

**Privacy International's response
to the call for submissions
on the right to participate in sporting life**

May 2024

Introduction

Privacy International welcomes the opportunity to provide input to the report of the UN Special Rapporteur in the field of cultural rights on the right to participate in sports to be presented to the upcoming report to the General Assembly in October 2024.¹

Privacy International (PI) is a non-governmental organisation that researches and advocates globally against government and corporate abuses of data and technology.² It exposes harm and abuses, mobilises allies globally, campaigns with the public for solutions, and pressures companies and governments to change. PI challenges overreaching state and corporate surveillance so that people everywhere can have greater security and freedom through greater personal privacy. Within its range of activities, PI investigates how peoples' personal data is generated and exploited, and how it can be protected through legal and technological frameworks. PI has advised and reported to international organisations like the Council of Europe, the European Parliament, the Organisation for Economic Cooperation and Development, the UN Office of the High Commissioner for Human Rights, and the UN Refugee Agency.

The human right to participate in sports is part of everyone's right to participate in cultural life and PI recognises the need for states to ensure safe participation in sports, including through law enforcement. However, states need to ensure that any measures taken to do not undermine the enjoyment of the very right they claim to protect, as well as other rights in the process. PI's submission hereinafter focuses on the increasing use of surveillance technologies, including AI and facial recognition technologies, in policing sporting events, and the impact this can have on the rights to privacy and participation in sporting life freely. The following sections provide PI's information and

¹ Call for input on the right to participate in sports, <https://www.ohchr.org/en/calls-for-input/2024/call-input-right-participate-sports>

² Privacy International, <https://privacyinternational.org/>

analysis of some of the topics listed in the call for submission, around governance and mega sporting events.

Examples of intrusive surveillance technologies in sports events

We are particularly concerned by the increasing use of surveillance technologies, including AI and facial recognition technology, in policing sporting events, and the impact this can have on participation. While we recognise that state authorities are required to implement certain security measures to protect the enjoyment of the right to participate in sporting life, they need to ensure that any measures taken to do not undermine the enjoyment of the very right they claim to protect, as well as other rights in the process.

The use of facial recognition in sporting events

In the past few years, the use of facial recognition technology (FRT) in sporting events has grown significantly, not just for the purposes of ticketing and contactless concessions, but to monitor spectator behaviour. In the top 100 football stadiums in the world, 25 use FRT alongside their video surveillance,³ with more and more running tests year on year.

The use of FRT by both police and private actors has a seismic impact on the way our society is monitored and policed. The roll out of such intrusive technology does not only pose significant privacy and data protection questions, but also ethical questions around whether modern democracies should ever permit its use. For example, the radical introduction of FRT will inevitably result in the normalisation of surveillance across all societal levels and accordingly cast a "chilling effect" on the exercise of fundamental rights, including the human right to participate in and enjoy sports freely.

PI is deeply concerned that the use of FRT by both private companies and the police raises significant problems for individual freedoms, including in particular the rights to privacy and participating in sporting life. The intrusiveness of FRT and the dangers associated with its potential abuse by both private and public actors call for robust safeguards and oversight governing its authorisation and use.

³ Moody, R., & Moody, R., 'Surveillance camera statistics: which football fans are the most watched in the world?', *Comparitech*, 6 September 2023 <https://www.comparitech.com/blog/vpn-privacy/the-worlds-most-surveilled-football-stadiums/>

There is precedent that the use of FRT in stadiums is unlawful. FC Metz allegedly used an experimental system to identify people who were subject to civil stadium bans, detect abandoned objects, and enhance counter-terror measures. Following several reports, the French data protection authority (CNIL) carried out an investigation which determined that the system relied on the processing of biometric data. In February 2021, CNIL ruled the use of facial recognition technology in the stadium to be unlawful.⁴ The UN High Commissioner for Human Rights has recommended states to ‘Never use facial recognition technology to identify those peacefully participating in an assembly’.⁵

Beyond data rights, we have seen the use of FRT already be used punitively to exclude individuals at sporting events. In early 2023, Madison Square Garden (MSG) earned headlines for using facial recognition technology to ban or kick out people with tickets to their events. A Long Island attorney was removed from a New York Knicks game in December 2022 after getting flagged by the FRT software. In January 2023, a New York Rangers fan was barred from watching his beloved team after his face was identified.⁶

The CEO of MSG Entertainment James Dolan, used the facial recognition software—which MSG has had since 2018—to scan for attorneys from an estimated 90 law firms with active litigation against the company, and ban them. The venue justifies banning the attorneys, many of whom aren’t personally involved in the lawsuits, because their presence somehow “creates an inherently adverse environment”.⁷ On the contrary, this creates a hostile environment for individuals who may be unaware that they may be perceived as a threat, and for the general public, which lacks assurance that they won't be treated similarly at some point if they possess certain characteristics that are perceived as problematic.

The looming threat of AI

We are now further seeing AI be added to the arsenal of surveillance, an even more opaque system that can process data at an alarming speed, profile people according to physical attributes such as perceived gender and race, clothing style, gait, etc. This is the next step in complete, discriminatory,

⁴ ‘French watchdog warns sports club about unlawful use of facial recognition technology’, *Reuters*, 18 February 2018, <https://www.reuters.com/article/france-privacy-soccer-idUSL1N2KO2C6/>

⁵ Report of the United Nations High Commissioner for Human Rights on the impact of new technologies on the promotion and protection of human rights in the context of assemblies, including peaceful protests, UN Doc A/HRC/44/24, 24 June 2020, para 53(h).

⁶ Gee, G., ‘Here are the stadiums that are keeping track of your face’, *Slate Magazine*, 14 March 2024, <https://slate.com/technology/2023/03/madison-square-garden-facial-recognition-stadiums-list.html>

⁷ DeGeurin, M., ‘Everything we know about the facial recognition scandal at Madison Square Garden’, *Gizmodo*, 30 January 2023, <https://gizmodo.com/madison-square-garden-facial-recognition-what-we-know-1850041475>

arbitrary, and abusive surveillance of public spaces. And it is being rolled out in Paris for the 2024 Olympics.

Alongside 7 other organisations, European Center for Not-for-Profit Law, International Network of Civil Liberties Organizations, Legal Resources Centre (South Africa), International Council Civil Liberties (Ireland), Agora (Russia), Egyptian Initiative for Personal Rights, Canadian Civil Liberties Association), PI filed an *amicus curiae*⁸ at the French constitutional court (Conseil d'état) expressing our concerns about the use of such intrusive surveillance technologies and urging the court to reconsider its use. We particularly highlighted that:

- Algorithmic video surveillance interferes with various constitutional rights, including the right to free movement, the right to privacy, the right to freedom of expression and the right to protest;
- The definition of algorithmic surveillance in Article 10 of the law is constitutionally insufficient, as it lacks foreseeability and clear boundaries around what types of technology can be deployed and in what circumstances; and
- The law enables processing of biometric data in a way that does not comply with the General Data Protection Regulation (GDPR).

On 17 May 2023, the French Constitutional Council issued its judgment (in French)⁹. It did not find any violations of constitutional rights when it comes to the use of algorithmic video surveillance during and after the Olympics, but incorporated a safeguard in the law requiring that the permission to use algorithmic video surveillance be renewed every month. We believe that nothing in this safeguard addresses the concerns set out in our submissions, notably the lack of necessity and proportionality of the measure.

Beyond this, after the roll out of surveillance in extenuating circumstances such as Covid-19,¹⁰ we have seen that it's difficult for governments to roll those measures back. And a new law is already going ahead to authorise new experiments of AI surveillance until 2027.

⁸ PI, 'AI Surveillance at 2024 Paris Olympics challenge', <https://privacyinternational.org/legal-action/2024-paris-olympics-challenge>

⁹ Conseil Constitutionnel, *Décision n° 2023-850 DC du 17 mai 2023*, <https://www.conseil-constitutionnel.fr/decision/2023/2023850DC.htm>

¹⁰ PI, 'Tracking the global response to COVID-19', <https://privacyinternational.org/examples/tracking-global-response-covid-19>

The impact of surveillance on the right to participate in sporting events

The importance of privacy in exercising cultural rights

The right to be free from arbitrary interference with the right to privacy creates the space in which the cultural life of the community can flourish free from external burdens of surveillance. Privacy is essential to protecting the right of athletes and sports players, referees, judges as well as spectators, enabling them to freely participate, both individually and in community, in the cultural life of our communities, including sporting life.

Over the past decade, we have been observing the increasing use of indiscriminate and generalise surveillance tools in sporting events. Using tools of mass surveillance to monitor sporting events relies on the assumption that all information could be useful to address a hypothetical threat. It creates an environment of threat and suspicion that is incompatible with democratic values and principles, where in the eyes of the deployer, all individuals become guilty until proven innocent.

As the Human Rights Committee has underlined in relation to the enjoyment of the right of peaceful assembly: ‘While surveillance technologies can be used to detect threats of violence and thus to protect the public, they can also infringe on the right to privacy and other rights of participants and bystanders and have a chilling effect.’¹¹

How can a culture flourish if they are being burdened with the threat of surveillance, and the assumption of guilt, simply by participating in sport?

Chilling effect on participation in sporting events

Privacy and free expression are two sides of the same coin, each an essential prerequisite to the enjoyment of the other. To freely form and impart ones political, religious, or cultural beliefs one needs an autonomous, private space free from interference, from the State, private sector or other citizens. Equally, infringements on the right to privacy – physical or online surveillance, monitoring of communications or activities – prevent an individual from exercising their freedom expression. The

¹¹ UN Human Rights committee, General comment No 37 (2020) on the right of peaceful assembly (article 21), UN Doc CCPR/C/GC/37, 17 September 2020, para 10.

right to participate to sporting life, as part of everyone's right to participate in cultural life, is also a form of freedom of expression.

Major sporting events like the World Cup and the Olympics have been vectors of dissent for centuries. They sit in a unique position of being truly international while being independent of government and intragovernmental structures. They are also watched by billions around the world, providing a perfect opportunity for spectators and athletes to voice their opinions and beliefs on a truly global level. In these major events, sports associations, clubs, and governing bodies also have a unique role to play in protecting human rights. Sports and mega sporting events must be inclusive, fair, and safe, and stakeholders must ensure that human rights risks are identified and addressed in accordance with international standards.

Protests and actions at major sporting events are intertwined with the resistance from marginalised communities. In 1968, US sprinters Tommie Smith and John Carlos protested their country's treatment of black citizens during the men's 200-meter award ceremony. They took their first- and third-placed podiums barefoot and, during the playing of the U.S. national anthem, raised a single black glove while bowing their heads. In 2016, San Francisco 49ers quarterback Colin Kaepernick and other African-Americans in the National Football League (NFL) began kneeling during the US national anthem to protest systemic racism, a symbol that has endured to this day.¹² In 2014, countless LGBTQIA+ athletes resisted Russian anti-gay laws around the Sochi Winter Olympics while rainbow pins and wearing rainbow nail polish.¹³

This similar resistance to anti-LGBTQIA+ laws occurred during the 2022 Qatar World Cup, but this time against the backdrop of one of the most heavily surveilled sporting events to date, with the Qatari government deployed video surveillance drones and more than 15,000 CCTV cameras.¹⁴ Reports emerged that individuals choosing to protest through wearing rainbow items of clothing were identified through video surveillance in mass, and intimidated.¹⁵

¹² Boren, C., 'A timeline of Colin Kaepernick's protests against police brutality, four years after they began', *Washington Post*, 26 August 2020, <https://www.washingtonpost.com/sports/2020/06/01/colin-kaepernick-kneeling-history/>

¹³ Bigg, C., 'Despite risks, Sochi athletes determined to protest Russian antigay law', *RadioFreeEurope/RadioLiberty*, 5 February 2014, <https://www.rferl.org/a/sochi-olympics-lgbt-protests-athletes/25254000.html>

¹⁴ Goh, A., 'Anyone who attends the 2022 World Cup in Qatar can expect to be watched by 15,000 cameras with facial-recognition technology', *Business Insider*, 7 November 2022 <https://www.businessinsider.com/world-cup-monitored-cameras-facial-recognition-tech-qatar-2022-11>

¹⁵ 'The Qatar World Cup ushers in a new era of digital authoritarianism in sports', *The Nation*, 7 December 2022, <https://www.thenation.com/article/society/qatar-world-cup-surveillance/>

Sport has a unique potential to bring about positive change in the world, as Volker Türk, UN High Commissioner for Human Rights, has stated. It incorporates art, play, and ethical issues of virtue and fairness.¹⁶ However, surveillance enables significant power imbalances and hinders people's autonomy and dignity and creates an atmosphere of fear around speaking out. It creates an environment of suspicion and threat, which can cause people who are not engaged in any wrongdoing to change their behaviour, including the way they act, speak, and communicate. In doing so, it inhibits the legitimate exercise of our rights.

Impacts on marginalised communities at sporting events

We are further concerned that in the hands of an actor with a disregard for fundamental human rights, these systems deployed at sporting events pose risks to people participating from marginalised communities, such as LGBTQ+ persons and persons of varied gender identity, persons with disabilities, migrants, and refugees, resulting in discriminatory consequences. At its core, the right to participate in sports encompasses the freedom to engage in sporting activities without any discrimination. Back in 2018, two women were arrested attempting to attend a football event at Azadi stadium¹⁷. News also emerged that the Stadium is currently equipped with 500 closed-circuit television cameras to spot women trying to sneak into the stadium disguised as men. It's nothing new for women to be attempting to bypass the ban on them attending sporting events but having a camera for every 156 people to try and find and arrest these women is an excessive use of surveillance, and power.

States, governing bodies, organisers of private sporting events, and sports companies bear the responsibility for countering racist and discriminatory practices. Ensuring privacy can help establish an equitable balance of power for everyone and ensure that marginalised community are not further marginalised. By protecting privacy, the power of certain actors to exert control is curtailed.

Recommendations

For individuals to be able to exercise their cultural rights, including the right to participate in sporting life, they need to be free from the looming threat of surveillance, and the explicit and implicit burdens of that.

¹⁶ UN High Commissioner for Human Rights, 'Advancing human rights in sports can catalyze social transformation, Türk says', 5 December 2023, <https://www.ohchr.org/en/statements-and-speeches/2023/12/advancing-human-rights-sports-can-catalyze-social-transformation>

¹⁷ Doe, J., 'Women arrested as authorities step up CCTV surveillance at Azadi Stadium', *IranWire*, 18 March 2022, <https://iranwire.com/en/features/65565/>

We recommend the Special Rapporteur to:

- Address in the upcoming report the impact of surveillance on the right to participate in sports;
- Urge states and private companies to ensure respect of the right to privacy when introducing security, including surveillance measures, to monitor sporting events;
- Urge states to prohibit the deployment of live facial recognition systems in sporting events unless it is strictly necessary to prevent or investigate serious crimes or serious public safety threats and only if all requirements under international human rights law are implemented;
- Urge states to ensure that the use of any AI surveillance technologies deployed in sporting events does not lead to discrimination, including by conducting, requiring and supporting systematic assessments and monitoring of the outputs of AI surveillance technologies and the impacts of their deployment;
- Urge states to conduct human rights due diligence systematically, including regular comprehensive human rights impact assessments, when designing, developing, purchasing, deploying and operating surveillance systems for sporting event;
- Urge both public and private actors to take into account, when conducting human rights due diligence and assessing the necessity and proportionality of new surveillance systems and powers, the entire legal and technological environment in which those systems or powers are or would be embedded;
- Ensure that victims of human rights violations and abuses linked to the use of surveillance systems have access to effective remedies.