

IN DEPTH

## Spain: Truth, Justice, Reparation and Guarantees of Non-Recurrence

**Jaime Ruiz**

President of the Platform for a Truth Commission on the Crimes of the Franco Regime

Until it attained a democratic constitutional framework in 1978, Spain endured a military uprising, a coup d'état and a civil war which led the victorious side to impose a dictatorship supported by Nazism and fascism. This illegal and illegitimate dictatorial regime remained in power for forty years. Today, as we approach the fortieth anniversary of democracy, there are still a vast number of mass graves in our land which hold the remains of the first men and women to rise up in defense of the legitimate and democratic government of the Second Republic, and against fascism, which spread throughout Europe and prevailed in our country.

The numbers speak for themselves: over 150,000 forced disappearances, over 30,000 kidnapped children and over 2,300 documented mass graves, with human remains, of which only 390 have been opened. And along with these data it is important to note that there are no ongoing judicial proceedings in our country, not because those affected, whether family members or concerned citizens, have shown no interest. Justice still awaits the tens, hundreds, thousands of victims that the dictatorship detained, tortured, forced into exile, deported, executed, subjected to forced labor, etc. Justice that, almost four decades after the end of Franco's regime, is still denied again and again by the state and the courts.

The first initiative was the filing of several complaints by victims, victim associations and other organizations with Central Magistrates' Court No. 5 of the *Audiencia Nacional* (Spanish National High Court) in 2006. On 16 October 2008, the judge admitted the case and ordered an investigation of the various crimes against humanity committed in the

Franco era, calling for the identification of those responsible, various exhumations and other measures. The second chamber of the Supreme Court, in its decision of 27 February 2012 in the case against Judge Baltasar Garzón, who was acquitted, decided that the crimes of the Franco regime could not be criminally investigated and claimed that they were amnestied and unprosecutable. It also considered that the principles of international criminal law could not be applied to these crimes. This is an explicit renunciation of the investigation and punishment of these crimes, as well as the search for truth.

**“ The tens, hundreds, thousands of victims of the dictatorship are still awaiting justice; it is a disgrace to us that the crimes of the Franco regime are not being investigated ”**

It is a disgrace to us all in our country that the crimes committed during the Franco dictatorship are not being investigated or prosecuted, although it is important to note that there are some exceptions in the judiciary domain: “In a society with a criminal law system that advocates giving victims and their families a greater role, victims should be supported so that they can heal their wounds. These people, irrespective of the time elapsed, should have the opportunity to receive reparations or compensation.” (Judge in Salas de los Infantes, Burgos); “A democratic state should not tolerate the continued existence of tens of thousands of victims of a dictatorship in mass graves or ditches.” (Association of Judges for Democracy); “The victims of the Franco regime, many of them elderly, are entitled to adequate reparation for their suffering.” (Association of Judges for Democracy).

Government institutions, on the other hand, are not only far from advancing in the development of a legislative framework that protects victims and their relatives and puts an end to the situation described above, but they have been closing the door to possible positive interpretations. The current government, led by Rajoy, has decided to strip the already limited Historical Memory Law of its substance, closing the office for

victim assistance, ending the gathering of information and access to certain archives, and allocating zero euros to the budget to fulfill the obligations established in said law.

In light of the desolate situation that still exists for the victims of Franco's dictatorship, the Platform for a Truth Commission on the Crimes of the Franco Regime was created in September 2012. We believe that the rights to truth, justice and reparation of the victims of crimes against international human rights – including torture – committed during the Civil War and under Franco are still being denied in our country. And most of the associations of victims, historical memory and human rights in our country agree.

**“ We call for the implementation of the principle of international legality that obliges the Spanish State to investigate and prosecute the crimes of the Franco regime ”**

Spain has a stable democratic institutional framework that is under virtually no risk of collapse or failure forced by groups or organizations that encourage hatred in our society. We are members of the European Union and we participate in UN agencies, including the Security Council, where we currently hold a seat. As the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, rightly stated, “The strength of democratic institutions is better reflected in the way they positively address the petitions of their citizens than in their ability to leave certain issues off the public agenda.”

The Platform's call for the establishment of a Truth Commission on the crimes of the Franco regime in our country ([see statement](#)) is based on international law, the experience of more than 40 countries, and the resolutions and recommendations of the UN, the Human Rights Committee, the Working Group on Forced Disappearances and the Council of Europe regarding our country. We believe that these recommendations can facilitate the resolution of the demands of victims and relatives, fulfill the duty of memory and be an instrument for democratic coexistence.

The Platform calls for the application of the principle of international legality enshrined in many international treaties and conventions. This principle obliges the Spanish State to investigate and prosecute crimes that would be categorized as such under the general principles of law recognized by the international community even though they may not receive this consideration under Spain's own internal legislation. We also demand that the State cooperate with the Argentine justice system regarding persons allegedly involved in the commission of crimes under international law, and adopt the recommendations contained in documents issued by the UN which imply possible interpretations that conform to the requirements of the law and which allow the judicial system to be accessible to the demands of justice of its citizens; that the demands of the victims, their organizations and a concerned civil society be promptly addressed so that the development of the measures that these reports present for our country may be implemented as State policies and in all institutions, with as much agreement as possible, in order to ensure that the victims, their relatives and the whole of society are aware of the history and memory of the generations that endured crimes repudiated by humanity; and to establish guarantees of non-recurrence, the basis on which new generations can be educated and a future in freedom can be built for all.

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