

Spain: Investigation launched into Franco's crimes

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Spain's most prominent investigative judge has opened the country's first criminal investigation into the executions and repression carried out by the fascist regime of General Francisco Franco. In a 68-page court document, Baltasar Garzón accepted a petition demanding an investigation into the forced disappearances of Republicans under the Franco regime. The petition was filed by 13 associations of the families of victims of Franco. Garzón has ordered the opening of 19 mass graves, including one believed to contain the remains of the poet Federico García Lorca.

Over the last month Garzón has sought information from local churches, city halls, and senior church authorities, in an attempt to establish a definitive list of victims between 1936 and 1951. According to the court document, he has compiled a list of 114,266 names.

No region was untouched, from the 262 victims identified in the Canary Islands to the roughly 10,000 victims each in Aragón, the Basque Country, and Extremadura. The document has identified 32,289 victims in Andalucía, 7,797 of them in the province of Málaga alone. Málaga's San Rafael cemetery is believed to contain the remains of 4,300 of these victims of fascism, making it the largest mass grave in Spain. Exhumations began there two years ago and some 2,300 bodies have already been recovered.

The mass graves, although kept unmarked by the fascists, were remembered locally and privately. Some sites have also been turned up by recent building work, like the installation of wind-powered electricity generators in Tarragona that unearthed human remains from the Battle of Ebro (1938). Some 1,200 bodies were found by chance during the creation of a botanical garden in Mérida in Extremadura.

Garzón's investigation has created turmoil within the Spanish ruling class. After the end of the Franco dictatorship, a number of legal measures were taken to ensure that there could be no settling of scores with the fascists by the working class. An amnesty in 1977 enabled Franco's supporters to continue in office. Former ministers and advisers of Franco formed the current Popular Party (PP) opposition.

Right wing critics of Garzón have claimed the 1977 amnesty covers any repression from the Franco era. Spanish prosecutors have lodged an appeal to prevent the investigation on this basis. This appeal will take two months to be heard, but Garzón's investigations may continue in the meantime.

Even if the amnesty does not cover these crimes, opponents have claimed, under Spanish legal regulations most crimes are deemed

to have lapsed after a 20-year period, and the investigation is thus invalid. Garzón has rejected this argument, stating that Franco conducted a systematic campaign to eliminate opponents and hide their bodies. As the bodies are still missing, the crime of kidnapping effectively continues today.

Garzón also argues that the policy of "illegal, permanent detention without disclosing [victims'] whereabouts" constitutes grounds for a case of crimes against humanity. These have no statute of limitation and would take priority over the amnesty: "Any amnesty law which aims at erasing crimes against humanity that cannot be described as political crimes, is null," he has stated.

Critics have claimed that international human rights legislation cannot be used, as Spain was not signed up to it at the time. Garzón, in reply, has appealed to the Nuremberg trial of Nazis as war criminals as a precedent. If international law could be used there, he argues, the same rules could be applied to events that took place only a few years before the Nazis' war crimes.

Garzón has concluded that the National Uprising, led by General Mola and supported by General Franco, against the Republic was a criminal act. In turn this criminal act led to the planning and execution of the arrest, torture, and elimination of opponents for political and ideological reasons. This is a legal breakthrough, since the Spanish right has always claimed that Franco's was a benign dictatorship, not a *dictadura*, but a *dictablanda*. The systematic uncovering of the victims of Franco reveals the extent of this lie. Ian Gibson, the author of a book about the murder of Lorca, has said, "The winners of the war had 40 years to recover their dead. But they did not let the other side approach the mass graves."

Because this is a criminal case, Garzón must provide an accused. He has identified the 35 most responsible figures within the Franco regime, starting with Franco himself. Garzón has requested death certificates for all 35 to ascertain that they are beyond the reach of criminal punishment. However, he has also requested a list of the leaders of the Falange party during the period under examination from the Interior Ministry. Any survivors could face trial.

Garzón has created two teams to pursue the investigation. One team, comprising seven experts, will closely study the number, location, and identification of all those who disappeared between 1936 and 1951. Ten police detectives make up the second team. They have unprecedented access to public and private registers, documents, and archives. Commentators have noted how different this is to the situation facing professional historians, who have

long complained about problems of archival access.

There is no doubt that the Spanish ruling class has sought to control any confrontation with the Franco period. The official fiction, chiefly promulgated by the ruling Spanish Socialist Workers Party (PSOE), was that the peaceful Transition to Democracy in 1978 laid to rest the revolutionary struggles of the 1930s. There was mutual agreement to a "pact of forgetting," which left Francoist officials in position and prevented any addressing of the crimes of the dictatorship. Victims' families often found themselves being governed by the murderers of their relatives. The right wing was given the opportunity to claim that both sides committed equivalent crimes during the Civil War. In particular, their propaganda focused on the 6,832 priests, nuns and monks killed by Republicans. The right chooses to downplay or ignore the support offered to Franco by the Catholic authorities, nor is the punishment meted out for those deaths during the 36-year dictatorship generally acknowledged.

The PSOE is caught between its desire to avoid a confrontation with the political heirs of Franco, and the need to appease and hopefully control a leftward movement of the working class, which continually brings up the unresolved questions of Spain's revolutionary history. The PSOE has several times proposed limited measures in order to buy off the mounting anger of Spanish workers without taking on the PP. In 2006, proposing a limited Law of Historical Memory, Prime Minister José Luis Rodríguez Zapatero agreed with the PP by declaring that "Spain had a civil war in which everyone was a victim." Prosecutors opposing Garzón have appealed to that PSOE law, enacted in 2007, to end the investigation: as that law rehabilitated the victims' memory, they argue, there is no need to investigate further.

When the PSOE was forced to begin removing symbols of Francoism, it tried not to upset the PP: statues were removed by night, under the pretext of road construction. It is clear that some sections of the PSOE regard Garzón's action as another safety valve for popular anger. The daily *El País*, close to the PSOE, said the action had important symbolic value: "A virtual trial of Franco is indispensable for the future of a country which has not been able to face the misery of its past," an editorial stated.

A further pressure on the PSOE has been Garzón's high-profile involvement in international human rights cases, including the extradition case against Chilean dictator Augusto Pinochet (himself an admirer of Franco), and the prosecution of the Argentine naval captain Adolfo Scilingo. Emilio Silva, founder of the Association for the Recovery of Historical Memory, noted, "Spanish politicians like to talk about human rights cases in other countries, but they never deal with the ones here at home."

Associations of victims' families had been unwilling to let matters rest and had already begun to locate and exhume mass graves. Silva had undertaken a private excavation in León in 2000 to identify the remains of his grandfather, shot in October 1936 with 12 others. Fernando Magán, a lawyer representing victims of Franco, has said that Garzón is only doing now what the government should have been doing all along.

Concerns that Garzón's investigations could ignite unresolved political tensions in Spain are not confined to the PSOE. Retired colonel Julián Delgado warned that support for the victims and

their families should be done "without the desire for revenge that is cropping up, and which does no good to democracy." It is, he said, "absurd to stir up pain." Delgado has a long record of warning the Spanish ruling class of the dangers it faces: he was one of the founders of the Democratic Military Union (UMD), a group of junior officers who proposed changes to Franco's military rule. After the Transition he headed the Guardia Urbana city police force in Barcelona.

The concern shared by all sections of the Spanish ruling class is that the demand for a reckoning with the Franco dictatorship will inaugurate a renewed era of class struggle. A PP senator, Augustin Conde claimed, "Garzón must be the only Spaniard who hasn't heard that Franco is dead. He is reopening wounds that were happily closed."

Manuel Fraga, a founding member of the PP who served as a senior minister under Franco and was close to the dictator, said, "Politically it is a very serious error to revive the problems of the civil war."

Despite the best efforts of the PSOE, the PP, the Communist Party and all of those who imposed the pact of forgetting and the "peaceful transition" to democracy, the post-Franco arrangements are unravelling. Nieves Galindo, whose grandfather was murdered in Granada, and is believed to be buried alongside Lorca, said, "The young have never really been taught about the civil war in our schools." Lorca's family have now agreed to the exhumation being demanded by the families of Galindo and other victims. Hitherto, the Lorca family had opposed opening the grave, as this might "distinguish some of the dead above the others."

The *World Socialist Web Site* supports all attempts at establishing an accurate historical record of the crimes of Francoism. Notwithstanding our clear differences with Garzón, we welcome his investigation of this critical period. Spanish workers will only be able to meet the challenges ahead by a thoroughgoing assimilation of the political lessons of the revolution and civil war. We warn, however, that this will have to be carried through against the resistance not only of the PP but also of the PSOE itself, which will do everything possible to neuter the investigation and defend the political basis of capitalist rule in Spain.



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