Spain: What the Garzon indictment states about the crimes of the Franco era

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An investigation has been launched by leading prosecuting judge Baltasar Garzon into the thousands of mass graves scattered across Spain. To date not a single person has been prosecuted for the terrible crimes committed under the fascist dictatorship of Generalissimo Francisco Franco. As the indictment points out, the Spanish courts have never carried out a criminal investigation into the crimes.

Garzon's investigation covers three periods—the civil war from July 17, 1936 to February 1937, the state of emergency between March 1937 and early 1945 and the "repressive action" between 1945 and 1952 "marked by the elimination of guerrillas and people who supported them." From the start, the indictment makes clear that the intention is not to raise political issues but is "much more moderate"—the investigation of "forced disappearances."

In the 15 days the prosecution was granted to draw up lists of missing persons, some 114,266 individuals were identified. The scale of the killings in some towns and cities was horrendous—in Cordoba 7,091 people disappeared, in Malaga 7,797 and in Burgos 4,800. According to the indictment "it is clear that such listings should be checked, analysed and revised to supplement and update them."

The indictment makes clear that the investigation was launched as a result of petitions to the High Court by historical memory societies and various individuals. All the petitions were for "alleged crimes of illegal detention based on established facts, mainly by the existence of a preconceived plan and systematic elimination of political opponents through multiple killings, torture, exile and enforced disappearances (unlawful detention) of people from 1936, during the years following the Civil War and after the war, in different geographical locations of Spain."

The demand for a political reckoning with the Franco regime has grown amidst widespread popular hostility to his political heirs, the Popular Party, which led to the downfall of the government of Jose Maria Aznar in 2004. The Socialist Party (PSOE) government of José Luis Rodriguez came to power as a result of this hostility—focusing particularly on Spain's participation in the Iraq war, but also encompassing the PP's rightist economic and social policies. However, the PSOE has done the barest minimum towards meeting demands for justice. In 2007, it enacted the Law of Historical Memory, recognising the "victims" on both sides in the civil war, and rehabilitating their "memory". It has also removed certain fascist symbols and monuments.

Garzon's indictment goes much further. The indictment again offers "the utmost respect for all victims who suffered unspeakable violence, massacres and gross violations of rights during the Civil War and the post-war period" and extends these sentiments to all "regardless of their political, ideological, religious or any other affiliation... without establishing the grounds for any differentiation between them."

Nevertheless its focus of the indictment is unambiguously on the fascists.

Garzon has said the Ministry of the Interior should be petitioned for information identifying the top leaders of the Spanish Falange between 1936 and 1951 and "agree on what is necessary, accusation or the termination, in the event of death, of criminal responsibility." This means that anyone surviving could theoretically still face criminal prosecution, though given the passing of time this is unlikely.

Potentially more serious is that Garzon has called for a five-strong group of experts to investigate "the number, location and identification of victims". This is backed up by a 10-strong Judicial Police unit, with the powers to access any public record. Such a court-backed investigation has the capability of revealing ties, often

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concealed from historians, between Franco's regime and broad layers of the ruling elite and state apparatus—both then and now.

The indictment shows that Franco's July 18, 1936 armed insurrection against the Popular Front government was planned well in advance, to be carried out with the utmost brutality.

The Reserve Instruction No.1 prepared by General Emilio Mola, issued in April/May 1936, declared that "the action has to be extremely violent as soon as possible to reduce the enemy, which is strong and well organized." It called for the imprisonment of the leaders of all political parties, unions and organisations not associated with the National Salvation Movement and "exemplary punishments applied to those individuals to strangle the rebellion and strike movements."

The Reserve Instruction No.6 stated that as soon as the fascist movement was victorious, it would form a Directory, comprising a president and four military officers, that would "exercise unlimited power" unhindered by the courts.

Decree No.2 called for "summary trials" and execution of opponents and Decree No.3 called for arrest and detention of the President of the Republic, the Prime Minister and all Ministers, the Secretaries, Directors General and Civil Governors "as perpetrators of crimes against the homeland, usurpation of power, and high treason to Spain." Decree No.4 annulled the Constitution and the Statute of Autonomy, dissolved the National Parliament, the parliaments of the autonomous regions and the Tribunal of Constitutional Guarantees.

When the insurgency began on July 19, 1936, Mola declared, "It is necessary to propagate an image of terror... openly or secretly, defenders of the Popular Front should be shot."

In a speech on *Radio Burgos* on July 31, 1936 he added, "I could take advantage of our favourable circumstances to offer a compromise to the enemies, but I do not want to. I want to impose my will to defeat them. And to annihilate them."

Captain Gonzalo de Aguilera, Count of Alba de Yeltes, told the American journalist John T. Whitaker that the fascists had to eliminate a third of the male population "and thereby remove the problem of unemployment and... the danger for the ruling classes represented by the proletariat."

He said that they had to "systematically conceal" the bodies of those killed so the families could not locate the place of burial.

Finally, Franco, in a statement in Tangiers on July 27, 1936 to Jay Allen of the *Chicago Daily Tribune* said, "We are fighting for Spain. They are fighting against Spain. We are determined to go ahead at any price."

When Allen replied, "You'll have to kill half of Spain," he recounted how Franco "turned his head, smiled looking at me and said firmly: ‘I have said if that is the price then so be it'."

The military courts established on July 28, 1936 for the repression of political opponents were "responsible for the prosecution, without any due process, of people arbitrarily detained and tortured and summarily imposed more serious penalties, such as the death penalty, forced labour, confiscation of goods or captivity in concentration camps or clandestine prisons unlawfully for a long time."

Most would agree that these actions constitute "crimes against humanity". The indictment spends several pages arguing that this is indeed so under Spanish and international legislation, which defines crimes against humanity as "part of a widespread or systematic attack directed against civilians by reason of their political, racial, national, ethnic, cultural, religious or gender or other affiliations."

However, it says there are a number of "pitfalls" in bringing such a case—the main one being the Law 46/1977 enacted on October 15, 1977 during the so-called "transition to democracy" which gave an amnesty to "all acts of intentional policy, whatever its outcome, defined as crimes or misdemeanours prior to December 15, 1976."

Basing itself on a number of United Nations judgements, the indictment argues that the 1977 amnesty "could never relate" to serious cases such as genocide or crimes against humanity and that "states have an obligation to investigate and, if there is sufficient evidence, prosecute suspects responsible for the violations and, if they are convicted, the obligation to punish them."

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