



SUBMISSION TO CALL FOR INPUTS PURSUANT TO UNITED NATIONS HUMAN RIGHTS COUNCIL

RESOLUTION 43/1 (2020)

SUBMITTED ON: 04 DECEMBER 2020

BY WITNESS

WITNESS

WITNESS is an international human rights organization that helps people use video and technology to protect and defend their rights. Working across five regions (Asia and the Pacific, Latin America and the Caribbean, the Middle East and North Africa, Sub-Saharan Africa, and the United States) alongside those most excluded or at-risk, our teams identify gaps, design solutions, provide guidance, and co-develop strategies that enable communities to hold the powerful to account and stand up for lasting change. We then scale this work globally on a systems level, sharing what we learn with communities facing similar issues and bringing grassroots perspectives to technology companies and other influential stakeholders to be translated into policies and solutions.

WITNESS has decades of experience working alongside marginalized communities, including communities of color, that face institutionalized state violence. We partner with local groups in impacted populations to generate greater security force accountability, reform criminal justice systems, decarcerate prisons, and support immigrants' rights. Much of this work is done through trainings and direct support for activists, advocates, lawyers, and local journalists as they seek to safely expose injustice and respond to harmful narratives that undercut accountability. Quintessential to this capacity building is understanding, communicating, and reinforcing the right to record, which aids justice and accountability efforts.

I. Introduction

This submission highlights the way in which video, and in particular people exercising their right to record, has exposed systemic racism and injustice in state violence against people of African descent. The [right to record](#) refers to the [entitlement](#) to use a camera or cell phone to film and/or photograph security forces and to share this material without fear of reprisal during the filming or subsequently. This submission considers how the right to record, despite states' active undermining of the right, has allowed activists and advocates to document and expose state violence against people of African descent.

This submission begins by addressing the role civilian captured video has played in exposing injustice in state violence against people of African descent to stress its importance. Next, it overviews the international and domestic legal parameters that frame the right to record. The submission then addresses how strong right to record legal safeguards can play a role in enhancing the documentation of and accountability for state violence against marginalized groups. To conclude, recommendations are presented for the international community to bolster the right to record so as to enhance the documentation of state violence and its propping up of racist structures and contribute to greater accountability.

II. Video's Exposure of Systemic State Abuse of People of African Descent

State security violence against communities of African descent has long upheld discriminatory structures. Such abuse is usually kept out of mainstream media reporting and when it does appear it often is presented through narrow, biased, or unsubstantiated perspectives. This allows

governments to control narratives and accountability processes around state violence, perpetuating prejudicial systems that uphold systemic racism.

For example, in the United States (US), police are [five times](#) more likely to stop without just cause, [five times](#) more likely to imprison, and [twice](#) as likely to kill Black civilians compared to white civilians. [In Brazil](#), a Black man or boy is killed every 23 minutes and Brazilian police account for thousands of deaths a year, [as many as](#) five a day in Rio de Janeiro alone. In Rio de Janeiro, one study found that prosecutors dismiss [over](#) 99% of cases involving police violence. In the US, over the past 14 years, [only four](#) police officers have been convicted of murder even though police kill about 1,000 people per year. These statistics remain imperfect as they cannot capture the full range of state terrorism visited upon communities of African descent and the way that terror perpetuates oppression.

The proliferation of cameras and camera phones has recently altered the way in which communities external to those of African descent view and understand how state violence enforces racist structures. In the US, the 1991 police [beating](#) of Rodney King, an African-American man, and the protests that followed illustrated the potential of civilian captured video to expose state violence. A similar inflection point [occurred](#) in Brazil in 1997 with what has been called the Favela Naval case, which included hours of secretly recorded footage of police officers manning a checkpoint on the outskirts of Sao Paulo where they consistently harassed and extorted people, even killing one man. These events, along with many others of a similar nature around the globe, demonstrated how video recording devices in the hands of bystanders can challenge near-certain impunity for state-sponsored crimes and catalyze accountability.

As cameras have become increasingly ubiquitous and communities have mobilized to record state security forces, more activist, bystander, and advocate captured footage has become available, further highlighting the systemic oppression of persons of African descent. Marginalized communities, especially Black communities, have found video to be a tool of protection with the ability to expose the realities of structural inequality in criminal justice systems (e.g. to [show](#) poor prison conditions or [advocate](#) for reduced prison sentences, clemency, and parole), drug abuse and treatment (e.g. to reveal how police [respond](#) to drug addiction with unhelpful force and violence), housing (e.g. to [expose](#) forced eviction policies), access to economic opportunity (e.g. to [visualize](#) the often inconceivable inequities in economic mobility), and sovereignty over land (e.g. to [illustrate](#) corporate invasion of indigenous territories). The recent COVID-19 crisis has [exemplified](#) video's power to expose injustice in healthcare and access to healthcare as well, especially with regards to communities of African descent.

The swell of video evidence illustrating structural discrimination and inequality that has surfaced over the past three decades should have, logically, led to increased accountability where racism is present. Unfortunately, it has not, usually because accountability mechanisms are rooted in the same colonial, racist structures that seeded the inequities being exposed and those in power are unwilling to meaningfully overhaul these systems. Acknowledging this, there are specific cases where video has played a role in accountability, especially when strategically utilized. For instance, in the US, the police officer that [murdered](#) Walter Scott, an unarmed Black man, in 2015 was [sentenced](#) to 20 years in prison in a civil rights lawsuit over the slaying after a bystander who filmed the shooting publicly released footage of the incident.

After decades of access to video evidencing institutional racism in state violence without accountability, another flashpoint occurred in 2014-2015 when a series of [videos exposed](#) police officers killing unarmed Black civilians. These murders, which included the killings of 12-year-old [Tamir Rice](#) in the US and 15-year-old [Alan Lima](#) in Brazil, led to the growth of [Black Lives Matter](#) and [similar](#) movements [around the world](#) focused on undercutting oppressive targeting of communities of African descent. Still, despite this outrage and months of demonstration, justice for many of these filmed police murders was never achieved. Even worse, despite overtures – such as an increase in police body cameras, which has done little to stem state security misconduct – police and other government actions seem to have only further entrenched systemic racism.

In the Spring of 2020, the filmed [murder](#) of unarmed Ahmaud Arbury by two men, one a former police officer, then the [videoed](#) police execution of George Floyd, focused attention, yet again, on state violence against people of African descent. COVID-19, which had been raging for months, had already exacerbated many of the structural issues that plague Black communities. In addition to highlighting access to healthcare problems, video [exposed](#) how communities of African descent were especially susceptible to the negative impacts of COVID-19 lockdowns, such as limited access to employment and education, and being [brutalized](#) in the enforcement of lockdown measures. The state murder of George Floyd in this context sparked global outrage.

Demonstrations against the state sponsored violence inflicted on Black communities, as well as other state sanctioned discrimination against people of African descent, took place in a [reported](#) 4,446 cities in dozens of countries from small islands like [Fiji](#) and [Bermuda](#), to ex-colonial occupiers like [Belgium](#), to war-torn [Syria](#) and occupied [Palestine](#). Many of these protests were met with [excessive](#) police force, the very actions being demonstrated against. Of critical concern was [violence](#) against those legally documenting the uprisings. Soon after movements began marching, [videos](#) surfaced of police taking targeted actions against journalists lawfully reporting on protests.

Those perpetrating this state violence, both against communities of African descent in their daily lives and protesters peacefully demonstrating for change in structurally racist institutions, have rarely faced reprimand or punishment. This comes from another layer of institutionally prejudicial support, supplanted on top of institutional anti-Blackness, that allows the state to manage narratives around police violence and legally protect those involved in it. For example, in addition to the troubling lack of transparency and accountability for police violence against communities of African descent, many of the cases of state violence against protesters earlier this year have [gone](#) uninvestigated, unprosecuted, undisciplined, or underwhelmingly disciplined.

This utter lack of accountability, undercutting any chance at meaningful change, continues, as it has in the past, to perpetuate state violence against communities of African descent. In the US, numerous [filmed](#) police shootings and killings of Black men have surfaced since the Spring of 2020. In October 2020, Nigeria's infamous Special Anti-Robbery Squad [shot](#) a young Black man and left him to die on the side of a road, sparking new, [global](#) anti-state violence [protests](#). Nigerian security forces' response to the protests were so violent and concerning that the International Criminal Court is [investigating](#) them. In France, the filmed [violent](#) dispersal of a

migrant camp and the police [beating](#) of Black music producer in his recording studio, both in Paris within days of each other at the end of November 2020, have also caused massive demonstrations against police abuse that are ongoing as of the drafting of this submission.

Today, it seems as if video of state violence enforcing structural racism, or video of byproducts of this structural racism, surface every second. Though this wealth of evidence is daunting and troubling, it is necessary. Without these visuals and [community-led](#) efforts to collect, preserve, archive, and advocate around these videos, the structural inequality communities of African descent face would continue without external recognition. With more of these videos, as disturbing as they may be, peoples of African descent will be better equipped to vindicate their rights. Now more than ever, the right to record must be protected and advanced. Doing so will allow the global reckoning we are facing to move forward with clear evidence of the injustices it must correct.

III. Legal Framework for the Right to Record

With the right to record's ability to shed light on systemic racism within state violence, and how that racism affects all elements of economic, social, and cultural rights, contextualized, it is necessary to understand the legal standards protecting the right.

A. International Legal Protections for the Right to Record

International law and human rights mechanisms protect the right to record. The right is most effectively encapsulated in the *jus cogens* right to freedom of expression, which includes the freedom to seek, receive, and impart information, enshrined at Article 19 of the [Universal Declaration of Human Rights](#) and Article 19(2) of the [International Covenant on Civil and Political Rights](#). Numerous regional legal documents also guarantee this right, such as the [European Convention on Human Rights](#) and the [African Charter on Human and Peoples' Rights](#). The right to record is related to but is distinct from freedom of press, which also finds its roots in freedom of expression guarantees but seeks to specifically protect journalists and their work.

Included in the right to record should be the right to document and share information through online assembly and expression, including [livestreaming and co-present storytelling](#), something that has grown in popularity in [protest movements](#) and become increasingly important during the COVID-19 pandemic. In a previous submission to the United Nations High Commissioner for Human Rights for the promotion and protection of human rights in the context of peaceful protests, WITNESS specifically [outlines](#) the utility of livestreaming and contemporaneous sharing and the necessity to reinforce legal protections around these free expression exercises.

The United Nations has recently begun to recognize and support the right to record. In 2015, the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Christof Heyns, [recognized](#) "citizens' right to record the police" in his report on the Use of Information and Communications Technologies to Secure the Right to Life. In 2016, Heyns, with the Special Rapporteur on Freedom of Peaceful Assembly, Maina Kiai, [stated](#) that "everyone ... shall enjoy the right to record an assembly, which includes the right to record the law enforcement operation The State should protect this right." In 2018, the United Nations Human Rights Council

passed a [resolution](#) recognizing the right to record and calling on states to protect those that document protests due to their “exposure and vulnerability.” In 2020, the United Nations Human Rights Committee issued [General Comment 37 on the Right of Peaceful Assembly](#), which holds that “[p]articipants, journalists and monitors also have the right to record law enforcement officials” during assemblies.

B. Domestic Legal Protections for the Right to Record

Domestically, the right to record is explicitly or implicitly guaranteed in many countries under freedom of expression protections; however, the right is consistently under attack. In the U.S., the right to record is relatively strong. The right is [recognized](#) as protected under the First Amendment of the US Constitution, which protects freedom of speech and freedom of the press when it is exercised to openly record police engaged in official activities.

In Brazil, it is [lawful](#) to record the police if they are on duty and police are not allowed to restrict this right. Many other South American countries have similar guarantees to the right to record, embedded in free expression protections, such as [Ecuador](#) and [Chile](#); however, courts have not extensively reinforced these rights. A [similar situation](#) exists in South Africa, where the right to record is guaranteed but not well protected with judicial support. Throughout Europe, the right to record is [seemingly](#) upheld and the European Court of Human Rights has [stated](#) that the presence of “watchdogs” during demonstrations is particularly important to hold authorities to account. In Asia, countries like [China](#) and [Malaysia](#) also claim to protect the right.

Unfortunately, despite these guarantees, state security forces around the globe, from Brazil to Belgium to Malaysia, summarily attack the right to record. These attacks, discussed in detail below, intimidate documenters and undermine the right. Even where the right is strongly reinforced, like in the US, it is common for police to seize recording devices or intimidate documenters. For example, in 2014, police stopped, tased, and arrested [Kianga Mwamba](#), the daughter of a police officer, after she began recording their arrest of another man. The police are even suspected of deleting Mwamba’s recording of the incident from her phone after taking her into custody.

Additionally, numerous countries have had, have, or are seeking to pass laws that undercut the right to record, for instance in the [US](#). In Spain, an infamous 2015 “Gag Law” [penalizes](#) the publication of images of police when such publication might endanger the personal safety of police or their families, jeopardize security operations, or threaten protected facilities with fines of up to €30,000. The most striking recent example of legislation to undercut the right to record, which is similar to Spain’s Gag Law, is the law France [recently](#) tried to pass that would have made it unlawful, with punishments of up to a year in prison and \$54,000 USD in fines, to share images of the police with the “obvious intention to harm.” This standard is incredibly ambiguous. The law is currently being rewritten after it was dropped in response to massive [demonstrations](#) across France. These assaults on the right to record have made it more necessary than ever to protect the right.

IV. The Right to Record to Deconstruct State Violence-Supported Systemic Racism

The right to record has contributed crucial video of a wide range of systemic abuses that target communities of African descent. Nowhere is this clearer than in video captured of state security violence against communities of color. Such state violence embeds and embraces structural racism. The right to record can go further than just identifying this racism, it can act to counter it by allowing Black communities to reclaim narratives around policing and compile actionable evidence for accountability.

The following discusses how the right to record can serve as a tool to counteract systemic racism through increased accountability by shifting narratives and producing effective evidence of police abuse. In particular it addresses filming the police in their daily activities and during protests. It also touches on police intimidation, police body cameras, and the ethical implications of filming and sharing videos of the police.

A. Filming Police in Daily Activities

The right to record allows communities of African descent to video police during their daily activities, allowing them to reclaim narratives around policing and create actionable evidence to seek out accountability. With regards to narrative shifts, the right to record allows oppressed communities the ability to tell their story. State security forces have a powerful narrative advantage over the communities they patrol. Policing is typically presented as a social service that protects all individuals equally from nefarious actors and allows people to peacefully enjoy their lives. States with strong rule of law mechanisms tend to build legal support for this notion. The sad reality is that this perception is not accurate. It is especially false in marginalized communities, including communities of African descent.

The right to record security forces in their daily activities is crucial for exposing the realities of racist, unjust policing. Often, communities of color can organize around the right to record and its power, creating volunteer corps to collect and archive footage of their lived experiences, for instance with [copwatch](#) projects. These videos, and the courageous individuals that choose to capture, amass, and maintain them, help show the disproportionate physical, verbal, and mental harassment, including baseless traffic stops, unwarranted searches, and criminalization of daily activities, that communities of color face. For example, [El Grito de Sunset Park](#), in New York City, is a volunteer community copwatch group that has documented localized police violence, intimidation, and harassment for 20 years. El Grito's footage serves as a catalog of abuses that helps illustrate broader patterns of misconduct and challenge the flawed "bad apple" narrative around policing.

Many of the videos discussed above, from the killing of George Floyd to the murder of the young man in Ughelli, Nigeria, were captured by Black community members pulling out their cameras while going about their daily lives. These videos allow individuals outside the communities impacted to peer into the lives of the community to see what is really occurring. When these videos are strategically used in pointed advocacy, especially from community-based organizations, or otherwise picked up by social media or mainstream news outlets, their ability to reshape narratives is even stronger. Ultimately, the right to record allows the world to see, understand, and empathize with communities of African descent.

The right to record police in their daily activities also allows for evidence to be compiled for accountability processes. As police enforce racist systems against Black communities, the systems, in turn, protect them. Legal structures usually offer security forces strong safeguards and shift burdens of proof. Prior to widespread access to video recording devices, this made challenging police action virtually impossible. Video has allowed for perpetrators of state violence to be identified and provided clear, direct evidence of misconduct. In accountability processes, this can cause monumental shifts. Also, video evidence can prove or corroborate security personnel's patterns of criminal conduct. This can be used in justice processes to implicate high ranking officials or entire security departments in wrongdoing, ideally sparking change at high levels and across sectors.

B. Filming Police in Protests

The right to record plays a crucial role in documenting public demonstrations and protests, allowing for counter-narratives and evidence of police misconduct. Narratives around public demonstrations are important, especially where violence occurs. The state benefits from being able to illustrate violence in demonstrations because it allows police, and the government, to crack down on community mobilization before it can gain momentum. Civilians within demonstrations can use film to show that they are peaceful, to illustrate when they are being unjustly attacked, and to emphasize the message of their movements, countering the accounts the state may propagate.

More importantly, video in demonstrations and protests can serve as evidence of police wrongdoing. Security forces often act aggressively to suppress public demonstrations, even in states with strong institutional support for freedom of association and expression. The protests in response to police violence that have occurred throughout the last year have resulted in countless injuries, many [serious](#), and dozens of deaths. In Nigeria alone, [at least](#) 56 people are reported to have been killed in anti-police brutality demonstrations. It is crucial, therefore, that evidence is collected of how security forces respond to public demonstrations. Video can serve a critical evidentiary role in identifying criminal officers and establishing illegal action. In fact, [numerous incidents](#) of police violence caught on film during the US protests this year led to immediate action against police officers.

C. Police Intimidation

Although usually embedded in national laws and protected by the widely accepted and recognized right to freedom of expression, the right to record is constantly under attack. State security forces fully understand the utility of the right in exposing their misconduct and therefore are often intent on undermining it. This can be done through [passing laws](#) that directly contradict existing rights to information and expression, as discussed above. It can also be done through [intimidation](#) or even by [seizing](#) and destroying cameras or footage. Even when security officials use seemingly noninvasive questioning or inquire into the personal information of bystanders filming incidents, this can deter the public. Such tactics are especially powerful when they are used against communities that police already terrorize, such as communities of African descent.

The state and its security forces also employ intimidation tactics through increased surveillance of the communities that they oppressively police. In fact, police often assert they have their own “right to record” civilians engaged in public, legal activities. Such assertions are excuses to surveil innocent people to intimidate them into acting in accordance with the police’s wishes. This coercive action erodes the principle of the civilian right to record by conflating civilians’ rights with state security enforcement policy and tactics.

D. The Myth of Police Body Cameras to Expose Wrongdoing

Civilian captured video of police violence and the ensuing public outrage has been met in recent years with calls for the increased use of police body cameras. This [touted](#) solution to police misconduct has inspired major support from police departments, especially in the [US](#) and Brazil. Unfortunately, the use of police body cameras has proven to actually do the opposite of offer evidence for realistic narratives around state violence and accountability.

Body cameras are riddled with flaws. For instance, they can be turned off, the footage they collect can be improperly or never reviewed, and when footage is collected and reviewed it can continue to be withheld from the public. All this allows police to maintain their power over accountability narratives and mechanisms. Perhaps most concerning, technology in police body cameras is developing in more intrusive ways that advance oppressive surveillance of communities.

The [more](#) appropriate solution for policing the police is civilians’ right to record. The right to record actually places the power of oversight in the hands of the civilians that face police abuse and are therefore best positioned to document it. Additionally, the massive financial investments in body cameras for police could be better utilized to directly support and empower communities impacted by police violence or in building mechanisms for accountability that are community controlled and implemented.

E. Ethics of Filming and Sharing

The right to record’s ability to expose and dismantle structures of injustice must always be measured against the immediate harm it can cause to the very communities it may help. The right to record invokes specific ethical considerations for both those capturing film of police violence and those sharing it.

With regards to capture, it is important to consider the victims of state violence that are being seen in the footage. Quintessential to choosing to use the right to record is the notion of “do no harm.” At its simplest, this requires, before deciding to film, an inquiry into the parties involved, the potential usage of the media, and the safety, dignity, and privacy of those it may impact. The right to record puts power in the hands of everyday civilians but that power should not be abused to jeopardize victims’ rights or to revictimizing them. Doing so could serve as a tool to support or protect the state’s racist actions. Additionally, while capturing film, an individual needs to consider their own rights and safety. Too often, those capturing video of state violence do not understand the prolonged, serious threats they may [face](#) simply for pressing record.

Sharing video of state violence also surfaces particular ethical considerations. The same “do no harm” principle, considering the victim as well as the potential threats to the original documenter, should be analyzed before sharing a video. Additionally, when sharing video, one must consider if what they are sharing is authentic – shows what it purports to show – and is not misleading. Sharing doctored or misleading video can harm victims of state security abuse or undermine those trying to share accurate information.

Sometimes, individuals are able to secure perpetrator captured footage of state violence, for instance from police body cameras. Sharing this footage invokes independent ethical considerations, most importantly whether or not sharing the footage perpetuates oppressive state security actions or narratives. This, in addition to the other considerations outlined above such as avoiding revictimization or jeopardizing victims’ rights, must be examined.

Finally, when sharing, attention should be paid to how something is shared. For instance, perhaps warning signs should be placed at the beginning of the video or in its description. Additionally, where a video is shared can be incredibly important. Sharing video through certain mediums or on certain platforms, such as social media platforms, can degrade the evidentiary value of the footage and undermine accountability processes. Whatever the sharing process, original files of the footage should always be kept in an unaltered and secure format and not physically shared with anyone except appropriate parties, such as lawyers.

V. Conclusion and Recommendations

Video of police misconduct, especially video communities afflicted by state security violence have captured exercising their right to record, can serve as critical evidence in accountability processes and can offer crucial counter-narratives. When marginalized communities are able to organize around and exercise their right to record, they are able to effectuate change. Video evidence of state security misconduct can create real accountability through identifying perpetrators of wrongdoing and providing actionable evidence of criminal activity. Similarly, video can counter state-controlled narratives and spaces by allowing people who are unaware of systemic state terrorism to view what life can be like within marginalized communities of color. The right to record is an absolutely essential tool to opposing state security enforced structural racism against communities of African descent.

For these reasons, and in consideration of the above discussion, WITNESS calls on the United Nations High Commissioner for Human Rights to:

- Recognize the systemic racism communities of African descent face around the globe;
- Acknowledge the role state security plays in developing, enforcing, and upholding racist structures that terrorize communities of African descent;
- Condemn state security’s widespread, systemic disenfranchisement of and discrimination against communities of African descent;
- Identify that the right to record plays a critical role in exposing structural injustices and systematic racism and that such exposure can lead to factual narratives around oppression and create a foundation for accountability processes and solutions for race-based abuse and inequities;

- Call on states to uphold and explicitly enforce the right to record through legislation, directives, and training of security personnel as well as through public acknowledgement of and support for the right;
- Request states utilize civilian secured video in accountability and justice processes that seek to penalize unlawful state security actions and dismantle systemic racism;
- Assert that there is a universal right to record within international law that is enshrined in the widely recognized right to free expression and that violating this entitlement is a human rights abuse.