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Possible Pardon of Former President Alberto Fujimori Brings Controversy in Peru

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Many have used the term "political expediency" in the context of the request for a humanitarian pardon made on Oct. 10 by relatives of former President Alberto Fujimori, who is serving a 25-year sentence for crimes against humanity and corruption (NotiSur, May 1, 2009).

After months of debate on the issue of a pardon for Fujimori, President Ollanta Humala said in late September that he hoped the discussion about a pardon was not political expediency, given that the request had not been made despite Fujimori's followers' insistence on putting it on the political agenda. Now that the request has been submitted, Fujimoristas say that, if Humala does not grant Fujimori the pardon, it is because of political expediency. There are also those who say that if Humala grants the pardon even if the team of doctors that reviews the case says that the prisoner does not have terminal cancer, that will make it a politically expedient decision.

Fujimori's four children presented to the Ministerio de Justicia a request for a humanitarian pardon for their father, arguing that he is a patient with high-risk cancer. They also left a personal letter addressed to President Humala at the Palacio de Gobierno with a copy of the pardon request.

Keiko Fujimori, the head of Fuerza 2011 and a former presidential candidate (NotiCen, April 29, 2011), said that she hopes that the president "will analyze our father's case objectively and without political partisanship. We expect a positive outcome. In granting the pardon, [President Humala] will have our gratitude as children, but, in the case of Kenji and myself as politicians, our role is to respond to the people who gave us a responsibility as opposition."

Kenji Fujimori, the youngest child of the ex-president and a Fuerza 2011 deputy in Congress, said on the television program Abre los Ojos, "We received a flower that came with dirt and thorns. What I did was take away the dirt and thorns and return the flower. Now, the ball is in the president's court." The deputy referred to statements by Humala saying, "In Peru, for a government to decide whether to grant someone a pardon, the interested person or the person's relatives have to take the step of asking for the pardon. Without that, the other cannot happen." Many interpreted that as a suggestion that the pardon request be submitted.

Deputy Kenji Fujimori told the press that Humala would not deny his father the pardon because that would be "insensitive and cruel, politically expedient."

Prime Minister Juan Jiménez Mayor said that the Ministerio de Justicia's technical units are in charge of evaluating the request for a humanitarian pardon, adding that such work is the province of the Comisión de Gracias Presidenciales, which must verify whether the request meets all the administrative requirements.

"That is going to depend on whether the file is complete, whether any documents are missing, and whether the requirements have been met....It depends on the complexity of each case. There is no pre-established time frame in the rules on this issue," Jiménez said in a press conference following
the Consejo de Ministros meeting on Oct. 10. He said that the relevant commission must issue an opinion that, if applicable, can be sent to the president's office. The opinion is not binding; the final decision will be made by President Humala.

Contradictory diagnoses
Decree Supreme 004-2007-JUS and Resolution Ministerial 0162-2010-JUS, which created and approved the internal rules for the Comisión de Gracias Presidenciales, authorizes the president to grant common, humanitarian, or exceptional pardons. The ministerial resolution stipulates that humanitarian pardons apply to those with a terminal illness; those who have a serious nonterminal illnesses that is advanced, progressive, degenerative, and incurable; those for whom prison conditions could pose a serious risk to their life, health, and integrity; and those suffering from chronic, irreversible, and degenerative mental disorders.

Fujimori is detained in installations of the Dirección de Operaciones Especiales (DIROES) of the Policía Nacional, and the prison conditions are in no way deplorable or a danger to his health; quite the contrary, he receives very good medical care. In his one-person prison, he receives frequent visits from his relatives and friends. Some even complain that he is in a "country-club prison." They mention, for example, that in February 2010, Fujimori attended the religious wedding ceremony of his daughter Sachi Marcela and her German partner Marc Koenig, celebrated in a small chapel on the DIROES grounds, 400 meters from his cell.

The pardon request thus bases it argument on the prisoner's health. "We have attached [the results of] all the pathologies from the five operations that he has had on his tongue...for example in 1997 he had a well-defined squamous-cell carcinoma and in 2008 a microinvasive squamous-cell carcinoma....We are adding the opinions of the medical team that has evaluated my father throughout his many years of treatment," Keiko told the press as she left the Ministerio de Justicia.

The renowned oncologist and scientist Elmer Huerto told the daily La República that Fujimori's cancer, classified by his primary care doctors as "high risk," does not imply a critically serious condition since the term refers only to recurrence, that is, to the possibility that the illness will return.

After the 1997 and 2008 biopsies showing cancer, Fujimori has not had another biopsy showing tongue cancer. All subsequent biopsies (2010, 2011, and 2012) have shown only precancerous lesions called dysplasias. Huerto says this means that the 74-year-old Fujimori is in complete remission from tongue cancer, that is, cancer-free.

"It is correct to say that Fujimori has cancer but that it is in complete remission, that he is free of illness. Unfortunately, his surgeon omitted the key word that his cancer is in remission and that it is well-controlled," Huerto said.

Fujimori's primary-care doctors, the head and neck oncologists Juan Postigo and Pedro Sánchez, have told the press on many occasions that since 2008 the prisoner has had dysplasias of levels ranging from moderate to severe.

On Oct. 2, Luis Solari, Cabinet chief and health minister during the administration of ex-President Alejandro Toledo (2001-2006), warned about a possible manipulation of the former president's health because of the way in which his relatives had been presenting it to the public. Solari's
statements to the press referred to a photo sent to the media of Fujimori's tongue showing "a post-surgery scar that has become infected," which, said Solari, was presented as if it were a terminal cancerous tumor. Solari called on President Humala to be cautious, since the truth of the matter "has not yet been established."

**Rejecting a possible pardon**

Reactions against granting a pardon to the prisoner convicted and sentenced for crimes against humanity have poured in since the Fujimoristas began the media campaign to raise public support for the measure.

Families of the victims of the Barrios Altos and La Cantuta massacres, as well as human rights advocates, staged a sit-in on the night of Oct. 10 in front of the Palacio de Justicia in central Lima to protest against a pardon for Fujimori.

"We will hold vigils, marches, and sit-ins to let the public know our opposition to the request for a humanitarian pardon for Fujimori, whose government committed terrible human rights violations," Raida Cóndor, mother of José Amaro Cóndor, one of the students at the Universidad La Cantuta kidnapped and murdered by the Colina paramilitary group, told Agencia Andina.

Rocio Silva Santisteban, executive secretary of the Coordinadora Nacional de Derechos Humanos (CNDDHH), said that they chose the exterior of the Palacio de Justicia to, in some way, recognize the Peruvian judiciary's work in convicting the ex-president. "When we rejected Keiko Fujimori's candidacy [in the 2011 presidential elections], we did so because of the proposal for a pardon. Therefore, if the president accepts [the request], he would be betraying himself," said Silva Santisteban.

In a Sept. 27 communiqué, the CNDDHH had rejected the attempt to obtain a pardon for Fujimori. "President Ollanta Humala's statements cause us great concern, slipping in the intention to pardon Fujimori. With no reason to grant this pardon, it would be a deplorable act of political expediency or under-the-table agreements, which is why we are alerting the public," said the communiqué.

Salomón Lerner Febres, ex-president of the Comisión de la Verdad y Reconciliación (CVR), said that a possible humanitarian pardon for Fujimori would go against the country's efforts to fight impunity. "I believe that a pardon will not happen. Politics also involves the country's decency. Our country has to show the world that it knows how to and can punish those who have committed serious crimes, and the greater the authority, the greater the responsibility," Lerner told Agencia Andina.

Lerner emphasized that, since Fujimori was convicted of aggravated kidnapping and crimes against humanity, a humanitarian pardon would not be appropriate according to national and international law.

However, César San Martín, president of the judiciary, who was the presiding judge in 2009 when Fujimori was sentenced to 25 years in prison, has said that, "in principle, there is no decision by the Inter-American Court of Human Rights (IACHR) or other international tribunals preventing a pardon in cases involving crimes against humanity or very serious crimes."

Regarding national laws, San Martín said that Article 2 of Law 28760, which denies pardon to those convicted of kidnapping and extortion, only applies to common and ordinary pardons. "Here what
matters for the effect of the interpretation are humanitarian rights and the principles of the dignity of the person and of proportionality," he said to El Comercio.

César Nakazaki, Fujimori's lawyer, said that a humanitarian pardon can be made "regardless of the type of crime" for which the ex-president was convicted.

Luis Bambarén, former bishop of Chimbote and former president of the Conferencia Episcopal Peruana (CEP), said an eventual humanitarian pardon for Fujimori would not help national reconciliation, as Keiko Fujimori has insisted, with the support of Juan Luis Cardinal Cipriani, archbishop of Lima. "The [Fujimori] family believes that a pardon could contribute to national reconciliation, but what it would do is divide and polarize the country even more, so what should be done is to comply with the protocols established by the law," said Bambarén.

Many Peruvians think Fujimori should ask for forgiveness for the crimes against humanity for which he was sentenced before asking for a pardon.

Keiko Fujimori has responded to that sentiment saying that asking for forgiveness is not a legal requirement nor is it obligatory for receiving a presidential pardon. She added that, "in one court hearing, he apologized for his excesses, but the nongovernmental organizations said that it was too late, past the time...He already apologized without anyone demanding it, it was a noble gesture on his part. Surely later on he will do it, but it is a decision for Alberto Fujimori," she told the press.

Humala is between a rock and a hard place, and he will have to bear the political costs of whatever decision he makes. If he grants a humanitarian pardon to Fujimori, he would be setting aside his commitment to defend human rights. If he does not grant the pardon, he will be going up against the same rightest sectors that dominate the media and have put this issue on the political agenda.

"In whichever case, the president's delay in adopting a clear and definite position further damages his image, reinforcing the idea that our head of state has little capacity for making decisions and is a weak leader. It also reinforces the public's perception that the government is negotiating some agreement—electoral or governmental—under the table," wrote Noticias Ser in an analysis a week before the pardon request was made.

But Humala's statements that Deputy Kenji Fujimori is clinging to show that the president seems to not be clear on this issue, which is very worrisome for defenders of democracy and justice in Peru.

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