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To the attention of Ms Hélène Tigroudja

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Re: Input for the Draft General Comment No. 38 on Article 22 (Freedom of Association) of the International Covenant on Civil and Political Rights

Introduction

1. The European Prison Litigation Network (EPLN) submits this contribution in response to the call for input issued by the UN Human Rights Committee for the preparation of its General Comment on freedom of association. As a network bringing together 30 civil society organisations active in 20 European countries, EPLN has a consolidated and practice-based perspective on the constraints faced by associations working in closed environments and on the factors that influence the effectiveness of their efforts to protect prisoners' rights.
2. EPLN is a French-based international non-governmental organisation that promotes and defends the fundamental rights of persons deprived of liberty in Europe and works to reduce the use of imprisonment. It conducts research and legal analysis on legislative

developments affecting prisoners' rights and prison conditions and holds a participatory status with the Council of Europe.

3. The purpose of the present communication is to argue that, in view of the specific role exercised, in a democratic society governed by the rule of law, by associations whose mandate is to document the situation in places of deprivation of liberty and/or to defend the rights of detained persons, including before courts, and in light of the particular attacks to they face, such associations must benefit from specific protection under Article 22 of the Covenant. As such, they must be the subject of specific consideration and dedicated developments in the General Comment that the Committee is called upon to elaborate.

The special role of prison-focused organisations in a democratic society

4. First and foremost, NGOs play a central role in the protection of individuals in detention. This is particularly evident in their efforts to prevent and eradicate torture, as recalled by the United Nations General Assembly.¹ Persons deprived of liberty are among the most vulnerable members of society. They are exposed to heightened risks of torture and ill-treatment, arbitrary restrictions, denial of healthcare, discrimination and abuse of power, while often lacking effective avenues to complain or seek redress. In many settings, detainees face reprisals for speaking out, lack confidentiality, or are entirely cut off from the outside world. Without independent associations, violations remain invisible, unrecorded and unremedied. Associations working on detention contribute directly to the prevention of torture and the fight against impunity, the protection of life and dignity, access to justice, and the effectiveness of remedies.
5. These considerations, therefore, call for a contextualised interpretation of the provisions of Article 22 of the Covenant, taking into account the fact that the work of associations is not peripheral but integral to the effective implementation of the Covenant as a whole. Freedom of association is intrinsically linked not only to Article 22, but also to Articles 2(3), 6, 7, 9, 10, 14, 17 and 19 of the Covenant.
6. A second set of considerations argues in favour of developing a specific protective framework. International law relating to detention is underpinned by the consideration that situations involving total dependence on public authorities in places removed from public scrutiny carry a potential for arbitrariness and unlawful violence. This is reflected, *inter alia*, in various presumptions developed by international courts, committees and monitoring bodies, a lower threshold of seriousness for finding certain violations, and an

¹ [A/RES/64/153](#), para. 32.

obligation – specific to the field of deprivation of liberty – to establish independent mechanisms for monitoring the actions of the administration vis-à-vis detained persons.

7. Given the importance of the interests at stake, foremost among them the right to respect for human dignity and the prohibition of torture, it is necessary to adopt a systemic interpretation of Article 22, that is, to interpret its provisions in the light of their normative environment. In other words, the enhanced specific protection accorded to detained persons under international law must be reflected in the protection afforded to the right to freedom of association in this area. This environment stems in particular from the interpretation given by the Committee to Articles 7 and 10 of the Covenant, as well as from the relevant jurisprudence of other treaty bodies, notably the Committee Against Torture, the case-law of the European Court of Human Rights, the practice of the Subcommittee on Prevention of Torture and of the European Committee for the Prevention of Torture, and relevant international recommendations.
8. Moreover, beyond their human-rights action in individual cases, civil society organisations play an essential role in shaping penal policies, to the extent that their intervention constitutes a distinct democratic interest. This role is deeply rooted in the history of modern penalty. From a socio-historical perspective, critical positions taken by civil society groups – whatever their form – regarding the functioning of prisons emerged contemporaneously with the emergence of modern prisons as a system of penal institutions in the eighteenth century. The appalled descriptions of prison conditions articulated by Enlightenment philanthropic movements thus helped shape the conception of the modern prison, as a step forward against the arbitrariness of punishment, representing a decisive advance for humanity. Similarly, nineteenth-century philanthropic societies fuelled the continually renewed processes of reform of their internal organisation.
9. Taken together, all these functions mean that organisations active in the prison context are particularly exposed to authoritarian tendencies, the securitisation of governance, and the instrumentalisation of emergency narratives, taking the form of expansion of legal, administrative and informal measures restricting the work of associations. While these trends affect civil society actors in general, they have particularly acute consequences for organisations working in closed or hard-to-access environments, such as places of detention, where independent oversight is both most needed and most contested.

Right of association of persons deprived of liberty

10. The provisions of Article 22 do not contain any exclusion clause removing persons deprived of liberty from the scope of the right to freedom of association. Admittedly, the

status of detainee and the specific duties incumbent upon prison services may require an adaptation of associative or trade-union activity, implying that restrictions – even significant ones – may be imposed on the modes of action of such groups. However, such restrictions must not prevent persons deprived of liberty from exercising their general right to freedom of association in order to defend their professional and moral interests. A blanket prohibition preventing detainees from forming an association or from joining one must be regarded as affecting the very essence of their freedom of association.

11. International standards encourage the participation of persons deprived of liberty in determining certain aspects of life in detention or of certain internal organisational arrangements (see in this regard Rule 50 of the European Prison Rules). These principles are reflected in certain domestic legal frameworks.
12. Apart from these specific aspects concerning forms of cooperation between the administration and prisoners' collectives, States generally do not have legislation specifically addressing the issue of the formation of associations by persons deprived of liberty or their membership of existing associations. Prohibitions on exercising certain associative functions may be linked to criminal records.
13. Scattered examples of prisoners' associations nevertheless exist across the European continent, such as the Prisoners' Union / National Organisation (GG/BO), an association without legal personality formed in a prison in Germany in 2016. The Bulgarian Prisoners' Rehabilitation Association (B.P.R.A.), for its part, was formally registered on 26 July 2012, with the Sofia City Court in Bulgaria, at the initiative of prisoners from Sofia Prison.

Vulnerability of associations working in closed environments

14. Unlike most other civil society actors, associations monitoring detention operate in spaces where the balance of power is overwhelmingly skewed in favour of the State. Access to these institutions is controlled by authorities, information is tightly managed, and public scrutiny is extremely limited.
15. In our and our partners' experience, States often invoke security, public order or institutional sensitivity as blanket justifications to restrict access, limit activities, or criminalise documentation of abuses in these settings. Such arguments are frequently used to deny entry to facilities, to impose intrusive supervision during visits, to prohibit confidential interviews with detainees, or to restrict the use of recording devices and other basic tools necessary for effective monitoring.

16. At the same time, associations and their members are exposed to heightened risks of reprisals. These may include administrative harassment, arbitrary inspections, burdensome reporting requirements, withdrawal of registration, freezing of bank accounts, stigmatising public rhetoric, surveillance, intimidation, raids and searches, criminal prosecution, or even physical violence. Detainees who cooperate with civil society monitors may also face retaliation, further undermining the possibility of independent oversight.²
17. These dynamics create a chilling effect that goes far beyond individual cases. They weaken networks, fragment civil society, reduce overall expertise, and disproportionately affect smaller, regional or grassroots organisations. Over time, they result in the near-elimination of independent monitoring in precisely those places where it is most urgently required.

Restrictions, national security and states of emergency

18. Article 22(2) permits restrictions on freedom of association only if they are prescribed by law and necessary in a democratic society for one of the exhaustively listed legitimate aims. As the Committee has consistently emphasised in its jurisprudence and General Comments, this restriction regime must be interpreted strictly. The burden lies on the State to demonstrate legality, necessity, proportionality and non-discrimination in each individual case.
19. In the detention context, inherent State sensitivity cannot serve as a general justification for suppressing associational activity. The mere fact that an association's work is critical of authorities, exposes abuse, or challenges official narratives does not render it a threat to national security or public order. On the contrary, such work is a core component of democratic accountability.
20. Even in situations of public emergency, armed conflict, occupation or other crises, freedom of association does not disappear. Although Article 22 is not listed among the non-derogable rights, the Committee has made clear that derogations are subject to strict conditions and must be limited to what is strictly required by the exigencies of the situation.

² See, for instance: Novaya Gazeta EU, "Octogenarian Russian human rights activist to appeal fine for 'incitement to terrorism'", 6 June 2025, available at: <https://novayagazeta.eu/articles/2025/06/06/octogenarian-russian-human-rights-activist-to-appeal-fine-for-incitement-to-terrorism-en-news>. Meduza, "В Иркутске и Йошкар-Оле пришли с обысками к защитникам прав заключенных" (In Irkutsk and Yoshkar-Ola, authorities conducted searches of the homes of prisoners' rights defenders), 8 June 2025, available at: <https://meduza.io/news/2025/07/08/v-irkutske-prishli-s-obyskom-k-svyatoslavu-hromenkovu-zaschischavshemu-prava-postradavshih-ot-pytok-zaklyuchennyh>; OHCHR, "Russia must drop charges against human rights defender Alexey Sokolov for using Facebook logo: UN Special Rapporteurs", 8 January 2025, available at: <https://www.ohchr.org/en/statements-and-speeches/2025/01/russia-must-drop-charges-against-human-rights-defender-alexey>.

In our experience, emergency contexts are often used to justify long-term or permanent restrictions on civil society, including in the prison system, despite the heightened risks faced by detainees in such periods.

21. In our experience, restrictions on digital tools, bans on recording devices, and State monopolies over video and medical records in detention facilities further limit the ability of associations to collect evidence of torture and ill-treatment. When combined with the absence of independent access to such material, these practices create structural impunity.
22. Particular attention must be paid to situations of occupation on European territory, such as the Ukrainian territories under Russian occupation, Transnistria, Abkhazia and South Ossetia. These regions demonstrate the persistent impossibility of exercising any form of associative activity. In such contexts, prisons are completely sealed off, even more so than other public institutions, and constitute legal black holes to varying degrees, often amounting to places of incommunicado detention. Any form of associative activity related to prisons is impossible in these contexts due to the immediate risks posed by such engagement.

Positive obligations: enabling and protecting associational activity

23. Article 22 entails not only negative obligations of non-interference, but also positive obligations to respect, protect, facilitate and enable the effective exercise of freedom of association. For organisations working in closed environments, these positive obligations are particularly concrete and practical
24. They include, in particular, ensuring meaningful access to places of detention; guaranteeing confidential communication with detainees; protecting both monitors and detainees from reprisals; and providing access to information necessary for their work. Restrictions on funding, especially where associations depend on external or foreign sources to operate independently, can be as effective in silencing civil society as direct prohibitions and should therefore be subject to strict scrutiny.
25. The UN Committee against Torture is vocal about the states' obligation to cooperate closely with NGOs by providing them with free access to places of detention, so that such facilities can be independently monitored.³
26. Although not all States are parties to the Optional Protocol to the Convention against Torture (OPCAT), the principles developed under that framework – such as unannounced

³ CAT/C/MDG/CO/1, para. 10(h).

visits, unrestricted access, confidentiality and independence – reflect minimum standards required to make freedom of association meaningful in the detention context.

27. National experiences demonstrate the very high effectiveness of associations' action in this type of intervention. For instance, based on the provisions of Article 24 of the Criminal Executive Code of Ukraine, a particularly effective prison oversight mechanism has been established, combining parliamentary oversight and civil society participation. In Moldova, associations have also effectively and meaningfully exercised this right.
28. It is further essential that associations whose work is related to prison have effective consultation and dialogue mechanisms within public policy-making processes related to their mandate.⁴ The contribution of NGOs to the formulation of public policy can greatly help to identify and develop solutions to many structural problems faced by penitentiary systems. The consultation process must be open and transparent and must, in terms of timing and organisation, allow for the meaningful participation of the organisations concerned, in other words, participation capable of genuinely influencing decision-making processes. It frequently happens that consultations are conducted in a purely formal manner, without any real intention of enabling active participation by civil society.
29. Associations should be able to exercise their right to seek and obtain funding without being subjected to unjustified restrictions.⁵ Associations defending the rights of persons deprived of liberty are particularly affected by various measures aimed at combating so-called foreign influence, which result in major administrative constraints or even in prohibitions on receiving foreign funding. Indeed, the defence of the rights of persons deprived of liberty is largely excluded from government funding schemes, which leads such organisations to rely on foreign funding, whether public or private.
30. Several international human rights instruments increasingly recognise that the funding of non-governmental organisations constitutes an essential guarantee for the effective protection of rights. The Istanbul Convention, for instance, requires States to recognise,

⁴ Such inclusive process builds upon the international standards established in this area, notably those set out in Human Rights Council Resolutions 24/21 (2013) on "Civil society space: creating and maintaining, in law and in practice, a safe and enabling environment", 32/31 (2016) on "Civil society space", and 38/12 (2018) on "Civil society space: engagement with international and regional organizations", as well as the Recommendation CM/Rec(2007)14 of the Committee of Ministers of the Council of Europe to member states on the legal status of non-governmental organisations in Europe. See also Communication of EU Parliament, the Council, the EESC and the Committee of the Regions "The Roots of Democracy and Sustainable Development: Europe's engagement with Civil Society in external relations" (COM/2012/0492).

⁵ General principles and guidelines on ensuring the right of civil society organizations to have access to resources (see A/HRC/53/38/Add.4)

encourage and support the work of non-governmental organisations and civil society active in the prevention of and fight against violence against women, and to allocate adequate financial and human resources to that end (Articles 8 and 9). In this respect, organisations operating in the prison context display strong parallels with those working in the protection of women, both in terms of the protective function they perform and their contribution to public debate and the development of national policies.

Discrimination and stigmatisation

31. Restrictions on freedom of association do not affect all actors equally. Women human rights defenders, minority groups, migrants, persons with disabilities, people living in poverty, and those working on politically sensitive issues – such as detention, torture, corruption or armed conflict – face compounded risks. Stigmatising narratives portraying associations as “foreign”, “unpatriotic” or “threats to security” contribute to social hostility and legitimise repression.
32. Read in conjunction with Articles 2, 3 and 26 of the Covenant, Article 22 requires States to ensure real and effective equality in the enjoyment of associational rights. This includes addressing structural and historical discrimination, dismantling stereotypes, and refraining from legal or administrative frameworks that disproportionately target certain groups or areas of work.
33. Regarding funding, in its practical aspect, organisations working in prisons are affected by forms of discrimination similar to those observed in the field of assistance to migrants, namely exclusion from public funding, particularly that originating from intergovernmental international organisations. In several contexts, such practices systematically disadvantage independent civil society organisations in favour of governmental or para-governmental actors. The Council of Europe's Council of Experts on NGO Law has found that, in several European states, NGOs active in the defence of the rights of migrants and refugees are subject to deliberate restrictions on access to public funding, including EU funding, with governments seeking to redirect such funds towards state or para-state structures. It also notes that these NGOs are exposed to strategies of stigmatisation and negative public discourse, which undermine their ability to attract private funding and weaken their role as a democratic counter-power.⁶ A similar phenomenon exists in the prison context, albeit in a more insidious form, leading to funding being channelled towards governmental organisations, both national and international,

⁶ Stigmatisation of non-governmental organisations in Europe, CONF/EXP(2024)1, 20 mars 2024, par. 147, 148.

rather than towards associations deemed too critical. Prisons have become a preferred setting for training programmes and technical cooperation initiatives purportedly aimed at transferring expertise, yet in which critical discourse is sidelined, resulting in an approach that addresses only the surface of the problems and lacks any real transformative capacity.

Implications for the right to an effective remedy

34. Freedom of association is also inseparable from the right to an effective remedy under Article 2(3) of the Covenant. Where associations are prevented from operating, victims of human rights violations – particularly detainees – are deprived of access to legal aid, documentation, advocacy and international protection mechanisms. The weakening or elimination of civil society thus has direct and often irreversible consequences for accountability and redress.
35. Conversely, it should be emphasised that legal frameworks which broadly recognise the locus standi of associations to defend the rights of persons deprived of liberty in court have proven effective in rapidly addressing the root causes of fundamental rights violations, owing to the early intervention of NGOs, their technical capacity to act, and their ability to shield detainees from reprisals. This is particularly the case with litigation before the administrative courts in France.

Suggested directions for the General Comment

36. In light of the above, the Committee may wish to consider explicitly clarifying in General Comment No. 38 that:
 - Associations working on the rights of persons deprived of liberty fall squarely within the core protection of Article 22. Their activities – monitoring detention conditions, providing legal assistance, documenting abuses, and engaging with national and international mechanisms – are legitimate forms of associational activity that enjoy heightened protection due to the vulnerability of their beneficiaries.
 - Restrictions on freedom of association in closed environments require particularly strict scrutiny. States should not rely on abstract or generalised references to security, institutional order, or sensitivity of detention facilities. Any limitation must be exceptional, demonstrably necessary and proportionate, time-bound, and subject to effective judicial review.
 - The Covenant does not contain any provision excluding the prison population from the scope of Article 22. As the theory of implied limitations no longer has a place in

international law, persons deprived of liberty must be regarded as holders of the rights guaranteed. While their specific circumstances may justify certain limitations, such restrictions must not impair the very essence of the right.

- Article 22 entails concrete positive obligations. These include facilitating meaningful access to places of detention, ensuring confidential communication between associations and detainees, protecting both from reprisals, and guaranteeing access to information essential for independent monitoring. The absence of such enabling conditions may in itself amount to an interference with freedom of association.
- The Committee may wish to emphasise that cumulative or indirect measures – such as excessive administrative burdens, funding restrictions, surveillance, stigmatisation, or repeated inspections – can violate Article 22 even where no single measure appears decisive in isolation.
- Associations working in prisons must not be discriminated against in access to funding, in particular with a view to sidelining critical discourse. Moreover, in light of both the stigma attached to the prison population and the essential role played by associations in ensuring the effective protection of detainees' rights and in sustaining democratic debate on penal and penitentiary policies, provisions addressing their funding should be expressly considered, by analogy with the Istanbul Convention, which recognises the need to support organisations combating violence against women and domestic violence.
- Finally, the General Comment could reaffirm that freedom of association must be interpreted in conjunction with the right to an effective remedy. Where associations are prevented from operating, detainees are effectively deprived of access to justice and protection, undermining the Covenant's system as a whole.

Conclusion

37. Associations working on the rights of persons deprived of liberty are indispensable to the protection of human dignity, the prevention of torture and ill-treatment, and the functioning of democratic societies. Their particular vulnerability in closed environments calls for heightened protection and clear guidance from the Human Rights Committee.
38. General Comment No. 38 offers a critical opportunity to articulate a robust, reality-based interpretation of Article 22 that recognises both the central role of civil society and the specific challenges it faces today. By explicitly addressing access to closed environments, protection against reprisals, funding restrictions, and discrimination, as well as the link

with the right to the effective remedy, the Committee can significantly strengthen the practical implementation of freedom of association under the Covenant.

39. We respectfully encourage the Committee to integrate these elements into the forthcoming General Comment and keep them at its disposal for further engagement and clarification.
40. Associations working in detention settings operate at the frontline of human rights protection. Their marginalisation or suppression weakens safeguards against torture and ill-treatment and erodes the rule of law. A clear, practice-oriented interpretation of Article 22 in General Comment No. 38 would provide essential guidance to States and contribute significantly to reversing the global trend of shrinking civic space in closed environments.

Respectfully submitted.