



THE PROTECTION OF
DEAD PERSONS AND
THEIR HUMAN REMAINS,
INCLUDING OF VICTIMS
OF POTENTIALLY
UNLAWFUL KILLINGS

RESPONSE TO CALL FOR INPUT

SUBMISSION TO THE THEMATIC REPORT
OF THE SPECIAL RAPPORTEUR ON
EXTRAJUDICIAL, SUMMARY OR
ARBITRARY EXECUTIONS

ESADE, University Ramon Llull
Course: International Human Rights Protection
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Introductory Note

This submission was prepared by the participants of the university course “International Human Rights Protection” at ESADE, University Ramon Llull in Barcelona during the fall term 2023/2024. The participants conducted independent research on different aspects requested in the call for input of the Special Rapporteur.

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Executive Summary



UN Call for input: The protection of dead persons and their human remains, including of victims of potentially unlawful killings.

SPANISH CIVIL WAR

Extra-legal, arbitrary or summary executions and mass graves

The **Spanish Civil War** (1936-1939) was marked by war crimes and mass atrocities:

- Nearly 500,000 lives were lost, with 150,000 civilians executed by summary methods.
- Victims were buried in over 3,300 mass graves: only 606 have been completely exhumed and almost 10% are expected to never be located.
- Amnesty International reports around 20,000 Republican casualties in the aftermath of the Civil War.

Enforced and involuntary disappearances

During the Civil War and the Franco dictatorship:

- **114,226 people were victims of enforced disappearances.**
- 10,000 Spanish Republicans were deported to Nazi camps and prisons: 75% of them to Mauthausen, of which only 3,800 survived.

The Spanish Government has created a national census and a DNA bank to identify the victims - between 2000-19, around 800 mass graves were opened, recovering 9,700 unidentified people.

Laws, administrative regulations, guidelines and policies on how to treat bodies unlawfully killed or disappeared

The '**Ley 20/2022, de Memoria Democrática**' focuses on the exhumation of mass graves, management of bodies, identification of victims, compensation and memorialization:

- Annual public reports on new discoveries, grave location and body count.
- Establishment of DNA Banks to link victims with relatives and classify genetic profiles.
- Establishment of the '**duty of democratic memory**'.

Competences in this matter have been transferred to autonomous communities:

- The Generalitat de Catalunya handles body disposal matters and has its own law ("**Ley 10/2009 sobre la localización e identificación de las personas desaparecidas durante la Guerra Civil y la dictadura franquista, y la dignificación de las fosas comunes**"), and searching institutions.

Deaths during COVID-19 in Spain

Spain ranks 15th globally with **127,760 COVID-19 deaths**:

- **Healthcare system collapse** and following measures exacerbated mortality; 7,291 deaths linked to the decision not to transfer the sick from retirement homes to hospitals in Madrid.
- Poor investigation into casualties in hospitals, homes, and nursing homes (90% of investigations on retirement homes in Madrid have been prematurely shelved): **lack of accountability**.

Laws and policies on body disposal and family rights during COVID-19

- **Body disposal during mass fatalities:**
 - Forensic medical examination was only allowed in specific cases - **overcrowding** led to the use of unconventional facilities.
 - Ministry of Health acknowledges deficiencies in understanding existing protocols.
- **Lack of information:**
 - CGCOM advised doctors to talk of "pneumonia" or "multiorgan failure" when COVID was not confirmed: **opacity**.
- **Religious and cultural rights challenged:**
 - Lockdowns limited **farewell ceremonies**, with hospitals enforcing strict visitation policies (order SND/298/2020).

COVID-19

Part A. Extra-legal, arbitrary or summary executions, mass graves, and disappearances

I. Background and data on extra-legal, arbitrary or summary executions and mass graves in Spain

Assessing the extent of extra-legal, arbitrary, or summary executions during and after the Spanish Civil War (1936-1939) and of the prevalence of mass graves presents a formidable challenge. Much of the available information related to the so-called “White Terror” (*Terror Blanco*) was destroyed during the Franco regime.¹

Estimates assume that from the 500,000 lives lost during the Civil War, **roughly 150,000 were civilians killed by summary executions.**² The vast majority of these victims are now buried in mass graves. Officially, from **over 3300 mass graves**, only 606 have been completely exhumed, 1149 have not been opened, 499 mass graves have been moved to the “Valle de los Caídos” and 251 have disappeared.³

The violence extended beyond mere fatalities, encompassing heinous acts such as sexual assaults against women, public humiliation and the existence of concentration camps.⁴ Over 500,000 individuals were incarcerated in these camps during the conflict, and this practice continued into the era of dictatorship. In fact, according to Amnesty International, approximately 20,000 Republicans lost their lives in the aftermath of the Civil War.⁵

II. Data on enforced and involuntary disappearances in Spain

Based on the information collected by the Criminal Investigation Court No. 5 of the National High Court, and the UN Working Group on Forced Disappearances, **114,226 people were**

¹ Francisco Espinosa Maestre, *La justicia de Queipo* Barcelona (Editorial Crítica 2005).

² Lucas Laursen, 'Gathering the Genetic Testimony of Spain's Civil War Dead' (Sapiens, 3 June 2016) <<http://lucaslaursen.com/clips/graves.pdf>> accessed January 23, 2024 (hereafter Laursen, 'Gathering the Genetic Testimony').

³ Ministerio de la Presidencia, Justicia y Relación con las Cortes, 'Searcher for Mass Graves' (Ministerio de la Presidencia, Justicia y Relación con las Cortes, 2024) <<https://www.mpr.gob.es/memoriademocratica/mapa-de-fosas/Paginas/buscadormapafosas.aspx>> accessed 24 January 2024.

⁴ United States Holocaust Memorial Museum, 'La Guerra Civil Española Hechos Clave' (United States Holocaust Memorial Museum, n.a.) <<https://encyclopedia.ushmm.org/content/es/article/spanish-civil-war>> accessed 24 January 2024.

⁵ Lauren Frayer, 'Finding a Long-Lost Father as Spain Exhumes Decades-Old Mass Graves' NPR (Washington D.C. 26 February 2016) <<https://www.npr.org/sections/parallels/2016/02/26/466008901/finding-a-long-lost-father-as-spain-exhumes-decades-old-mass-graves>> accessed 24 January 2024.

victims of enforced and involuntary disappearance during the Spanish Civil War and Franco's dictatorship.⁶ Approximately 10,000 Spanish Republicans were deported to prisons or camps of the German Nazi regime.⁷

Between 2000 and 2019, around 800 mass graves were opened, leading to the recovery of 9700 individuals.⁸ From 2020 to 2022, 86 exhumations were scheduled, with the objective of locating 3553 victims. Experts state that, although the total number is higher, only around 20,000 additional bodies can be recovered. Currently, 40% of suspected graves in some communities cannot be located.⁹

III. Laws, administrative regulations, guidelines and policies on how to treat bodies of unlawfully killed or disappeared: search and opening of mass graves, management of bodies, identification of victims

Two national laws, namely the **Law on Democratic Memory (Law 20/2022 of 19 October 2022, *Memoria Democrática*) and its supplementary protocol**,¹⁰ concentrate on the excavation of mass graves, management of bodies and identification of victims.

The *Memoria Democrática* Law outlines procedures for uncovering **mass graves** in Article 16. It designates the General Administration of the State to lead these searches, scheduled several times annually.¹¹ Notably, the law mandates the **public disclosure of information** on new discoveries, including location and body count on a yearly basis.

Engaging in activities related to mass grave openings and **victim identification** requires administrative authorization. Entities such as the General State Administration, autonomous communities, local entities and family members can request this, involving supporting

⁶ 'Report of the Working Group on Enforced or Involuntary Disappearances' (OHCHR, 2014) <https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-49-Add1_en.doc> accessed 25 January 2024.

⁷ Sam Jones, 'Madrid Exhibition Tells Story of Spaniards Sent to Nazi Concentration Camp' The Guardian (25 January 2023) <<https://www.theguardian.com/world/2023/jan/26/madrid-exhibition-tells-story-of-spaniards-sent-to-nazi-concentration-camp>> accessed 25 January 2024.

Diego Fonseca, 'What Was Franco's Role in the Deportation of 10,000 Spaniards to Nazi Camps?' (El País, 26 April 2019) <https://english.elpais.com/elpais/2019/04/26/inenglish/1556272970_468527.html> accessed 25 January 2024.

⁸ Natalia Junquera, 'Las Huellas Del Horror Franquista: 10.000 Esqueletos Recuperados En 20 Años' (El País, 9 January 2022) <<https://elpais.com/espana/2022-01-09/las-huellas-del-horror-franquista-10000-esqueletos-recuperados-en-20-anos.html>> accessed 25 January 2024.

⁹ Ibid.

¹⁰ BOE-A-2011-15206 Order PRE/2568/2011, 26 September 2011, which publishes the Agreement of the Council of Ministers of September 23, 2011, which orders publication in the Official State Gazette of the Protocol for action in exhumations of victims of the civil war and the dictatorship, <<https://www.boe.es/eli/es/o/2011/09/26/pre2568>> accessed 25 January 2024.

¹¹ BOE-A-2022-17099 Ley 20/2022, 19 October 2022, de Memoria Democrática, <<https://www.boe.es/buscar/act.php?id=BOE-A-2022-17099>> accessed 25 January 2024.

documentation and a public information period. Forensic studies for identification are conducted by the General State Administration, and unclaimed remains find a resting place in an appropriate cemetery. The law also assures the return of remains to family members. Additionally, Article 23 establishes a **State DNA Bank of Victims of War and Dictatorship** which enables the comparison of genetic profiles for identification.

In addition to national legislation, each autonomous community has its own particular set of laws governing this matter. In this context, it is worth mentioning Catalonia's "Ley 10/2009 sobre la localización e identificación de las personas desaparecidas durante la Guerra Civil y la dictadura franquista, y la dignificación de las fosas comunes".¹² The law's fundamental objectives are realized through the establishment of various institutions, including the "Democratic Memory Bank". This initiative aims to foster the **democratic memory** in Catalonia, in particular regarding the victims of repression during the Civil War.¹³ Tasks encompass preliminary historical studies, retrieval of human remains, archaeological surveys, and anthropological and genetic studies.¹⁴ A publicly accessible database, the "Human Cost of the Civil War", compiles comprehensive information about individuals who lost their lives in Catalonia during the Civil War and Franco era, allowing individuals and their relatives to request information.

A significant stride in regulating mass grave openings, body management, and victim identification is the establishment of the "**Genetic Identification Program**". This unit specializes in disappearances and mass graves from the Civil War and Francoist dictatorship. Its crucial function is organizing and classifying genetic profiles of relatives of the disappeared, transferred to Vall d'Hebron University Hospital's genetic laboratory for establishing kinship relationships and enabling personal identifications.

¹² BOE-A-2009-12855 Law 10/2009, 30 June 2009, on the location and identification of people who disappeared during the Civil War and the Franco dictatorship, and the dignification of mass graves, <<https://www.boe.es/buscar/doc.php?id=BOE-A-2009-12855#:~:text=A%2D2009%2D12855,Ley%2010%2F2009%2C%20de%2030%20de%20junio%2C%20sobre%20la,dignificaci%C3%B3n%20de%20las%20fosas%20comunes>> accessed 25 January 2024.

¹³ Department of Justice, Memòria democràtica, Drets i Memòria, <<https://justicia.gencat.cat/ca/ambits/memoria/>> accessed 25 January 2024.

¹⁴ Department of Justice, Programa d'identificació genètica, Drets i Memòria, <<https://justicia.gencat.cat/ca/ambits/memoria/Persones-desaparegudes/Programa-didentificacio-genetica/>> accessed 25 January 2024.

IV. Laws, administrative regulations, guidelines and policies on how to treat bodies of unlawfully killed and disappeared: final disposal of body/ashes, memorialization, respect for rights of families

The legislation also introduces a “**duty of democratic memory**”,¹⁵ which implies an obligation for public administrations to implement measures aimed at preventing the recurrence of past human rights violations. This includes the inclusion of ‘democratic memory’ in educational programs,¹⁶ along with the removal and prohibition of symbols from the civil war and dictatorship.¹⁷ Additionally, the law recognizes a selection of Democratic Memorial Sites.¹⁸

As mentioned, the State has transferred competences in specific matters to the autonomous communities. For example, the regional government of Catalonia has implemented programs aimed at locating missing individuals,¹⁹ handling compensations²⁰ and advising victims. There exists a high incentive to officially register a case in order to determine the burial location of relatives, and, whenever feasible, remains shall be recovered.

¹⁵ Art. 25 Law 20/2022 Memoria Democrática.

¹⁶ Art. 45 Law 20/2022 Memoria Democrática.

¹⁷ Art. 35 Law 20/2022 Memoria Democrática.

¹⁸ Art. 49 Law 20/2022 Memoria Democrática.

¹⁹ Law 10/2009 (n 12). For Catalonia, see, for example, implementing Decree 111/2010, 31 August 2010; Resolution IRP/4072/2010, 15 December 2010, which approves the protocols regarding the required actions provided for in Law 10/2009 on the location and identification of persons who disappeared during the Civil War and the Franco dictatorship, and the dignification of mass graves; Resolution EXI/2948/2016, 21 December 2016, which publicizes the Framework Agreement for collaboration between the Department of Institutional and External Relations and of Transparency, the Department of Health and the Department of Justice for the genetic identification of skeletal remains of people who disappeared during the Civil War and the Franco regime, and to the specific collaboration agreements signed for its development.

²⁰ See, for example, Decree 288/2000, 31 August 2000, which establishes the requirements to regulate the compensations of the people included in the cases provided for in Law 46/1977, 15 October 1977, on amnesty, and excluded from the benefits of the eighteenth additional provision of the general budgets of the State for the periods 1990 and 1992; Decree 330/2002, 3 December 2002, which regulates the financial compensation of persons under the age of 65 on 31 December 2000 who suffered deprivation of liberty and who are included in the cases provided for in Law 46/1977, 15 October 1977, on amnesty.

PART B. COVID-19

I. Background and data on deaths during COVID-19 in Spain

A more recent context in which Spain experienced an exceptionally high death toll was during the COVID-19 pandemic. According to the last official reports by the Health Ministry, as of June 2023, **121,760 people had died** from the virus in Spain.²¹

Limited research exists regarding cause-specific mortality in Spain during the pandemic. In 2020, 60,358 deaths were officially linked to COVID-19, and an additional 14,481 were reported without specific identification of the cause.²² Mortality was significantly aggravated by the collapse of the healthcare system and the measures imposed in response. For instance, in Madrid at least 30,682 **elders** died in retirement homes,²³ with an estimated 7291 deaths caused by the decision not to transfer sick individuals to hospitals.²⁴ In this regard, around 90% of prosecutors' investigations have been prematurely shelved, despite acknowledgment by the General Public Prosecutor of the existence of human rights violations in care homes.²⁵

Overall, despite ranking 15th in COVID-19 deaths worldwide,²⁶ Spain issued its first indemnification judgment in 2024,²⁷ setting an important precedent. Following the collapse of the healthcare system, authorities failed to conduct thorough investigations into casualties in hospitals, homes, and particularly nursing homes, leading to a deficit in both accountability and transparency.

²¹ Ministerio de Sanidad, 'Actualización nº 672. Enfermedad por el coronavirus (COVID-19)' (Gobierno de España, 30 June 2023)

<https://www.sanidad.gob.es/areas/alertasEmergenciasSanitarias/alertasActuales/nCov/documentos/Actualizacion_672_COVID-19.pdf> accessed 25 January 2024.

²² Joan B. Soriano, et al., 'The Emergence of COVID-19 as a Cause of Death in 2020 and its Effect on Mortality by Diseases of the Respiratory System in Spain: Trends and their Determinants Compared to 2019' (2022) 58(S1) Archivos de Bronconeumología

<<https://www.archbronconeumol.org/en-the-emergence-covid-19-as-cause-articulo-S0300289622001788>> accessed 25 January 2024.

²³ Statista, 'Número de personas fallecidas a causa del coronavirus en residencias de mayores en España en 2021, por comunidad autónoma' (Statista, November 2022)

<<https://es.statista.com/estadisticas/1201589/fallecidos-residencias-a-causa-de-covid-19-por-region-espana/>> accessed 25 January 2024.

²⁴ Elena Jiménez, 'Los familiares de los fallecidos en residencias recuerdan los 7.291 muertos sin atención hospitalaria en Madrid a las puertas del 28M' Cadena Ser (Madrid, 24 May 2023).

²⁵ Amnesty International, 'Spain 2022 - Right to health - Older people' (Amnesty International, 2022)

<<https://www.amnesty.org/en/location/europe-and-central-asia/spain/report-spain/>> accessed 25 January 2024.

²⁶ Statista, 'Número de personas fallecidas a causa del coronavirus en el mundo a fecha de 8 de agosto de 2023, por país' (Statista, August 2023)

<<https://es.statista.com/estadisticas/1095779/numero-de-muertes-causadas-por-el-coronavirus-de-wuhan-por-pais/>> accessed 25 January 2024.

²⁷ RTVE.es / Agencias 'Primera condena en España por la muerte de una paciente que se contagió de COVID en un hospital de Palencia' RTVE.es (Madrid, 15 January 2024).

II. Laws and policies on how dead bodies were disposed and rights of families were respected or disrespected

With escalating mortality rates and the rapid spread of Covid-19, regulation on how to swiftly manage corpses became imperative to alleviate the strain on hospitals.

In Spain, ‘El Procedimiento para el manejo de cadáveres en casos de Covid-19’²⁸ emerged as the foundational management procedure for doctors and health services. It highlighted the potential risks associated with autopsies and transport of Covid-19 corpses. Forensic medical examinations were only allowed in “violent deaths, cases of clear suspicion of criminality and certain special cases”.²⁹ As a result, bodies were usually placed in biodegradable airtight sanitary bags and stored in morgues.³⁰ Nevertheless, maximum capacity was quickly reached and new facilities had to be set up for corpse preservation. For example, the government of Madrid decided to use the Real Madrid ice skating rink to store corpses.

These new regulations on corpse management raised concerns about potential human rights violations, particularly regarding the dignified treatment of the deceased, access to burial and funeral services, and accurate information.

Because of Spain’s lockdown measures, countless people did not have the opportunity to give a **final farewell** to their loved ones. Hospitals tightened their visitation policies. For example, the hospital ‘Clínic’ of Barcelona only allowed one designated visitor per patient for an hour a day.³¹ These policies compromised the dignity of end of life moments, especially affecting the elderly. National regulations on mortuary health, such as *Order SND/298/2020*,³² also

²⁸ Sociedad Española de Anatomía Patológica, ‘Procedimiento para el manejo de cadáveres de casos de COVID-19’, (Ministerio de Sanidad, 26 May 2020) <https://www.sanidad.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/documentos/Manejo_cadaveres_COVID-19.pdf> accessed 22 January 2024.

²⁹ González Jorge, Ibáñez María, A. José, Alama Sergio, Sánchez Félix and Montero José María, ‘Gestión de los cadáveres durante la pandemia por COVID-19 en España’ (National Library of Medicine, May 2020) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7211618/>> accessed 22 January 2024.

³⁰ BOE-A-2020-4173 Orden SND/298/2020 por la que se establecen medidas excepcionales en relación con los velatorios y ceremonias fúnebres para limitar la propagación y el contagio por el COVID-19 (BOE, 29 March 2020) <<https://www.boe.es/buscar/act.php?id=BOE-A-2020-4173>> accessed 22 January 2024.

³¹ Clínic Barcelona, ‘El Clínic da marcha atrás y cambia la normativa de visitas a familiares ingresados’ (Clínic Barcelona, July 2021) <<https://www.clinicbarcelona.org/noticias/el-clinic-da-marcha-atras-y-cambia-la-normativa-de-visitas-a-familiares-ingresados>> accessed 24 January 2024.

³² BOE, SND/298/2020 (n 30).

prohibited devotions, gatherings and religious ceremonies.³³ More notably, it restricted funerals to a maximum of 3 family members.³⁴ Cremation of bodies was permitted; however, on occasion, this led to situations where relatives received the wrong ashes.³⁵

³³ La Moncloa Sanidad, 'Sanidad prohíbe los velatorios y restringe las ceremonias fúnebres para limitar la propagación y el contagio por la COVID-19' (La Moncloa Sanidad, March 2020) <<https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/sanidad14/Paginas/2020/300320-velatorios.aspx>> accessed 22 January 2024.

³⁴ BOE, SND/298/2020 (n 30).

³⁵ Tiempo de Canarias, 'La hija de una fallecida por covid recibe por error las cenizas de un hombre' (Tiempo de Canarias, 2021) <<https://www.tiempodecanarias.com/noticia/sucesos/la-hija-de-una-fallecida-por-covid-recibe-por-error-las-cenizas-de-un-hombre>> accessed 22 January 2024.