SUBMISSION BY THE CENTRO DE PENSAMIENTO LUIS EDUARDO MORENO (CEPLEM)

Draft General Comment No. 38 of the Human Rights Committee

(Article 22: Right to Freedom of Association)

Background

1. The **Centro de Pensamiento Luis Eduardo Moreno (CEPLEM), Colombia,** welcomes the opportunity to submit, on an independent basis, its contribution to the Human Rights Committee's call for input on the draft General Comment No. 38 on Article 22 of the International Covenant on Civil and Political Rights (ICCPR).

2. This submission puts forward two specific language proposals concerning the interlinkage between the right to freedom of association (art. 22) and the right to freedom of religion or belief (art. 18), building on the connection between these rights already acknowledged in paragraph 2 of the draft General Comment.

3. The proposals address two forms of interference that, although frequently presented as neutral regulatory or administrative measures, in practice restrict or discourage the collective exercise of religion or belief and disproportionately affect religious or belief minorities and unregistered communities: (i) urban planning, land-use and administrative regulations restricting the establishment, acquisition or use of places of worship; and (ii) surveillance and arbitrary inspection of religious or belief communities.

4. Accordingly, CEPLEM respectfully submits the following amendments to paragraphs 33 and 30 of the draft General Comment, together with the rationale supporting each proposal, for the Committee's consideration.

I. Urban planning regulations and places of worship

Amend paragraph 33 as follows:

33. The positive obligations under article 22 require States Parties to create an enabling environment for the enjoyment and exercise of the right to freedom of association that covers the whole life cycle of an association. Creating that environment requires a wide range of measures to

facilitate the implementation of the right, including with respect to registration, policies on tax incentives and tax exemptions for associations, the search for and access to funding, access to and preservation of records and archives, and the manner in which an association carries out its activities, including in relation to the exercise of other rights, such as the right to enjoy one's own culture in community with others, to profess and practise one's own religion, or to use one's own language; freedom of movement; freedom of expression; or the right to privacy and to freedom of peaceful assembly. **States Parties must refrain from adopting and applying urban planning, land-use and administrative regulations that unjustifiably restrict, de jure or de facto, the ability of religious associations or communities to establish, acquire, lease, maintain or use places of assembly and worship necessary for the exercise of their activities, particularly where such measures have a differentiated and disproportionate impact on minority religious communities.**

Rationale: The Committee has recognized, in its General Comment No. 22 (1993), that the concept of worship protected under article 18 of the Covenant extends to ritual and ceremonial acts, as well as to practices integral to such acts, expressly including the building of places of worship[1]. The material impossibility of building, acquiring or maintaining a place of worship in practice negatively affects in practice the individual and collective right to manifest religion or belief (art. 18) and its associational dimension (art. 22), since organized religious life requires, in the vast majority of cases, a stable physical space. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities expressly recognizes the right of minorities to establish and maintain their own associations[2], a right that would be rendered illusory if local authorities could, through facially neutral instruments such as zoning or urban planning, effectively exclude a religious community from the territory or subject it to disproportionate burdens not applied to other faiths. Practice shows that such restrictions (denials of permits, minimum-distance requirements between places of worship, minimum construction area requirements, disproportionate requirements concerning the internal layout of places of worship, exclusion of places of worship from certain zones, or the application of more onerous rules to some

[1] Human Rights Committee, 'General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)' (30 July 1993) UN Doc CCPR/C/21/Rev.1/Add.4, para. 4.
[2] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (adopted 18 December 1992) UNGA Res 47/135, art. 2(4).

denominations than to others) disproportionately affect religious and belief minorities, and often amount to an indirect form of discrimination incompatible with articles 2, 3, 18, 22 and 26 of the Covenant. The proposal does not seek to exempt religious associations from generally applicable, non-discriminatory planning rules (for example, on structural safety or accessibility), but rather to ensure that such rules are applied objectively, transparently and without discrimination, and are not used as aninstrument for restricting the right to freedom of association in practice of religious communities, specially of minority or unregistered religious cummunities.

II. Arbitrary or unjustified surveillance and inspection of religious or belief communities

Amend paragraph 30 as follows:

Applied to the right to freedom of association, the obligation to respect means that States Parties must refrain from restricting the right de jure or de facto in a manner incompatible with article 22, paragraph 2 (see section V below). Accordingly, prohibited measures include the arbitrary denial of registration of an association, the dissolution or prohibition of an association, the imposition of a travel ban on members of the association or the requirement that they seek travel authorization, the withdrawal of nationality from members of the association, the cancellation of their passports and identity documents, surveillance, including online, of the organization's activities, **arbitrary or unjustified inspections targeting associations, including religious or belief communities,** the infiltration of an association by police officers or undercover intelligence agents, **including in places of worship, religious ceremonies, or the governing bodies of religious or belief communities,** police raids and searches of private homes, reprisals and harassment against members of the association, including through administrative procedures and requirements, misuse of counter-terrorism and anti-money-laundering measures, imposition of restrictive and onerous tax or funding regulations on associations, criminalization of the activities or membership of an association or of legal aid associations, and the instrumentalization of defamation proceedings and other means of "strategic lawsuits against public participation" (SLAPPs). Such measures prevent the full realization of the right and may have a chilling effect on its exercise.

Rationale: Disproportionate or discriminatory State surveillance of religious or belief communities simultaneously interferes with the right to freedom of association (art. 22) and the right to privacy (art. 17), read together with the prohibition of coercion that would impair the

freedom to have or adopt a religion or belief of one's choice (art. 18, para. 2)[3]. As the Committee has noted, the coercion prohibited under article 18, paragraph 2, includes not only the threat of physical force or penal sanctions, but also policies or practices having the same intention or effect on believers and non-believers alike[4]. The systematic surveillance of religious services, the infiltration of agents into the governing bodies of faith communities, and the interception of their communications produce precisely such a chilling effect on the collective exercise of religion or belief, and affect minority or unregistered communities with particular severity, as these are frequently subject to suspicion or stigmatization by the authorities. It may also be used as an instrument of persecution to arbitrarily restrict the participation of religious or belief communities in public life and in political affairs.

A distinct but equally serious problem arises where the law itself empowers the authority responsible for religious affairs to enter places of worship, premises or archives of religious or belief communities without prior notice or a judicial warrant, or to review their financial and organizational records at any time. Such a power does not meet the legality requirement under article 22, paragraph 2, as developed in paragraph 43 of the draft General Comment itself, which requires that the legal basis for any restriction be clear, precise and accessible, and not depend on broad or vague criteria or on the unfettered discretion of the authority.

The absence of prior notice, of objective and verifiable criteria, and of effective judicial oversight (arts. 2(3) and 14 of the Covenant) turns the power of surprise inspection into a potentially arbitrary instrument with a direct chilling effect on the collective exercise of religion or belief, regardless of whether that power is formally framed as part of a general regime of inspection, oversight and control of a tax or administrative nature. Comparative practice confirms the relevance of this safeguard: in 2025, a bill was introduced in the Congress of the Republic of Colombia that would have granted the Ministry of the Interior broad powers of inspection, oversight and control over religious entities, including the review of their financial and organizational records and the power to suspend or cancel their legal status; the bill was withdrawn by its own sponsor weeks later, following opposition from numerous religious communities and civil society organizations, which

[3] International Covenant on Civil and Political Rights, arts. 17, 18(2) and 22; Human Rights Committee, 'General Comment No. 16: Article 17 (Right to Privacy)' (8 April 1988) UN Doc HRI/GEN/1/Rev.1.
[4] Human Rights Committee, General Comment No. 22, supra note 1, para. 5.

warned of the risk of undue interference with their autonomy[5]. Making this dual safeguard (against surveillance and against inspection conducted without safeguards) explicit in the General Comment would reinforce the protections already recognized in paragraph 30 of the draft with respect to associations in general, and would preclude any reading that excludes or minimizes its application to the religious sphere.

[5] Colombia, Bill No. 057 of 2025 (Senate of the Republic), 'Establishing the regime of inspection, oversight and control over religious entities in Colombia and issuing other provisions', introduced on 30 July 2025 and withdrawn by its sponsor on 26 August 2025, following opposition expressed by religious communities and civil society organizations.