section 5(a).

¹⁶ Ibid, Art. VIII, Sections 5(b) and (c).

payments stability and whether *domestic economic* and financial policies are promoting *domestic stability* and advise the member on policy adjustments necessary for these purposes.¹⁷

32. Accordingly, under the Articles of Agreement, all member countries are required to consult with the IMF on their exchange arrangements and macroeconomic policies, both external and domestic, and to provide the information necessary for the IMF to carry out its surveillance. The fact that member countries are required to report on domestic policies brings Peru's Agrarian Reform, which was financed by resorting to a higher level of indebtedness, into the purview of the IMF surveillance power.

(b) Reporting Obligations on Government Debt

33. The IMF Executive Board formalized the framework for complying with reporting data to the IMF in Decision No. 13183-(04/10) dated January 30, 2004 (the "**2004 Decision**"). The data includes all relevant macroeconomic variables related to the balance of payments, the monetary and financial statistics, the government finance statistics, economic activity, and inflation. Under this framework, all member countries shall provide information on central government and central government-guaranteed debt, including the residency of debt holders when available:

(iv) revenue, expenditure, balance and composition of financing (i.e., foreign financing and domestic bank and nonbank financing) for the general and central governments respectively; *the stocks of central government and central government-guaranteed debt*, including currency and maturity composition and, if the debt data are amenable to classification on the basis of the residency or nonresidency of the holder, the extent to which the debt is held by residents or nonresidents.¹⁸

34. In addition to restating the obligation of member countries to report "the stocks of central government ... debt" held by residents and nonresidents alike, the framework formalized by the 2004 Decision also reasserted the obligation of all member countries to provide information on the subset of "gross external debt,"¹⁹ which constitutes the "outstanding amount of those actual current, and not contingent, liabilities that require payment(s) of the principal and/or interest by the debtor at some point(s) in the future and that are owed to nonresidents by residents of a

¹⁷ Decision No. 15203-(12/72), July 18, 2012 (emphasis added). The same decision later states: "7. In the conduct of their domestic economic and financial policies, members are considered by the Fund to be promoting balance of payments stability when they are promoting domestic stability—that is, when they (i) endeavor to direct their domestic economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability, with due regard to their circumstances, and (ii) seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions. It is recognized that there may be circumstances where a member's domestic instability may give rise to systemic instability even in the absence of balance of payments instability."

¹⁸ Decision No. 13183-(04/10), January 30, 2004, as amended (emphasis added).

¹⁹ Ibid, para. (xi).

[member country].”²⁰ As stated by IMF manuals since 1948, debt instruments (such as ARBs) held by nonresidents are considered by the IMF to be external debt. To comply with this obligation, Peru could have maintained a record of ARB bond holders, where nonresidents would have been identified. This need became especially evident when nonresidents started buying ARBs as Peru’s standing as a good debtor improved.

(c) Compliance with Reporting Obligations

35. The Executive Board has stressed the importance of complying with reporting obligations and the need for adequacy of the data provided to the IMF within consultations.

36. During its March 15, 2004 meeting to discuss Data Provision for Surveillance Purposes, the Executive Board instructed that “Article IV consultation reports should identify data shortcomings, indicate where the analysis of key issues is significantly affected by these shortcomings or where important policy conclusions may be subject to unusual uncertainty due to data weaknesses, and recommend remedial actions where data prove inadequate for effective surveillance. In general, Directors encouraged staff to seek full compliance with existing guidelines on treatment of data issues in staff reports, while noting that coverage of these issues will of course vary from report to report, depending upon the adequacy of data provision to the Fund in each case.”²¹ In its May 2, 2008 meeting, most Directors of the Executive Board “agreed that there should be no delay in implementing the formal procedures specified under the 2004 Decision—including the ‘letter stage’ where management notifies the member of its intention to inform the Board of a breach of obligation—once the criteria for moving to the letter stage are met, namely where the data are not provided and the member appears to have the capacity to provide the data.”²²

37. Similarly, during its May 2, 2008 meeting, the Executive Board “called for more candid assessments of data adequacy across countries,” noting that there was “room for improvement in the treatment of data issues in Article IV staff reports.”²³ As such, the Executive Board reiterated that “in cases where shortcomings in data provision significantly hamper surveillance, staff should highlight the implications of these deficiencies for its analysis and policy conclusions.”²⁴

2. IMF-Supported Programs

38. In addition to the general reporting obligations arising from surveillance under the Articles of Agreement, countries that have IMF-supported programs are also subject to more stringent reporting obligations. These obligations arise from conditions attached to the financial support that the member country receives, otherwise known as the performance criteria. These

²⁰ IMF Report SM/03/386, Sup. 1, 1/23/04 as cited in Decision No. 13183-(04/10), January 30, 2004, as amended.

²¹ “Summing Up by the Acting Chair—Review of Data Provision to the Fund for Surveillance Purposes,” Executive Board Meeting 04/25, March 15, 2004.

²² “The Acting Chair’s Summing Up—Review of Data Provision to the Fund for Surveillance Purposes,” Executive Board Meeting 08/38, May 2, 2008.

²³ Ibid.

²⁴ Ibid.

performance criteria are framed within a quantified macroeconomic program, which also hinges on adequate data provision.

39. The purpose of IMF-supported programs is to help the receiving country restore its external and internal balance by providing access to the IMF's financial resources. For high- and middle-income countries, there are two types of arrangements: (i) Stand-By arrangements (up to 18 months in principle) and (ii) the Extended Fund Facility (typically three years). Regardless of the arrangement, the IMF's support is divided into tranches, with each tranche subject to certain performance criteria that the member country must satisfy in order to receive the IMF's financial support. This is known as the program's "conditionality."

40. The performance criteria set forth in IMF-supported programs typically target policy variables that are under the authorities' control. These performance criteria may include (i) a test to ensure a desired level of net international reserves (equivalent to an exchange rate policy test); (ii) a ceiling on the net domestic assets of the monetary authorities to keep monetary policy consistent with the program; (iii) a test to ensure that fiscal policy is in line with the adjustment path of the program; (iv) a set of ceilings on the external indebtedness of the public sector in order to keep public debt within desirable bounds; and (v) a commitment to abstain from introducing or intensifying exchange restrictions.²⁵ When countries adopt a system of inflation targeting to guide their monetary policy, the net domestic assets test is changed for regular consultations, in a way that will allow the IMF to gauge the consistency of interest and exchange rate policies.²⁶ Peru did move to an inflation-targeting regime within the life of these successive arrangements that it had with the IMF between 1999 and 2009.

41. Programs may also address structural issues to improve the efficiency of the country's own systems, be it markets (such as the foreign exchange or bonds), or procedures for carrying out key policies (such as tax rules, tax administration, open market operations, and bank supervision). The IMF, however, has moved away from using this type of conditionality.²⁷

42. In any event, performance criteria are typically quantitative and relate to macroeconomic scenario that defines the desired policy path. This highlights the relevance of data for an IMF-supported program, and explains why the IMF is especially sensitive to any misinformation in that data. Moreover, the relevance of accurate data for the IMF applies both during the diagnostic stage—when the stabilization program is designed and the quantitative macroeconomic scenario agreed upon—and during the execution of the program.

43. The Executive Board has provided specific guidance on how conditionality should operate in IMF-supported programs. The receiving country's authorities must prepare a series of "program documents" describing their policy intentions, goals, and strategies. In doing so, the

²⁵ Decision No. 7842-(84/165), November 16, 1984, as amended by Decision Nos. 12249-(00/77), July 27, 2000, and 13849-(06/108), December 20, 2006.

²⁶ "The Acting Chair's Summing Up – Conditionality in Evolving Monetary Policy Regimes," Executive Board Meeting 14/28, March 26, 2014.

²⁷ "Summing Up by the Acting Chair—Lessons from the Real-Time Assessments of Structural Conditionality," Executive Board Meeting 02/36, April 3, 2002, and Decision No. 14280-(09/29), March 24, 2009.

authorities “should clearly distinguish between the conditions on which the Fund’s financial support depends and other elements of the program.”²⁸ These documents, which include “a Letter of Intent (LOI), or a Memorandum on Economic and Financial Policies (MEFP) that may be accompanied by a Technical Memorandum of Understanding (TMU),” are prepared with the cooperation and assistance of the IMF staff and then submitted to the Managing Director of the IMF for circulation to the Executive Board.²⁹

44. At least one LOI is required for each arrangement, wherein the Minister of Finance and the Governor of the Central Bank outline the program for which they seek support and the conditions that they are willing to fulfill in order to receive each of the tranches defined in the arrangement. The LOI typically includes a general summary of the main developments, a diagnostic of what needs to be done to ensure a stable macroeconomic outcome, and the conditionality attached to each tranche of the program. In addition, the Minister and the Governor agree on a TMU that defines in detail the performance criteria and the data that will be used to monitor the fulfillment of the conditions of the program.

45. The Executive Board has also provided guidance for monitoring compliance with the program’s conditionality, stating that “[t]he implementation of the member’s understandings with the Fund may be monitored, in particular, on the basis of prior actions, performance criteria, program and other reviews, and other variables and measures established as structural benchmarks or indicative targets.”³⁰

46. IMF financial support operates through the General Resources Account, which is the account where the IMF places its regular resources—a pool of currencies and reserve assets built up mostly from members’ fully paid capital subscriptions. Disbursements from this account, which take place upon fulfillment of the conditionality attached to a particular tranche, are called purchases, and repayments by members back to the account are called repurchases.

47. During the 1980s, the IMF developed a policy for cases where a member made a purchase that it was not entitled to make under the terms of the arrangement or other decisions governing the purchase (a “noncomplying purchase”). In these cases, the IMF had initially permitted the purchase because, on the basis of the information available at the time, the IMF was satisfied that all quantitative performance criteria and other conditions applicable to the purchase were satisfied. However, in noncomplying purchases, some of the information later proved to be incorrect. The IMF requires the taking of corrective measures for noncomplying purchases:

When such a case arises in the future, the member will be called upon to take corrective action regarding a noncomplying purchase, to the extent that it is still outstanding, either by repurchase or by the use of its currency in transactions and operations of the Fund, unless the Fund decides that the circumstances

²⁸ Decision No. 12864-(02/102), September 25, 2002, as amended by Decision No. 13814-(06/98), November 15, 2006.

²⁹ Ibid.

³⁰ Ibid.

justify the member's continued use of the purchased resources. Steps should also be taken to improve the accuracy and completeness of the information to be reported to the Fund by the member in connection with its use of the Fund's general resources, and to define performance criteria and other applicable conditions in a manner that would facilitate accurate reporting.³¹

3. The Special Data Dissemination Standards (SDDS)

48. The third and final reporting obligation in the IMF framework arises from the Special Data Dissemination Standards ("**SDDS**"). The SDDS, which were adopted by the IMF in 1996, resulted from a call by the Interim Committee of the Board of Governors of the IMF for higher and more transparent statistical information standards.

49. While subscription to the SDDS is optional for member countries, when a member country decides to do so, it is then required to comply with more stringent data requirements. The data requested for SDDS include all sectors, and seek to provide reliable information on most relevant economic variables, including public and external debt. In addition, at the request of a subscribing member country, the IMF may prepare a ROSC evaluating how closely the country follows internationally agreed standards and codes in various subject areas. By subscribing to the SDDS or requesting a ROSC, a country signals to the world financial markets that its data complies with higher standards and is therefore reliable.

50. Because of these higher standards, the IMF has implemented a detailed procedure for addressing SDDS deviations, including the non-dissemination of data, and cases of incomplete or delayed dissemination of the information.³² When bilateral efforts at the staff level fail to correct deviations, the procedure intensifies and can lead to the Managing Director sending a report to the Executive Board, and the termination of the member's subscription to SDDS.

B. The IMF Definition of "Central Government Debt"

51. The scopes of particular reporting obligations are set forth in the IMF's "manuals," which provide guidance to member countries on how to report statistical information.

52. Since 1948, the IMF has published manuals that clearly define the key concepts that statistics should reflect, facilitating comparability of data and economic analysis for member countries. The methodological uniformity established by the IMF manuals plays a key role in facilitating Article IV Consultations. While the manuals are not Executive Board decisions, their content is considered mandatory for all member countries. As member countries are consulted prior to publication, manuals reflect comments from member countries to a large extent.

³¹ Decision No. 7842-(84/165), November 16, 1984, as amended by Decision Nos. 12249-(00/77), July 27, 2000, and 13849-(06/108), December 20, 2006.

³² "Summing Up by the Acting Chairman—Standards for the Dissemination of Economic and Financial Statistics to the Public by Member Countries and Implementation of the SDDS," Executive Board Meeting 96/36, April 12, 1996, as amended by Decision Nos. 14728-(10/85), September 1, 2010, and 15256-(12/96), October 4, 2012.

53. In 1986, the IMF issued the first “Government Finance Statistics” (“**GFS**”) Manual, which was designed to compile existing practices and oral tradition, thus harmonizing fiscal sector statistics among countries. Since 1986, the Manual has been revised twice, in 2001 and 2014. (In 2011, the IMF, with other multilateral institutions forming the Inter-Agency Task Force on Finance Statistics (“**TFFS**”), also issued a “Public Sector Debt Statistics Guide” that is aligned with the general methodology of the 2001 and 2014 GFS Manuals.)

54. While many of the fundamental concepts have remained the same across the different versions of the GFS Manual, the 2001 Manual introduced a major change in method, essentially shifting from *flows* on a *cash* basis to *stocks* of assets and liabilities on an *accrual* basis. Accordingly, the approach laid out in the 2001 Manual allows an in-depth view of the different stocks of public debt.

55. One critical concept reflected in all IMF manuals since 1948 is the concept of residency of the holder of an asset or liability. If the holder is a resident of the country, the asset or liability is considered *domestic*. If the asset or liability is transferred to a nonresident, the asset or liability becomes *external*. This distinction applies regardless of whether the asset or liability was intended for the domestic or the foreign market, and the law under which the asset or liability was created or is being enforced.

1. The 1986 GFS Manual

56. The 1986 GFS Manual provided guidance on how to classify bonds issued by a government as part of a land reform program and characterized this type of bond as “domestic financing” from households:

[The domestic financing from households] category includes the net change in holdings of government securities by households and private nonprofit institutions, whether as the result of dealings directly with the government—other than the noncash issuance of government debt—or of transactions with others. [...] *Payment in bonds for government purchase of land from individuals, as under an agrarian reform program*, would be shown here, with a simultaneous entry for government expenditure for purchase of the land.³³

57. The 1986 GFS Manual also classified financing by type of debt instrument, allowing users to track issuances of long-term bonds and bond amortization. The Manual observed that, while many governments would likely lack the necessary information to track indebtedness by instrument, what mattered was information on the financing flows. Debt securities, when accounted for, were valued at the amount due at maturity.

58. Under the 1986 GFS Manual, principal payments were recorded differently than interest payments on the same debt. Principal payments were treated as financing flows *to* households, which reduced the total amount of outstanding domestic financing obtained by the

³³ International Monetary Fund, Government Finance Statistics Manual, 1986, Section IV.C.1.II.4.3.2, pg. 204 (emphasis added).

government *from* households. Interest payments, on the other hand, were classified as current expenditures that were paid in exchange for the use of borrowed money. Interest payments did not affect the reported amount of financing obtained by a government from households, and were only recorded “at the time [they were] paid.”³⁴

59. The treatment of principal payments as a reduction in outstanding financing meant that a government’s failure to make principal payments would leave the level of outstanding financing unchanged. Once principal payments in arrears were made, the level of outstanding financing would be reduced accordingly. The treatment of interest payments as current expenditures booked at the time they occur, and not as financing flows, meant that interest arrears similarly would not impact the level of government financing outstanding. Despite this, the IMF’s policies have been particularly strict regarding arrears of both principal and interest, especially when incurred by the public sector.

60. Reflecting the principle that accounts are recorded on a cash basis, contingent liabilities were only recorded when the condition forming the contingency materialized. The usual practice was to record, as a memorandum item, only contingent liabilities that were sufficiently significant to warrant attention in the overall macroeconomic analysis. For the most part, however, contingent fiscal liabilities were ignored, and, in all cases, were not included in the calculation of a government’s liabilities.

2. The 2001 and 2014 GFS Manuals

61. The 2001 and 2014 GFS Manuals introduced several important changes from the 1986 Manual that impact how debt must be reported to the IMF.³⁵ *First*, the IMF shifted its method for compiling and reporting government finance statistics, from *flows* on a *cash* basis to *stocks* of assets and liabilities on an *accrual* basis, while also introducing the concept of “*other economic flows*” to account for relevant changes that do not stem from government transactions. *Second*, the IMF moved to valuing debt securities at their current market prices. *Third*, the 2001 and 2014 Manuals set forth additional guidance on the treatment of interest and arrears. *Finally*, unlike the 1986 Manual, the 2001 and 2014 Manuals provided explicit guidance on the treatment of contingent liabilities.

(a) From Flows on a Cash Basis to Stocks on an Accrual Basis, and the Introduction of Other Economic Flows

62. The 2001 Manual introduced a significant shift in the approach to compiling and reporting government finance statistics, moving from recording *flows* on a *cash* basis to following the *stocks* of the government’s assets and liabilities on an *accrual* basis. Under this new methodology, all member countries are required to report their stocks of assets and liabilities,

³⁴ Ibid, p. 179.

³⁵ For ease of reference, the references and quotes in this section generally refer to the 2001 Government Finance Statistics Manual, although the concepts are the same as those in the 2014 Government Finance Statistics Manual. Where appropriate, the footnotes include references to the equivalent sections of the 2014 Manual.

including of domestic debt, as soon as it is feasible for them to change their government finance accounting.

63. The 2001 methodology keeps track of the stocks through the public sector's balance sheet, and of financial flows through two types of flows: *first*, "government transactions," which include revenues, expenses, net acquisitions of nonfinancial assets, net acquisition of financial assets, and net incurrence of liabilities; and *second*, "other economic flows," which reflect "price changes and a variety of other economic events that affect the holdings of assets and liabilities, such as debt write-offs and catastrophic losses."³⁶

64. The events covered by "other economic flows" include those "that involve the addition to or deletion from the balance sheet of an existing asset or liability with no changes in its quantity or quality."³⁷ Such events include: (i) "holding gains," which are gains due to price or exchange rate changes;³⁸ and (ii) volume changes resulting from "exceptional or unexpected events," which should be recorded when such events occur.³⁹

65. The changes introduced by the 2001 and 2014 Manuals thus have a bearing on reporting liabilities, including the ARBs. Of particular relevance is the introduction of the concept of "other economic flows" and, within this general heading, the suggested treatment of changes in the quality of an asset. While the 1986 GFS Manual emphasized cash flows, the methodology introduced in 2001 mandates an explicit way of recording changes in the stock of debt that are due to exogenous factors, such as the 2001 Decision.

(b) Market Price Valuation

66. While under the 1986 Manual, debt securities were valued at the amount due at maturity, the 2001 Manual moved to valuing flows, assets, and liabilities "at current market prices" (mark-to-market):

Flows as well as assets, liabilities, and net worth are valued at current market prices in the revised *GFS Manual*, but with a provision for recording the nominal value of debt securities as a memorandum item. In the *1986 GFS Manual*, debt securities are valued at the amount the government is obligated to pay when the debt matures, which may differ from both the nominal value and the current market value.⁴⁰

³⁶ International Monetary Fund, Government Finance Statistics Manual, 2001 ("GFS Manual 2001"), pg. 3; International Monetary Fund, Government Finance Statistics Manual, 2014 ("GFS Manual 2014"), pgs. 3, 44.

³⁷ GFS Manual 2001, pg. 26; GFS Manual 2014, pgs. 44-45.

³⁸ GFS Manual 2001, pg. 43, and Chapter 10; GFS Manual 2014, pgs. 44-45.

³⁹ GFS Manual 2001, pg. 43; GFS Manual 2014, pg. 45, and Chapter 10.

⁴⁰ GFS Manual 2001, pg. 4; GFS Manual 2014, pg. 5.

67. When market prices are not available, especially for long-term securities, the 2001 and 2014 Manuals take slightly different approaches, while at the same time maintaining the principle that “acquisitions and disposals of each category of financial assets are presented net.”⁴¹

68. The 2001 Manual, on the one hand, values long-term securities at the issue price plus interest: “if market values of long-term securities are not available, they should be valued at the issue price plus accrued but unpaid interest.”⁴² The 2014 Manual, on the other hand, directs member countries to try to estimate the market price:

When there are no observable prices because the items in question have not been purchased or sold on the market in the recent past, an attempt has to be made to estimate what the prices would be were the assets to be acquired on the market on the date to which the balance sheet relates. Such estimates may be obtained by (i) accumulating and revaluing transactions, or (ii) estimating the present value of future returns.⁴³

69. The different approaches set forth in the 2001 and the 2014 Manuals, shifting toward mark-to-market, affect how liabilities like the ARBs are valued for reporting to the IMF. However, regardless of their estimated value, the obligation to report these liabilities to the IMF is the same.

(c) Treatment of Principal and Interest Arrears

70. The 2001 and 2014 Manuals take different approaches regarding the treatment of interest payments in arrears than the 1986 Manual. The 2001 Manual, in contrast to the 1986 Manual, “recommends that accrued but unpaid interest be added to the principal of the underlying instrument,” meaning “as interest accrues on a government bond, the principal of the bond would increase.” The 2001 Manual “recognize[s], however, that interest accruing on deposits and loans may have to follow national practices and be classified under accounts payable.”⁴⁴ The 2014 Manual has a more nuanced and detailed discussion on the different ways in which interest may be recorded.⁴⁵

71. In addition, the 2001 Manual proposes a different way to handle principal payments in arrears than the 1986 Manual. The 2001 Manual states that: “transactions in liabilities can be classified in the same way as transactions in financial assets. One additional classification that could be employed is whether a liability has become past due for payment and is in arrears. By showing a reduction in a liability when it is due for payment and a corresponding increase in a

⁴¹ GFS Manual 2001, pg. 33; GFS Manual 2014, pg. 61.

⁴² GFS Manual 2001, pg. 125.

⁴³ GFS Manual 2014, pg. 175.

⁴⁴ GFS Manual 2001, pg. 68. Moreover, the 2001 Manual states that “a debt is in arrears when it has not been liquidated by its due-for-payment date. [...] The total amount of debt in arrears should be indicated as a memorandum item and the classification of liabilities should be expanded to show how much of each category is in arrears whenever the amounts are significant.” GFS Manual 2001, pg. 129.

⁴⁵ GFS Manual 2014, pgs. 127-129.

separate liability, the accumulation of debt amortization arrears can be indicated as a source of financing.”⁴⁶

72. Thus, the 2001 and 2014 Manuals both provide explicit guidance for reporting both principal and interest arrears. This guidance pertains directly to liabilities in arrears, such as the ARBs.

(d) Treatment of Contingent Liabilities

73. The 2001 and 2014 Manuals provide explicit and useful guidance on what the IMF considers to be a contingent liability of the public sector, and both require that contingent liabilities be recorded as memorandum items.

74. Specifically, the 2001 Manual defines “contingent contracts” as “contracts that create a conditional financial claim on a unit” where “conditional means that the claim only becomes effective if a stipulated condition or conditions arise.”⁴⁷ Similarly, the 2014 Manual defines “contingent liabilities” as “obligations that do not arise unless a particular, discrete event(s) occurs in the future” and requires that “stock positions of contingent liabilities [be] recorded as a memorandum item to the balance sheet.”⁴⁸

75. In this regard, the 2001 Manual “follows the *1993 SNA* [System of National Accounts] by not treating any contingencies as financial assets or liabilities because they are not unconditional claims or obligations,” while requiring that “aggregate data on all important contingencies should be recorded as memorandum items.”⁴⁹

76. Hence, the 2001 and 2014 Manuals make clear that obligations like the ARBs, which are not conditional, should not be recorded as contingent liabilities. Further, even contingent liabilities should be reported, and ought to be recorded as memorandum items.

C. IMF Policies on Disputes with External Private Creditors

77. Another point worth exploring in the IMF’s regulatory framework is how the Fund deals with disputes on external obligations and, particularly, with arrears with private creditors. The Fund’s Executive Board has noted the facilitative role that it can play with regard to overdue obligations. This role is consistent with the fact that the IMF allows member countries that are in arrears with private creditors to participate in IMF arrangements, as long as that country is engaged with its creditors in attempting to resolve the obligation.

⁴⁶ GFS Manual 2001, pg. 42. The 2001 Manual, when explaining the different ways in which financial assets and liabilities may be classified, mentions as one possibility a “classification of financial assets according to whether the counterpart liability was incurred by a resident (indicated by ‘domestic’ in the table) or a nonresident (foreign) and vice versa for the classification of liabilities.” GFS Manual 2001, pg. 41, 121.

⁴⁷ Ibid, pg. 129.

⁴⁸ GFS Manual 2014, pg. 76.

⁴⁹ GFS Manual 2001, pg. 34.

78. In June 1984, the IMF Executive Board stressed the fact that “the Fund had a direct interest in the settlement of overdue obligations and a role to play in accordance with the Articles of Agreement.”⁵⁰ While “the circumstances surrounding overdue financial obligations typically were complex,” and “there were often important differences among individual cases, [...] most [Directors] supported the idea that the Fund should continue to fulfill its responsibilities under the Articles on a case-by-case basis within the context of the present policies and procedures,” but “that the Fund should show caution and restraint in making judgments on issues involving claims on such overdue obligations.”⁵¹ Directors also “stressed the importance of the Fund’s helping member governments to improve their statistical base and to increase the supply of information on their external debt obligations, particularly in cases involving overdue claims,” while noting that “[w]here necessary, the Fund could provide the technical resources to help sort out the frequently complex circumstances surrounding the debt situation, including individual cases.”⁵²

79. With that framework in mind, “Directors generally agreed that, in exercising its functions under Article VIII and Article XIV, the Fund was entitled to examine the context in which nonpayment of a financial obligation had occurred in order to determine whether or not it involved an exchange restriction and, as such, was subject to Fund approval.”⁵³ In addition, “Executive Directors also generally endorsed the Fund’s existing policies and practices for dealing with disputed financial obligations in members using Fund resources,” which “concerned primarily the identification and treatment of payments arrears.”⁵⁴ As such, “Directors accepted the general premise that, to restore its financial position, a member country must reduce and eliminate its external payments arrears.”⁵⁵

80. While most Directors recognized “the principle that a member country should give comparable treatment to all its creditors, [...] there was not broad support for trying to define that principle in detail.”⁵⁶ There was also “a strong feeling that responsibility for the enforcement of the principle of comparable treatment was ultimately in the hands of creditors, and that the Fund should take into account the actions of the creditors when assessing the viability of, and progress under, a Fund-supported program.”⁵⁷ Directors nevertheless reached a “strong consensus” on general matters relating to the use of the IMF’s good offices, emphasizing the IMF’s role as a facilitator of external debt disputes in appropriate circumstances:

First, in the light of the Fund’s primary responsibilities concerning the international monetary system and of its specific authority under the Articles to

⁵⁰ “Summing Up by the Acting Chairman—Settlement of Disputes Between the Members Relating to External Financial Obligations—Role of the Fund,” Executive Board Meeting 84/99, June 22, 1984.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

provide financial and technical services, management and staff should stand ready to use their good offices in helping members engaged in a particular dispute over an external financing obligation. *Second*, such good offices should, however, be limited in scope and frequency, although in that connection there were differences in emphasis among Directors. Some felt that the Fund should be more active, others that the Fund must be quite cautious. In short, the use of good offices should be consistent with available resources and should be substantially technical. *Third*, all Directors attached great importance to the Fund's remaining neutral in issues of debt dispute. It should be clearly understood that the Fund's good offices were meant to bring the parties to a dispute together. *Fourth*, there was agreement that the Fund should act in such cases only if both parties wished to have the Fund provide its good offices.⁵⁸

81. The IMF's general approach on external debt disputes is consistent with its policy of allowing member countries that are in arrears with private creditors to enter into an IMF-supported program, provided that the country endeavors to resolve its external imbalance by engaging with its creditors. In that regard, the Executive Board has stated:

Directors agreed that the Fund's policy on lending into sovereign arrears to private creditors continues to provide a useful tool enabling the Fund to support a member's adjustment efforts before it has reached agreement with its private creditors on a debt restructuring. The pillars of this policy are *first*, that the timely support of the member's adjustment program is considered essential to help limit the scale of economic dislocation and preserve the economic value of investors' claims; and *second*, that the debtor engages its creditors in an early and constructive dialogue to help secure a reasonably timely and orderly agreement that would help the country regain external viability.⁵⁹

82. Thus, as this discussion shows, while the IMF generally does not insert itself into disputes between member countries and their creditors, it does require members to engage in an "early and constructive dialogue" with private creditors when disputes arise—especially when the member seeks support through an IMF-supported program.

IV.

PERU'S REPORTING OF THE AGRARIAN REFORM BONDS

83. In general terms, Peru was required to report the ARBs to the IMF. However, there are two distinct periods in assessing both the content of that obligation and Peru's compliance—namely, before and after the introduction of the 2001 Manual. The year 2001 also marks the Constitutional Tribunal's decision recognizing the debt owed to the ARB holders and requiring such debt to be valued using the current value principle. Following this decision, the ARBs could

⁵⁸ Ibid.

⁵⁹ "The Acting Chair's Summing Up—Fund Policy on Lending into Arrears to Private Creditors—Further Consideration of the Good Faith Criterion," Executive Board Meeting 02/92, September 4, 2002.

no longer be disregarded as an obligation of only nominal value, and therefore were subject anew to reporting obligations.⁶⁰

84. Based on IMF staff reports sent to the Executive Board, Peru appears to have reported the ARBs at the time of issuance, but it does not appear to have done so after 2001, despite being required to report such debt. In addition, Peru does not appear to have informed the IMF about the ARBs, or the 2001 Decision when it sought to obtain IMF-supported programs or in connection with SDDS reports.

A. The 1969-2001 Period under the GFS 1986 Manual

85. Following the introduction of the Agrarian Reform in June 1969, an IMF mission visited Lima between December 1 and December 9 of that same year, and reported to the Executive Board as part of the Article VIII Consultation.^{61 62} The resulting IMF Staff Report contains specific information about the Agrarian Reform, including Peru's plan to compensate the expropriated landowners with nonnegotiable bonds with maturities of up to 30 years:

Since the land reform program has to date involved highly developed productive units, its cost for now consists primarily of the indemnization of expropriated Landowners. This is being covered mainly by payment in the form of bonds. The new Agrarian Reform Law authorizes the issuance of S/.15 billion in nonnegotiable bonds between 1969 and 1973 with maturities of up to 30 years. Expropriations expected between 1969-75 will require payment of S/. 7.2 billion, 90 percent of which will be covered by bond issues and the remaining S/. 0.7 billion by cash. Although agrarian bonds are nonnegotiable under the new law, a procedure is being set up whereby the bonds received in payment of an expropriated holding can be exchanged for shares in an industrial enterprise formed under the aegis of the Industrial Bank, provided that the bonds are accompanied by a cash investment of unequal amount.⁶³

86. The Peruvian authorities noted that “the compensation payments for the expropriation would not require large amounts of resources in the early years” and “could be provided by the government budget without major problems.” They also noted, however, Peru that the Agrarian Reform would later “require growing amounts of financial resources over an extended period of time”:

With respect to the financial aspects of the land reform, the authorities indicated that the case of the reform in its initial stage will be limited to the payment of compensation to the former owners in as much as the highly capitalized lands

⁶⁰ One could further divide the post-2001 period in July 2013, when the Constitutional Tribunal issued a decision effectively changing the valuation approach to the ARBs. However, for purposes of this paper, the 2001 Decision was clear enough in making the ARBs relevant, thus triggering once more Peru's reporting obligations.

⁶¹ IMF Report SM/70/8, January 1970.

⁶² In the early years of the Fund and through the 1970s, IMF consultations were known as “Article VIII Consultations.” They were, in practice, the predecessors of the “Article IV Consultations.”

⁶³ IMF Report SM/70/8, January 1970, Part II (Background Material), pg. 10.

which have been affected by the reform do not require for the time being additional investments. They noted that the compensation payments for the expropriation would not require large amounts of resources in the early years as a maximum limit of S/. 1 million was established as cash compensation for an expropriated property, the balance being payable in bonds with maturities of up to 30 years. They explained that the relatively moderate amount of funds needed to cover cash compensation payments and to amortize the agrarian reform bonds could be provided by the government budget without major problems. They recognized, however, that once the land reform will begin to affect the decapitalized farms of the highlands, the defraying of land development costs and the provision of working capital as well as extension services and other technical assistance to the beneficiaries of the reform will require growing amounts of financial resources over an extended period of time.⁶⁴

87. While the IMF Staff Report provides detail about the amounts and terms of the ARBs,⁶⁵ the fiscal tables include the cash payments on the expropriated land but not the ARBs. The fact that the ARBs had maturities of up to 30 years and were nonnegotiable may have influenced the IMF's decision not to include specific data on the ARBs. However, the amount of ARBs expected to be issued as part of the Agrarian Reform—S/. 6.5 billion—was significant enough to warrant inclusion in the public debt tables. That amount represented about 3 percent of 1969 nominal GDP or almost two thirds of Peru's nonfinancial public sector deficit estimated by the IMF for 1969.⁶⁶ While the IMF characterized Peru's total external debt of 17 percent of GDP as low, the ARBs nevertheless constituted a steep increase in public indebtedness.⁶⁷

88. The 1971 Consultation reiterated the authorities' view that cash demands on the budget would be low in the early years of the Agrarian Reform due to the large portion of the expropriations paid with ARBs.⁶⁸ The accompanying Recent Economic Developments Report estimated that, by September 30, 1970, Peru had already issued ARBs for S/. 5.1 billion, including S/. 0.5 billion on the 1964 Agrarian Reform.⁶⁹

89. The Staff Reports and Recent Economic Developments Reports for the Consultations between 1972 and 1976 discussed Peru's progress with the Agrarian Reform, but did not provide any information on the stock of ARBs.⁷⁰ This is consistent with the IMF's prior decision not to

⁶⁴ IMF Report SM/70/8, January 1970, Part I, pg. 8.

⁶⁵ Ibid, Part II, Table 7.

⁶⁶ Ibid, Part II, pg. 2.

⁶⁷ Ibid, Part I, pg. 23.

⁶⁸ IMF Report SM/71/83, April 1971, pg. 5.

⁶⁹ IMF Report SM/71/91, April 1971, pg. 11 and Table 7.

⁷⁰ IMF Report SM/72/206, August 1972; IMF Report SM/73/270, December 1973; IMF Report SM/74/253, December 1974; IMF Report SM/76/40, February 1976.

report the stock of ARBs on Peru's fiscal accounts. In any case, the data are not sufficiently disaggregated to ascertain until when ARB interest payments were reported.

90. From 1977 through 2001, the IMF Staff and Recent Economic Developments Reports do not mention the Agrarian Reform, with the exception of the Staff Report for the 1981 Consultation, which mentions the ARBs in passing: "Private enterprise in marketing, agro-based industry, and research is to be encouraged through tax incentives and the use of agrarian reform bonds, issued during the 1970s under the Agrarian Reform Law, as collateral for credit."⁷¹

91. Following issuance of the ARBs, several events decreased the relevance of ARBs to Peru's economy, which may explain why the ARBs were not reported separately on Peru's fiscal tables (and may not be included at all in later years). These events included, among others, sustained inflation (including periods of hyperinflation) in the 1970s and 1980s, followed by the debt crisis in the early 1980s, and Peru's two currency re-denominations in 1985 and 1991. As a result, the nominal value of the ARBs was reduced so as to be practically meaningless, until it was restored by the 2001 Decision.

B. The 2001-2017 Period under the GFS 2001 and 2014 Manuals

92. Two major developments took place in 2001. Following these developments, Peru was required to report once again the ARBs to the IMF. Its apparent failure to do so after the 2001 Decision resulted in Peru understating to the IMF its level of indebtedness.

93. *First*, on March 15, 2001, Peru's Constitutional Tribunal issued the 2001 Decision ordering the Government of Peru to repay the ARBs and to adjust their value in accordance with the current value principle enshrined in Article 1236 of the Civil Code and in Article 70 of the Constitution.⁷² The ARBs, which had essentially lost all value, regained value as a result of the 2001 Decision.

94. *Second*, the IMF issued the 2001 GFS Manual. As discussed in the previous section, the 2001 Manual changed the focus of fiscal accounting—and with it, the associated reporting requirements. Under this new methodology, which required IMF members to report the principal balance of outstanding debt, Peru should have reported the ARBs as part of its debt, given that their value had been restored. Under the 2001 and 2014 GFS Manuals, the 2001 Decision restoring the value of the ARBs resulted in an increase in the stock of public debt that should have been classified as "other economic flows," of the type relating to volume changes resulting from exceptional or unexpected events. While this increase in the stock of debt should have been recorded when the "exceptional or unexpected events" occurred—that is, in 2001—Peru seems to have failed to do so. Moreover, Peru was expected to adhere to the more stringent reporting requirements associated with its arrangements with the IMF between 1999 and 2009, and under the SDDS.

⁷¹ IMF Report SM/81/80, April 1981, pg. 8.

⁷² Constitutional Tribunal Decision dated March 15, 2001.

1. There Is No Evidence That Peru Reported the ARBs in Connection with Article IV Consultations after 2001

95. There is no evidence that Peru reported the ARBs to the IMF after 2001. In fact, a detailed review of all the relevant IMF reports, coupled with the statistical debt series before and after the 2001 Decision, suggests that Peru did not advise the IMF of the 2001 Decision and its impact on Peru's level of indebtedness and debt service profile. A thorough review of the reports found no evidence of a discussion of the 2001 Decision.

96. The question then becomes how significant the revalued outstanding stock of ARBs was in relation to Peru's fiscal policy targets, especially those under IMF programs, and to the existing stock of public debt from other sources. As reported by Benavides, Peñaranda and Adrianzen,⁷³ the Peruvian Congress noted in a 2006 report that the revalued stock of the ARBs was roughly equivalent to about four percent of Peru's 2005 GDP, which would increase the stock of total public debt from the 41.7 percent of GDP reported to the IMF for 2005 to 45.5 percent.⁷⁴ With fiscal deficit targets hovering between one and two percent of GDP per year during the IMF program years, the increase in public sector indebtedness estimated by the Peruvian Congress due to the revaluation of the ARBs was equivalent to about three years' worth of fiscal deficits.

2. The IMF Arrangements and Peru's Debt Reporting

97. There is also no evidence that Peru reported the ARBs in connection with its more stringent reporting requirements arising from its arrangements with the IMF. The absence of data on the ARBs had an impact on the macroeconomic quantitative framework of the programs, which may have led the IMF to a different conclusion on the targets set for the programs.

98. Between 1999 and 2009, Peru entered into five precautionary arrangements with the IMF: one Extended Fund Facility ("**EFF**") arrangement and four Stand-By arrangements. For the IMF, precautionary arrangements are those that are regarded by the authorities and the IMF as a "safety net," whereby the funds available to the country under an arrangement are not to be drawn by the country without the prior consent of the IMF.⁷⁵

99. While Peru did not draw any of the funds made available by the IMF under any of the precautionary arrangements, the mere fact that Peru had a series of IMF-supported programs and gave every appearance of complying with the terms of those programs may have helped Peru gain

⁷³ Benavides Ferreyros, Ismael, Cesar Peñaranda Castañeda, and Carlos Adrianzen Cabrera, "On the Costs and Benefits of Restructuring the Selective Default of the Peruvian Land Debt", Lima, February 17, 2015.

⁷⁴ In particular, Benavides, Peñaranda and Adrianzen state on page 7 of their report: "The Congressional Report indicates that 2.52168 billion Soles Oro of principle of Peruvian Land Reform Bond debt remained outstanding as of December 2006. Further, the congressional Report quantified the adjusted value of the outstanding debt as of July 2006 under the CPI Method as 10,025,618,044 Nuevos Soles."

⁷⁵ The period covered by the precautionary EFF was 6/24/99 to 2/08/01. The periods covered by the precautionary Stand-By arrangements were 3/12/01 to 1/31/02, 2/01/02 to 2/29/04, 6/09/04 to 8/16/06, and 1/26/07 to 2/25/09.

access to the external bond market starting in 2002, and move from a below-investment-grade rating of BB- in 2002 to an investment grade rating of BBB+ by 2013.

100. Pursuant to these arrangements, Peru was required to engage in periodic review of the programs, as well as to produce the standard program documents—LOIs and TMUs. While after the 2001 Decision, Peru sent eleven LOIs to the IMF,⁷⁶ none of them contains any reference to this decision or the ARBs.

101. With each LOI, the Peruvian authorities signed the corresponding TMU. The 2002 TMU contained a clause defining the term “debt” as encompassing “arrears, penalties, and judicially awarded damages arising from the failure to make payment under a contractual obligation that constitutes debt.”⁷⁷ This clause was repeated in subsequent TMUs. Accordingly, following the 2001 Decision, the ARBs should have been reported to the IMF as debt.

102. Given the architecture of IMF conditionality, the TMU includes a significant amount of data on the stocks of public debt and the flows of financing to the public sector. However, while the tables in the TMUs reported on many bonds of smaller amounts, including those issued to capitalize the Central Reserve Bank of Peru, none included the ARBs. For example, as illustrated in Figure 1 below, the corresponding table for the Second Review submitted to the IMF’s Executive Board on April 21, 2003 included the data for the year-end of 2002, detailing the stock of domestic debt of the nonfinancial public sector, but made no mention of the ARBs:⁷⁸

Figure 1

Table 6. Peru: Stock of Domestic Debt of the NFPS (as of December 31, 2002)

| | Legal Norm | Gross placements | | Stock (estimated) (Millions of Nuevos Soles) |
|---|----------------------------------|------------------|--------|---|
| | | Currency | Amount | |
| Credits from BN | | | | 4,163 |
| Credit to central government | | US\$ / S/. / Y | | 3,202 |
| Credit to local governments | | US\$ / S/. | | 91 |
| Net public treasury overdraft | | S/. | | 870 |
| Bonds | | | | 5,693 |
| Capitalización BCRP | D.S.066-94-EF | S/. | 614 | 327 |
| Serie A | | | 239 | 239 |
| Serie B | | | 375 | 88 |
| Bonos TP - Financial system strengthening | D.U. 041-99 | US\$ | 175 | 429 |
| Bonos TP - Temporal suscription of stocks | D.U. 034-99 | US\$ | 52 | 183 |
| Bonos TP - Temporal portfolio exchange | D.S. 114-98-EF | US\$ | 136 | 241 |
| Bonos TP - Debt exchange bonds | D.S. 068-99-EF | US\$ | 259 | 750 |
| Bonos TP - RFA and FOPE programs | D.S. 059-2000-EF / D.U. 050-2002 | US\$ | 95 | 335 |
| Bonos TP - Financial system consolidation | D.U. 108-2000 | US\$ | 392 | 1,376 |
| Bonos TP - Sovereign bonds | D.U. 015-2001 / D.U. 106-2001 | S/. | 1,934 | 1,934 |
| Bonos TP - Caja de Pensiones Militar Policial Bonds | D.U. 030-2001 | US\$ | 34 | 119 |
| Total | | | | 9,856 |
| Memorandum item: | | | | |
| Pension Reform Bonds (Bonos de Reconocimiento) | D.S. 096-95-EF | S/. | | 9,519 |
| Floating debt | | S/. | | 957 |

⁷⁶ One in 2001, two in 2002, one in 2003, one in 2004, two in 2005, three in 2007, and one in 2008.

⁷⁷ TMU circulated to the Executive Board of the IMF concurrent with Country Report 02/27, February 2002, pg. 13, paragraph 7.

⁷⁸ IMF Country Report 03/104, April 2003, pg. 73.

3. The SDDS and the Transparency Reports

103. There is also no evidence that Peru reported the ARBs to the IMF pursuant to the SDDS.

104. As previously noted, Peru is a subscriber to the SDDS. Its latest central government debt data were certified on February 6, 2017. As a subscriber to SDDS, Peru is required to provide accurate and complete information in a timely fashion about its public debt, regardless of when the debt was issued, whether it is owed to residents or nonresidents, or denominated in a currency different from the one in which the debt was originally issued.

105. Under the SDDS initiative, the IMF, at the request of the member country, evaluates how closely the country follows internationally agreed standards and codes, providing feedback through a ROSC in specific areas, including data dissemination.⁷⁹ At Peru's request, the IMF produced (i) one ROSC on data dissemination in 2003, (ii) one fiscal transparency ROSC module in 2004, and (iii) another similar module in 2015. However, none of these reports makes any reference to the ARBs.

106. The 2003 ROSC on data dissemination highlighted areas for improvement in Peru's approach to reporting. It stated that Peru was not at the time following the 2001 GFS Manual methodology and noted that "the authorities will evaluate, in due course, the timing and possible method of migration to the Government Finance Statistics Manual 2001 (GFSM 2001)."⁸⁰ The report was also fairly critical of Peru's government finance statistics, particularly those related to public debt. For example, the report stated that "preliminary GFS are compiled using the most up-to-date data; however, they are not reconciled with fiscal data for central government published by the MEF [Ministry of Economy and Finance] (though with different institutional coverage)."⁸¹ The report also stated that "a table with data on short and long term internal debt is published, but there are no debt tables classified solely by type of debt holder or by type of instrument."⁸² Accordingly, the IMF recommended that Peru "publish debt tables for central government, general government, and nonfinancial public-sector, disaggregated by type of sector of debt holder and instrument."⁸³

⁷⁹ These areas include: (1) policy transparency (data dissemination, fiscal policy transparency, and monetary and financial policy transparency); (2) financial sector regulation and supervision (banking supervision, securities regulation, and insurance supervision); (3) institutional and market infrastructure (crisis resolution and deposit insurance, insolvency and creditor rights, corporate governance, accounting and auditing, financial market infrastructures, and market integrity).

⁸⁰ IMF Country Report 03/332, October 2003, pg. 13.

⁸¹ Ibid, pg. 15.

⁸² Ibid, pg. 82.

⁸³ Ibid, pg. 20. In the authorities' comments to the report, the Central Reserve Bank of Peru noted that "with respect to the recommendation to disseminate disaggregated public debt information, this information can be found in the quarterly tables published in the Weekly Note, and it should be explained that to date only the central government has issued debt." Ibid, pg. 4. There is no evidence, however, that the Weekly Note includes the ARBs.

107. The report on fiscal transparency that Peru requested in 2004 was intended to address the deficiencies noted in the 2003 ROSC.⁸⁴ The report acknowledged Peru’s progress, notably by adopting several statutes related to transparency and fiscal prudence, but noted that some weaknesses remained, in part because the new statutes were more demanding in terms of data. By way of example, the report cited Peru’s 2002 Law on Transparency and Access to Public Information (“**LTAIP**”), which “requires consistency between the budget documentation and the MMM [Multiyear Macroeconomic Framework] with regard to the fiscal balance and changes in the public debt.”⁸⁵ The 2004 report also provided detailed information on the debt statistics published by the Directorate of Public Credit of the Ministry of Economy and Finance, but, like the 2003 report, included no mention of the 2001 Decision or the ARBs.⁸⁶

108. The 2015 fiscal transparency report was fairly positive for Peru, noting, however, that “a number of items in the balance sheet and operating statements of financial statements are either not recorded or their values should be reviewed and updated.”⁸⁷ In fact, the ARBs are not included in either the “Unreported Liabilities” or the “Reported Liabilities.” While the 2015 report mentions that “the pre-electoral Report (2011) and the 2012-2014 MMM compiled some information on Public Private Partnerships, litigation, and select guarantees,” no mention is made of the ARBs in these reports.⁸⁸ Given that Peru’s Constitutional Tribunal rendered another decision related to the ARBs in 2013 and that Peru’s Ministry of Economy and Finance issued related Supreme Decrees in 2014, the continued absence of reference to the ARBs in the 2015 report is surprising.

109. Despite Peru’s subscription to the SDDS—and the enhanced reporting requirements that it entailed—there is no indication that Peru provided information about the ARBs to IMF staff during its preparation of the three ROSCs. The IMF’s conclusions regarding Peru’s abidance by the SDDS standards would most likely have been different, especially given the size of the ARBs.

⁸⁴ IMF Country Report 04/109, April 2004.

⁸⁵ Ibid, pg. 15.

⁸⁶ Ibid, pg. 16, paragraph 23 includes this description: “with respect to medium and long-term public liabilities, the General Directorate of Public Credit (DGCP) maintains a database accessible on its website with historic annual data (from 1970 for external debt) and current quarterly data broken down between external and domestic debt, by creditor, currency and interest rate. The information includes flow data on new loans, disbursements and debt service for the period, updated debt balance, and monthly debt service projections for the remainder of the year, and for future years until the outstanding obligations are repaid. Aggregate data on this basis are published monthly in the BTF [Fiscal Transparency Bulletin]. However, domestic public debt information from the DGCP and the BTF differs significantly from that published by the BCRP [Central Reserve Bank of Peru].”

⁸⁷ IMF Country Report 15/294, October 2015, pg. 8.

⁸⁸ Ibid, pg. 58.

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