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PERU: CONSTITUTIONAL COURT RULING ON FUJIMORI'S PARDON VIOLATES HUMAN RIGHTS OBLIGATIONS

The Inter-American Court of Human Rights, in the context of its monitoring of compliance with judgments in the Barrios Altos and La Cantuta cases, must take all necessary measures to prevent this ruling by the Constitutional Court of Peru, which reinstates the pardon granted to Alberto Fujimori by former President Pedro Pablo Kuczynski, from becoming an obstacle to the rights to truth, justice and reparation of the victims and their families.

On 28 March, the Constitutional Court of Peru reinstated the provisions of Supreme Decree 281-2017-JUST of 24 December 2017 in which former President Pedro Pablo Kuczynski granted Alberto Fujimori a pardon on humanitarian grounds.¹ With this decision, the Constitutional Court extinguished Alberto Fujimori's 25-year prison sentence – imposed following his conviction for the aggravated homicide of 25 people, the wounding of four people and the aggravated kidnapping of two people – and ordered his immediate release.

Amnesty International believes this ruling ignores Peru's international human rights obligations and is a violation of the victims' right to access to justice. Therefore, its implementation by the authorities responsible for releasing him would also constitute a breach of their international obligations.

In this context, the victims, families and a large part of Peruvian and Latin American and Caribbean society are placing their hopes in the Inter-American Court of Human Rights (Inter-American Court). The Inter-American Court has a historic role to play, once again, in light of the gravity of this ruling and the irreparable harm it may cause not only to the victims and immediate family members, but to Peruvian society as a whole.

The protection of life and guaranteeing the right to health of a person deprived of their liberty, which are of course legitimate state concerns, does not necessarily entail the annulment of their sentence, contrary to the text of the Constitutional Court's draft ruling. The Inter-American Court has established that it is up to the state to assess what the proportionate administrative measure or legal mechanism is that can ensure the protection of the life and physical integrity of a convicted prisoner, provided that it is duly granted and for a legitimate purpose, and this does not solely mean not enforcing the penalty. In cases of serious human rights violations, such a measure or legal mechanism must be the least restrictive of the victims' right of access to justice and must be applied only in very extreme cases and out of overriding necessity. This does not mean that the state must adopt the legal mechanism or measure that necessarily releases the convicted prisoner and, much less, that involves the annulment of the sentence.

The Inter-American Court has established that when granting a pardon to someone convicted of serious human rights violations and crimes against humanity, other factors must also be considered, in addition to their state of health, such as: that a considerable part of the prison sentence has been served and that any civil reparation imposed as part of the sentence has been paid; the conduct of the convicted prisoner regarding establishing the truth; the recognition of the seriousness of the crimes perpetrated and rehabilitation; and the effects that their early release would have on wider society and on the victims and their families.²

The Constitutional Court ruling did not assess whether Alberto Fujimori had complied with any of the elements stipulated by the Inter-American Court, nor does it elaborate on why other measures that would impose a lesser restriction on victims' right to justice would not meet the purported humanitarian aims, nor has it listened to the victims of the crimes against humanity for which Alberto Fujimori has been convicted or their relatives. There is no public information to show that these conditions have been met and it is in fact public knowledge that Alberto Fujimori has not contributed to clarifying the truth,

¹ Twitter: @TC_Peru, https://twitter.com/TC_Peru/status/1504598346731823105 (Spanish only).

² Inter-American Court, *Case of Barrios Altos and Case of La Cantuta v. Peru*, Monitoring Compliance with Judgment, Order of the Inter-American Court of Human Rights of May 30, 2018.

has not acknowledged his responsibility for or the gravity of the acts of which he is accused and has not contributed to reparations to the victims and their families.

For all these reasons, Amnesty International considers that in effect this pardon is a decision that seeks to bolster impunity in Peru and not a pardon on humanitarian grounds.

This ruling also sends an unacceptable message to the victims in other cases that remain open against Alberto Fujimori and are pending trial, such as the Pativilca cases and the case of forced sterilizations, in the context of the racism and structural discrimination against women that permeates all social and state institutions.

Read more:

Peru: Supreme Court confirms annulment of Fujimori's pardon and supports victims' rights, News, 13 February 2019

Peru: Decision to overturn Fujimori pardon confirms that victims' rights must take priority over political decisions, 3 October 2018

Peru: National court to review pardon granted to former President Alberto Fujimori, News, 21 September 2018

Peru: Inter-American Court rules that the Peruvian courts should review the pardon granted to Fujimori, News, 18 June 2018

Peru: IACHR: Amicus Curiae brief in the cases of "La Cantuta" and "Barrios Altos" vs. Peru (Monitoring compliance with judgments), Research, 1 February 2018

Peru: Amnesty International presents its position before the Inter-American Court of Human Rights on the pardon granted to Alberto Fujimori, News, 31 January 2018

The Peruvian state has the obligation to end the impunity created by the grace granted to Alberto Fujimori, Research, 25 January 2018

Perú: Indulto y Gracia a Alberto Fujimori es duro golpe a la lucha contra impunidad, [Peru: Pardon granted to Alberto Fujimori is a major blow to the fight against impunity] News, 25 December 2017, (Spanish only)

Peru: Rumours of pardon for Fujimori must not distract from efforts to seek justice for victims, News, 20 October 2017