



**FREEDOM OF RELIGION
UNDER ATTACK
IN UKRAINE**



**A WHITE PAPER ON THE UKRAINIAN
ORTHODOX CHURCH PREPARED BY ROBERT
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*This White Paper was prepared by the law firm of Amsterdam & Partners LLP
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Table of Contents

EXECUTIVE SUMMARY	i
I. THE ORTHODOX CHURCH IN UKRAINE	1
A. Orthodox Christianity in Ukraine.....	1
B. The Political Decision to Request Autocephaly.....	2
C. The UOC as a Self-Governing Church	4
D. Separation from Moscow Patriarchate.....	5
II. OPPRESSIVE MEASURES AGAINST THE UOC	9
A. Ukraine’s Crackdown on the UOC.....	9
B. Sanctions against UOC Members and Clergy	12
C. Criminal charges and jailing of UOC bishops	13
III. LEGAL GUARANTEES OF THE FREEDOM OF RELIGION	19
A. The International Legal Framework	19
B. The Ukrainian Constitutional Framework	21
D. International condemnation of Ukraine’s attacks on the UOC	21
E. The dangerous precedent of collective punishment.....	22
IV. CONCLUSION	25

EXECUTIVE SUMMARY

Religious freedom is under attack in Ukraine. Institutions such as the office of the president, the Security Service of Ukraine (“SBU”), and the courts are working together to restrict, if not outlaw, the Ukrainian Orthodox Church (“UOC”) which has been the historic home of Ukrainian Orthodoxy for hundreds of years. In fact, there is legislation currently pending in the Verkhovna Rada, Ukraine’s Parliament, to ban the UOC outright, which passed a first reading by a wide margin on October 19, 2023 and is likely to become law imminently. Enjoying the benefit of unprecedented diplomatic financial and military support from the West, these institutions are mirroring some of the worst traits of Russian and Soviet history in targeting the Church and its members, alleging “plots” and conspiracies that bear no semblance to the reality on the ground.

This white paper highlights the perilous state of religious freedom in Ukraine as well as the overall threat to rule of law for which this campaign against the UOC is emblematic. We urge readers to contact those governments providing financial support and military aid to remind Ukraine of its obligations under its own constitution, as well as international treaties to protect religious freedom.

The dangerous threat to religious freedom in Ukraine has its origins in the state-sponsored 2019 recognition of a new Orthodox Church – the Orthodox Church in Ukraine

(“OCU”) – backed by the rogue support of the Ecumenical Patriarchate of Constantinople. This led to a major split in Ukrainian Orthodoxy between the long-standing UOC, with historic ties to the Russian Orthodox Church (“ROC”), and the newly created OCU, with strong support from the government of President Petro Poroshenko, in office from 2014-2019.

At the start of Russia’s invasion of Ukraine in 2022, the UOC’s leadership—despite its historic ties to the Moscow Patriarchate—condemned Russia’s actions and began the process of separating itself from the Russian Orthodox Church, with which it was linked. In May 2022, the UOC officially separated from the ROC by amending its constitution. The UOC, which has a considerable presence throughout Europe, has also played an important role in aiding Ukrainian refugees fleeing conflict. The OCU, by contrast, is prevented under the terms of its autocephalous status granted by Constantinople from maintaining a presence outside of Ukraine.

The Ukrainian government appointed a commission to analyze the UOC’s links with the ROC, but the Commission lacked independence and its investigation was plagued by irregularities. While the Commission found that a complete separation between the UOC and the ROC had not taken place, this finding is not based on an independent analysis and is likely biased by internal Church politics. Specifically, the Commission’s “experts” were not

independent and included members of the state church, the OCU.

Despite the UOC's historic connections to the Moscow Patriarchate, the UOC has supported Kyiv's independence, backed the Ukrainian government's war efforts, and criticized Moscow's invasion. Nevertheless, the Ukrainian authorities have accused the UOC of collaborating with the Russian Federation and have used such allegations to justify repression of the faith and institutions of the church. The Ukrainian government's attacks on the UOC, its leadership, and its members are a grave violation of the freedom of religion, guaranteed in both the Ukrainian Constitution and the Universal Declaration of Human Rights.

Several UOC clerics have been jailed and subjected to polygraph questioning, among other measures. Dozens of UOC clerics have been sanctioned – a process that operates outside the courts and results in the freezing, and sometimes even seizure, of assets. Criminal charges against several UOC Metropolitans threaten long jail sentences on vague, Orwellian charges based on their exercise of free speech relating to intra-Orthodox religious matters under the guise of national security. In some cases, there are strong signs of evi-

dence planting; in all of the pending criminal cases against UOC Metropolitans, the alleged 'crimes' and farcical evidence would not even reach a court of law in a country with an independent judiciary and a strong tradition of the rule of law.

Since the invasion commenced, the Ukrainian government have increased its attacks on the institutions of the UOC. In December 2022, President Zelensky signed a decree "making it impossible" for religious organizations "affiliated with centers of influence in the Russian Federation" from operating in Ukraine. In April 2023, the Ukrainian government attempted to expel the UOC from the Kyiv Pechersk-Lavra, a UNESCO World Heritage Site and one of the holiest places in Orthodox Christianity, by unilaterally terminating a lease agreement. As noted above, the Verkhovna Rada, passed on the first reading legislation that would ban the UOC and is likely to imminently become law following a second reading in the coming weeks or months. In March and October 2023 reports by the United Nations High Commissioner for Human Rights ("**OHCHR**") raised concerns about religious freedom and rule of law in the government's crackdown against the UOC.

I. THE ORTHODOX CHURCH IN UKRAINE

A. ORTHODOX CHRISTIANITY IN UKRAINE

The global Orthodox Church is a family of self-governing churches, which is comprised of four ancient Patriarchates and several autocephalous churches, one of which is the ROC. There is no equivalent position in Orthodoxy to the Pope in the Roman Catholic Church, and although the Patriarch of Constantinople is accorded a special honor, his position is more analogous to that of the Archbishop of Canterbury in the Anglican communion. He does not have the right to interfere in the internal affairs of the other Churches. While each Church in the communion is independent, matters of faith and practice are resolved on a conciliar basis.¹

In Ukraine, Orthodox Christianity has a long and contested history, which dates back to the times of Kyivan Rus. It became the dominant religious confession after the conversion of Prince Volodymyr (Vladimir) in the late tenth century, although historical records suggest there were communities of believers before this time.² The institutional foundations of the Church, administered as a province of the Patriarchate of Constantinople, were established in the eleventh century, and centered on St Sophia's Cathedral and the Kyiv-Pechersk Lavra cave monastery. Not only did the latter influence the development of Orthodox monasticism in Rus, but it gifted

Orthodoxy two of its greatest saints – Antony and Theodosius – whose relics transformed the complex into a major site of pilgrimage.³

It is critical to understand that the lineage of the Church from this time is fundamental to the concept of Apostolic succession. This traditional view emphasizes the linearity of power and authority tracing back to the authority given to the twelve Apostles by Jesus Christ. A canonical church therefore derives its authority from this unbroken line of succession down to the current bishops. "In each location a bishop, in direct succession to his predecessors, is surrounded by his priests and deacons, whose authority as ministers of the sacraments and teachers of the gospel encounter comes through the charismatic preservation of apostolic heritage and mission."⁴ Non-canonical churches are not viewed by global Orthodoxy to have apostolic succession and are considered schismatic.

The fortunes of Kyivan Rus' changed as other competing city states grew in prominence in the twelfth and thirteenth centuries. Two events had a critical impact on Orthodox Christianity in the medieval era: (i) the sack of Kyiv by the Mongols in 1240 and (ii) the rise of Lithuanian suzerainty, and later, control by the Poland-Lithuanian Commonwealth.⁵ Under influence from the Latinate West, communion was renewed with the Roman Catholic Church at the Union of Brest in 1596, a position rejected by most of the laity.⁶ Leftbank Ukraine was

brought into the orbit of Muscovy after the Treaty of Pereiaslav in 1654, and the Orthodox Metropolitanate of Kyiv was subordinated to the Moscow Patriarchate in 1686, which was confirmed by a synodal decision of the Patriarchate of Constantinople and accepted by global Orthodoxy.⁷

The Orthodox Metropolitanate of Kyiv remained canonically subordinated to the Patriarchate of Moscow until the Revolution of 1917. At that time, the Ukrainian Autocephalous Orthodox Church (“**UAOC**”) was established and declared itself autocephalous, or separate, from the ROC. This decision was made unilaterally, without the blessing of world Orthodox churches. This meant that the UAOC was viewed as non-canonical by global Orthodoxy. As a result, the UAOC was “neither in communion with nor did they have an official relation to the other canonical Orthodox Churches”.⁸ In addition, many clergy and laity remained loyal to the Moscow Patriarchate due to habit and canon law. Indeed, many believers continued to undertake pilgrimages to religious sites in Russia until as late as 1927.⁹ As independent Ukraine was brought under Bolshevik rule, the Church faced attacks from the communist authorities. This took the form of anti-religious campaigns, attacks on the clergy, and state sponsored attempts to split the Church by forming a new renovationist church that departed significantly from Orthodox tradition.¹⁰

In 1989, as the Soviet Union faltered, the UAOC was brought back to life, and in 1992, the Ukrainian Orthodox Church of the Kyiv Patriarchate (“**UOC-KP**”) was established. Both churches continued to be unrecognized by global Orthodoxy for nearly three decades.¹¹ From the perspective of believers belonging to the UOC – which was canonically subordinated to the Moscow Patriarchate – the UOC-KP and the UAOC were non-canonical, and

their beliefs prevented them from switching allegiance to a church that was not accepted by global Orthodoxy. Although the UOC remained canonically subordinated to the ROC, it continued as a dominant force in Ukrainian Orthodoxy for clergy and laity alike.¹²

After the Maidan events in 2014 – and especially in light of Russia’s full-fledged invasion in February 2022 – underlying religious divides within Orthodox Christianity in Ukraine have largely been framed in a political context which has only complicated matters further. Accusations stemming from Ukraine’s security services and foreign media alike suggest that the UOC is an instrument of Russian influence and power, which has led to a crackdown on a church for which a significant percentage of Ukrainian citizens continue to profess belief and membership.¹³

Analyses that focus purely on the political dynamics of Ukraine’s religious divide without understanding the canonical and religious aspects of the faithful fail to understand the beliefs, views, and motivations of the UOC and its members. Nearly 80 percent of Ukrainians are believers in some denomination of Orthodox Christianity.¹⁴ According to Ukrainian government statistics, in 2023 the UOC had 11781 total religious organizations across the country, including 11,439 parishes and 221 monasteries. By comparison, the OCU has 7,861 religious organizations, including 7,645 parishes and 72 monasteries. The UOC also has nearly twice as many clergy and monks compared to the OCU, according to 2022 data, the most recent available.¹⁵

B. THE POLITICAL DECISION TO REQUEST AUTOCEPHALY

Beginning in 2018, the religious debate changed immensely when several historic events shook the status quo of Ukrainian Or-

thodoxy. Of primary importance is the intervention by the Ukrainian government to lobby Constantinople to grant a new autocephalous Ukrainian Orthodox Church derived from a union of the UOC-KP and the UAOC which would give canonical legitimacy to the clergy of these denominations. Indeed, the issue of Orthodox Christianity in Ukraine became a highly political issue in these years. Petro Poroshenko, Ukraine's president at the time, weaponized and "actively instrumentalized the religious issue," and used "the formation of an autocephalous church in Ukraine as an important component of his election campaign."¹⁶

On April 9, 2018, Petro Poroshenko, Ukraine's president at the time, visited Istanbul and met with the Ecumenical Patriarchate of Constantinople, Bartholomew I, where he formally requested autocephaly. Ten days later, Ukraine's parliament passed a resolution requesting autocephaly, and in December 2018, a Council for the Unification was held which merged the UOC-KP and the UAOC into the OCU. Notably – and unusually, given Ukraine's constitutionally professed separation of church and state – President Poroshenko was present at the Council of Unification. In January 2019, breaking with traditional procedures, a *Tomos* – the granting of autocephaly – was issued by Bartholomew I to this newly merged OCU.¹⁷

The decision by Constantinople to grant autocephaly led to a rupture in relations between the ROC and Constantinople, with the ROC disputing the right of Constantinople to grant autocephaly to the OCU.¹⁸

The granting of the *Tomos* also led to serious disagreements within global Orthodoxy. Metropolitan Nikiforos of Kykkos of the Cypriot Orthodox Church, a highly respected scholar and theologian, wrote that the decision to grant autocephaly to the OCU "has resulted in

a difficult, divisive situation that is tormenting not only the Ukrainian Orthodox Church, but also worldwide Orthodoxy. It threatens the faith with the cursed crime of schism, an unforgivable and deadly sin..."¹⁹

In this context, Metropolitan Nikiforos remarked that the Ecumenical Patriarchate should not be turned into a "primacy of authority," as this "alters Orthodox ecclesiology, abolishes her conciliar, democratic system, and introduces a monarchical papal-style authority which speaks on behalf of all other Orthodox primates."²⁰ In other words, the granting of the *Tomos* is not a definitive stamp of legitimacy for the OCU, and the decision by Constantinople to grant it in the manner it did – motivated, it seems, by political rather than canonical, religious considerations – is met with broad opposition.

Metropolitan Kallistos Ware of Diokleia, an eminent English theologian and scholar at Oxford University, was also critical of the steps taken by Bartholomew. His keynote address at a conference of the International Orthodox Theological Association at Iasi in 2019 contested the primacy of the Ecumenical Patriarchate and noted that the UOC had far more parishes than the UOC-KP and UAOC, which implied the decision could not be taken lightly.²¹ In a separate interview at the time the *Tomos* was issued, Kallistos said:

Though I am a metropolitan of the Ecumenical Patriarchate, I am not at all happy about the position taken by Patriarch Bartholomew. With all due respect to my Patriarch, I am bound to say that I agree with the view expressed by the Patriarchate of Moscow that Ukraine belongs to the Russian Church. After all, the Metropolia of Kiev by an agreement of 1676 [1686] was transferred from the omophorion of the Ecumenical Patriarchate to that of the

Patriarchate of Moscow. So, for 330 years Ukraine has been part of the Russian Church.²²

For the Poroshenko government, the granting of autocephaly appears to have been driven by political and nationalist aims. Poroshenko declared that in the country's anti-imperial struggle against Russia, there were three pillars: Army, Language, and Faith, by which he meant autocephaly.²³ Similarly, in January 2019, Poroshenko declared that "... the Tomos for us is actually another act of proclaiming Ukraine's independence. It will complete the assertion of the independence of the Ukrainian state, strengthen religious freedom and interconfessional peace."²⁴ Poroshenko also likely had the 2019 presidential election in mind when he made the granting of the *Tomos* such a core part of his political agenda. Polls taken in 2018 showed that while only 30 percent of Ukrainians nationally supported the autocephalous status of the OCU, 58 percent of those in western Ukraine, a key part of Poroshenko's political base at the time and a region where a large portion of the population is Catholic, were in favor of autocephaly.²⁵

It has become increasingly apparent under the Zelensky presidency that the autocephalous church has become weaponized as an instrument of administrative control and political power. This move has been reinforced by a slow but deliberate attempt by the SBU, the presidential administration, and local governments to delegitimize the UOC, strip it of its right to Church property, and restrict its activities all in favor of the OCU, which in return has adopted a distinct liturgical and religious practice.

C. THE UOC AS A SELF-GOVERNING CHURCH

The Ukrainian government and media – which is currently under severe martial law restrictions²⁶ – has attempted to portray the UOC as a church entirely controlled by the Russian Orthodox Church.²⁷ However, the UOC has long been a highly independent religious entity and the ROC has limited to no influence over the Church's day-to-day affairs. Indeed, a comparative analysis by Archbishop Sylvester, Rector of the Kyiv Theological School published in October 2020 compared the charters of the UOC and the OCU and concluded that "in certain positions, the volume of rights of the UOC is comparable or even greater than the volume of rights of the OCU."²⁸

The UOC adopted a Statute on the management of the Church on October 29, 1990 when the first Synod of Bishops of the UOC met in Kyiv. This document declared that the church is "self-governing with the rights of wide autonomy." This came two days after the Synod of Bishops of the ROC met and approved a Deed on 27 October 1990 which declared, "from now on the Orthodox Ukrainian Church will be independent and self-governing."²⁹

Archbishop Sylvester highlighted several key areas where the UOC enjoyed even greater autonomy and independence from the ROC than the OCU does from Constantinople. For instance, if an issue arises within the OCU of an "ecclesiastical, dogmatic and canonical nature" or on issues unregulated by the OCU's charter, a commission is created with representatives of both Constantinople and the OCU to resolve it, and the Patriarch of Constantinople has the exclusive right to interpret the provisions of the OCU's statute as it relates to the *Tomos* of autocephaly. Similarly, any clergy within the OCU can turn

to Constantinople to appeal an ecclesiastical judgement against them.

In contrast, “in the UOC there is no such dependence on the Russian Orthodox Church.” Only bishops can submit an appeal to the Council of Bishops in the ROC if an ecclesiastical judgement has been made against them, and on issues relating to church life within the UOC the ROC has no authority. The head of the UOC is elected by the Ukrainian episcopate and – prior to May 2022, as discussed below – blessed by the Moscow Patriarch, but this is a formality and in practice the ROC does not exercise control over such appointments. Similarly, the statute on the management of the UOC was adopted by the UOC and then endorsed by the Moscow Patriarch, but Archbishop Sylvester emphasizes that this right to endorse (*схвалювати*) should not be construed as a decisive authority to ratify and approve the statute (*затверджувати*).³⁰

D. SEPARATION FROM MOSCOW PATRIARCHATE

Following Russia’s invasion of Ukraine in February 2022, the UOC condemned Russian aggression and confirmed its self-governing status. The UOC found itself in the unenviable position of being spiritually and canonically linked to the Russian Orthodox Church while some elements of the ROC supported Russia’s actions in Ukraine.

From the start of Russia’s invasion, the UOC took measures to declare its opposition to the position of the Russian Government with respect to its actions in Ukraine. Eight hours after Russia began its invasion, the UOC’s leader, Metropolitan Onufry, declared the Church’s opposition to the war and repeatedly appealed to Putin to reverse course.³¹ Metropolitan Onufry stated at the time, “To our great regret, Russia has started military

actions against Ukraine...In this tragic time we express special love and support for our soldiers, who stand guard to defend our land and our people.”³²

The UOC has also collected more funds and humanitarian aid for the Ukrainian Army than any other religious organization in Ukraine, a fact that has been brushed aside in mainstream Ukrainian media since 2014. In 2022 alone, the UOC transferred more than 180 tons of humanitarian aid to the Armed Forces of Ukraine and the Territorial Defence Forces, 80 automobiles were donated to the military, and a total of 30 million UAH was donated to the Armed Forces of Ukraine.

In 2022, the UOC also aided more than 50,000 forcibly displaced persons by assisting with evacuation and providing accommodation. 3.5 thousand tons of humanitarian aid was distributed, 550,000 meals were distributed, and more than 25 million UAH was provided to individuals suffering from the ongoing war.³³

The UOC has suffered catastrophic damage to its churches and other buildings throughout the war. The Institute for Religious Freedom found that of all faiths in Ukraine the UOC “suffered the most from Russian aggression.” It observed that 143 UOC churches had been destroyed by shelling.³⁴

The UOC has also played an important role supporting Ukrainian refugees abroad. One of the conditions of the OCU’s recognition by Constantinople was that the new church would be restricted to operating within Ukraine’s borders. As an analysis for the Carnegie Endowment highlighted, the wave of Ukrainian refugees across Europe has led to an increasingly important and expanding role of the UOC in Europe. The UOC has stepped up, establishing parishes in 32 European cities, including Antwerp, Cologne, and Leipzig.³⁵ The UOC’s European parishes “are

currently focused on offering assistance to the multitude of Ukrainian refugees who have fled there.”³⁶

In May 2022, the UOC held an unprecedented meeting (“sobor”) at which changes were made to its Charter confirming its self-governing status and emphasizing that the control center of the UOC is based in Kyiv.³⁷ The amendments to the UOC’s charter removed all mention of the ROC except a reference to the October 1990 document cited

above which established the UOC’s status. The new charter removed references to a UOC primate representative in the ROC synod and removed reference to the need for the UOC primate to be blessed by the Russian patriarch upon election by the UOC. Additionally, the new charter also included the potential for establishing parishes abroad, which has played an important role in supporting Ukrainian refugees across Europe as cited above.³⁸

ENDNOTES

- 1 Kallistos Ware, *The Orthodox Church*, at 6–7.
- 2 Simon Franklin and Jonathan Shepard, *The Emergence of Rus 750–1200*, at 160–66; Jonathan Shepard, 'The Origins of Rus' (c.900–1015)', in *The Cambridge History of Russia. Volume I: From Early Rus' to 1689*, at 66–72.
- 3 Simon Franklin, 'Kievan Rus' (1015 – 1125)', in *The Cambridge History of Russia*, at 93–97; The Paterik of the Kievan Caves Monastery.
- 4 *The Cambridge Companion to Orthodox Christian Theology* (2009), at 123.
- 5 Andrew Wilson, *The Ukrainians. Unexpected Nation*, at 43–53
- 6 Nicholas Denysenko, *The Orthodox Church in Ukraine: A Century of Separation*, at 6.
- 7 Vera Tschentsova, 'A Patriarchal "Blessing of Release" for the See of Kyiv dated 1686', *Canadian-American Slavic Studies*.
- 8 'The New Independent Orthodox Church in Ukraine', *Comparative Southeast European Studies* (03/02/2020) <https://www.degruyter.com/document/doi/10.1515/soeu-2019-0037/html?lang=en> at 478-479
- 9 Anatolii Zhurakovskii, *Materialy k zhitiuu*; A. P. Timofievich, *Bozhii liudi*.
- 10 Bohdan Bociurkiw, 'The Russian Orthodox Church in Ukraine: The Exarchate and the Renovationsists, and the "Conciliar-Episcopal" Church, 1920–1939', *Harvard Ukrainian Studies*; Edward E. Roslof, *Red Priests: Renovationism, Russian Orthodoxy, and Revolution, 1905–1946*.
- 11 'The New Independent Orthodox Church in Ukraine', *Comparative Southeast European Studies* (03/02/2020) <https://www.degruyter.com/document/doi/10.1515/soeu-2019-0037/html?lang=en> at 478-479
- 12 Denysenko, *The Orthodox Church in Ukraine: A Century of Separation*, see chapter five.
- 13 See for example, 'Clergymen or Spies? Churches Become Tools of War in Ukraine' *The New York Times* (31/12/2022) <https://www.nytimes.com/2022/12/31/world/europe/orthodox-church-ukraine-russia.html>; and 'Ukrainians Shun a Church Seen as a Kremlin' *The New York Times* (05/08/2022) <https://www.nytimes.com/2023/08/03/world/europe/ukraine-orthodox-church.html>
- 14 'The Role of Religion in Russia's War on Ukraine', *United States Institute of Peace*, (17/03/2022) <https://www.usip.org/publications/2022/03/role-religion-russias-war-ukraine>
- 15 Порівняльна статистика кількості релігійних організацій (2020-2023)
- 16 'Inter-Orthodox crisis in Ukraine: Recent Developments and Reflections', *Observatoire International Du Religieux* (May 2023) <https://obsreligion.cnrs.fr/bulletin/inter-orthodox-crisis-in-ukraine-recent-developments-and-reflections-english-version/>
- 17 'The Ukrainian National Church, Religious Diplomacy and the Conflict in the Donbas', *Journal of Orthodox Christian Studies*, (2019) https://publications.aston.ac.uk/id/eprint/40258/1/Lucian_Article_on_Ukraine.pdf
- 18 'The New Independent Orthodox Church in Ukraine', *Comparative Southeast European Studies* (03/02/2020) <https://www.degruyter.com/document/doi/10.1515/soeu-2019-0037/html?lang=en> at 480; also see ROC press release: <https://mospat.ru/en/news/47058/>
- 19 Metropolitan of Kykkos and Tillyria Nikiforos, *The Ecclesial Crisis in Ukraine: And Its Solution According to the Sacred Canons* (2021), at xxi.
- 20 *Ibid.*
- 21 Kallistos Ware, *Synodality and Primacy in the Orthodox Church* <https://iota-web.org/keynote-lecture/>
- 22 Met, Kallistos (Ware): "I am not at all happy about the position taken by Patriarch Barthomolew", *Orthodox Christianity* (13/12/2018) <https://orthochristian.com/117867.html>
- 23 'Russian World and Ukrainian Autocephaly: Religious Narratives in Anti-Colonial Nationalism of Ukraine', *MDPI, Exploring Modern Religious Changes From the Perspective of Narrative Theology* (12/04/2022) <https://www.mdpi.com/2077-1444/13/4/349#B34-religions-13-00349>
- 24 *Ibid.*
- 25 'Russia, Ukraine, and the Battle for Religion', *European Council on Foreign Relations* (11/11/2018) https://ecfr.eu/article/commentary_orthodox_redox_russia_ukraine_and_the_battle_for_religion/
- 26 <https://www.theguardian.com/world/2023/mar/05/ukraines-reporters-adapt-amid-media-restrictions-and-pressure-of-war>
- 27 See for example, '9 months into the war, Moscow-backed churches in Ukraine get in trouble', *Kyiv Independent* (29/22/2022), <https://kyivindependent.com/moscow-patriarchate-churchs-troubling-links-with-the-kremlin/>.
- 28 'Ректор Киевской духовной академии сравнил самостоятельность УПЦ и ПЦУ', *SPZH*, <https://spzh.news/ru/amp-news/75456-ректор-kievskoj-duhovnoj-akademii-sravnil-samostojatelysty-upc-i-pcu>
- 29 Єпископ Сильвестр (Стойчев): «Статутні документи УПЦ та ПЦУ: порівняльний аналіз», *Ukrainian Orthodox Church Theological Academy and Seminary*, <http://kdais.kiev.ua/event/%d0%84%bf%d0%b8%d1%81%d0%ba%d0%be%d0%bf-%d0%a1%d0%b8%d0%bb%d1%8c%d0%b2%d0%b5%d1%81%d1%82%d1%80-%d0%a1%d1%82%d0%be%d0%b9%d1%87%d0%b5%d0%b2-%d0%a1%d1%82%d0%b0%d1%82%d1%83%d1%82%d0%bd%d1%96/>.
- 30 *Ibid.*
- 31 'Звернення Блаженнішого Митрополита Київського і всієї України Онуфрія до вірних та до громадян України (+відео)', *Ukrainian Orthodox Church*, (24/02/2022), <https://news.church.ua/2022/02/24/zvernennya-blazhennishogo-mitropolita-kijivskogo-vsijeji-ukrajini-onufriya-virmix-ta-gromadyan-ukrajini/>.
- 32 'Metropolitan Onufry of the UOC MP supported the AFU and urged Russia to stop the war', *Front News* (24/02/2022) <http://www.frontnews.eu/en/news/details/20111>

- 33 'RESULTS of the Holy Synod of the Ukrainian Orthodox Church of 20 December 2022', *Ukrainian Orthodox Church* (20/12/2022), <https://news.church.ua/2022/12/21/results-of-the-holy-synod-of-the-ukrainian-orthodox-church-of-20-december-2022/?lang=en#2023-11-20>.
- 34 'Orthodox Cathedral in Odessa Severely Damaged in Russian Missile Strikes', *Radio Free Europe* (23/07/2023) <https://www.rferl.org/a/ukraine-cathedral-odesa-damaged-russia-strikes/32515336.html>
- 35 'Can the Ukrainian Orthodox Church Survive the War With Russia', *Carnegie Endowment for International Peace* (17/01/2023) <https://carnegieendowment.org/politika/88811>
- 36 'Holy War: The Fight for Ukraine's Churches and Monasteries', *Carnegie Endowment for International Peace* (11/04/2023) <https://carnegieendowment.org/politika/89496>
- 37 'Moscow-led Ukrainian Orthodox Church breaks ties with Russia', *Reuters* (28/05/2022) <https://www.reuters.com/world/europe/moscow-led-ukrainian-orthodox-church-breaks-ties-with-russia-2022-05-28/>
- 38 Thomas Bremer, 'Assessment of the "Experts' Commission Report" on the Ukrainian Orthodox Church', WWU Munster (15/09/2023), <https://www.dialogtut.org/wp-content/uploads/2023/09/review-uoc-report-2.pdf>.

II. OPPRESSIVE MEASURES AGAINST THE UOC

Despite the fact that the UOC is in no way an agent of the Russian state, has reaffirmed its independence in governance from the Russian Orthodox Church, and has been a staunch backer of Ukraine's war effort, elements within the Ukrainian government have turned against the Church. A wide range of legal and political actions have sought to limit the Church's operations.³⁹ Legislation that seeks to ban the UOC entirely is likely to be imminently adopted. On October 19, Ukraine's parliament, the Verkhovna Rada, passed on the first reading with a large majority of 267 votes Draft law number 8371, "On the prohibition of religious organizations associated with the Russian Federation."⁴⁰ These efforts are clear violations of the rights to freedom of religion found both in Ukrainian and international law. They represent a grave threat to the ability of many Ukrainians to openly worship consistent with their religious beliefs. The Assistant Secretary-General for Human Rights at the United Nations High Commissioner for Human Rights ("OHCHR") warned on November 17 that Draft law 8371 may be in contravention of Article 18 of the International Covenant on Civil and Political Rights which guarantees freedom of religion and can only be restricted in very narrow circumstances. The OHCHR remarked, "OHCHR is closely monitoring how legislative developments in Ukraine may impact enjoyment of freedom of religion."⁴¹

A. UKRAINE'S CRACKDOWN ON THE UOC

*"The expected recognition of Ukrainian autocephaly...I emphasize, will not in any way mean either establishment of a state church or prohibition of the other Orthodox confessions in Ukraine...Every citizen of Ukraine has been able and will be able to choose faith and church [freely]." – Former President Petro Poroshenko, 2017.*⁴²

Following Russia's invasion of Ukraine in February 2022, the Ukrainian government dismissed the UOC's May 2022 declaration of independence from the Russian Orthodox Church as insufficient and has taken action against the UOC.⁴³

The Ukrainian government's attacks on the UOC contradict commitments made by officials in the early months of the Russian invasion to protect the freedom of religion even in times of war. In April 2022, for instance, Ruslan Stefanchuk, Chairman of the Verkhovna Rada, Ukraine's parliament, declared that the parliament would not consider any laws banning the UOC until the war was over, arguing that "during the war, we do not have the right to adopt any law that splits Ukrainian society."⁴⁴ Similarly, President Zelensky did not make religious issues a key part of his campaign for the presidency, and following Russia's invasion, initially did not take steps to crack down on the UOC. Unfortunately, the

original government's commitments to uphold religious freedom have given way to dangerous repression.

On December 1, 2022, a presidential decree restricting religious organizations "affiliated with centers of influence in the Russian Federation" from operating in Ukraine was issued.⁴⁵ The decree imposed sanctions against individual representatives of such religious organizations.⁴⁶ Some have suggested that former president Poroshenko has played an important role in agitating public opinion against the UOC, linking the UOC to Russian state influence, and adding pressure on the government to take stronger measures against the Church. In April 2023, for instance, Poroshenko called on local governments across Ukraine to terminate lease agreements with the UOC and encouraged the Verkhovna Rada to pass the pending draft law which would ban the UOC.⁴⁷

The December presidential decree also brought the State Service for Ethnopolitics and Freedom of Conscience ("**DESS**"), a body responsible for overseeing religious organizations which was previously overseen by the Ministry of Culture, under the control of the Cabinet of Ministers. Religious scholar Viktor Yelensky was appointed to head the DESS.⁴⁸ Yelensky, a long-term critic of the UOC and a long-running supporter of autocephaly for the OCU, had previously served as a member of the Rada during the Poroshenko government that oversaw the OCU's autocephaly and was working on legislation aimed against the UOC.⁴⁹

In a clear signal of the direction of state policy vis-à-vis the UOC, Yelensky replaced Olena Bohdan, a widely respected leader who was known for her impartial approach to religious affairs.⁵⁰

During her time as head of DESS, Bohdan emphasized that the UOC was not legally and

practically subordinated to the Moscow Patriarchate, emphasizing instead that the connection is of a canonical nature. Bohdan remarked in November 2022, "The document in which the connection with the Russian Orthodox Church was indicated was the statute of the religious association in general, which, accordingly, does not apply to a specific legal entity."⁵¹

Bohdan was also highly critical of early attempts to ban the UOC in 2022 and took issue with the SBU's heavy-handed approach against the UOC. Bohdan also noted that the UOC has been loyal to Ukraine:

It should be remembered that there are about 10,000 priests in the Ukrainian Orthodox Church. If we look at the percentage, we are talking about the number of people significantly less than 1% [who are investigated by the SBU]...They [the SBU] should not make us blind to the fact that when the full-scale invasion began, a number of UOC believers volunteered for the front. A number of UOC priests blessed believers to go to the front. In the churches of the UOC, they pray for the victory of Ukraine. And this is also important to remember.⁵²

In September 2022, Bohdan also warned that banning the UOC would lead to instability within the country,⁵³ and that the ongoing seizure of UOC churches and other property would damage Ukraine's image and reputation internationally.⁵⁴

The Decree also convened a government-commissioned panel of experts to examine the UOC's May 2022 decision to break ties with the Russian Orthodox Church and amend its statute. In February 2023, this panel of experts found that the UOC's separation from the ROC was insufficient.⁵⁵ This decision has been cited as justification for a stark in-

crease in investigations, raids, sanctions, and other measures that have targeted the UOC and undermined its ability to provide religious leadership in the country.

The panel which carried out the 'expert examination' of the UOC's relationship to the ROC is highly problematic in that it lacked both independence and appropriate expertise. Denys Brylov and Tetiana Kalenychenko wrote in May 2023 that although the expert examination focused their conclusions on ecclesiology and canon law, there were no experts on canon law represented on the panel.⁵⁶ Furthermore, a UOC representative complained in January 2023 at a meeting with the expert group that several members of the panel of experts were members of the OCU and clearly biased based on their prior public statements. Four members of this expert group had stated explicitly in the media that they favored the banning of the UOC through immediate legislation, restricting the UOC, or terminating church leases. Despite numerous comments strongly suggesting that these experts could not be relied upon to produce an unbiased opinion, demands to exclude some of these "experts" from the panel were not considered. UOC requests to include both a UOC expert as well as international experts on this panel were ignored.⁵⁷

Comments made by religious scholar Liudmyla Fylypovych, a member of the expert panel, are illustrative of the questionable impartiality of this process. On December 2, 2022, Fylypovych told the Religious Information Service of Ukraine, "I don't know what arguments the UOC can find to convince everyone that they are autonomous and independent, almost autocephalous. The links are still there." On December 17, Fylypovych went further, declaring that the UOC was a 'quasi-religion, which is not really a religious structure.'⁵⁸

The danger that an ostensibly impartial ex-

pert commission be used to achieve political ends or suppress religious freedom are real. Dmytro Vovk, a professor at Cardozo School of Law in New York, expressed his criticism of the commission investigating the UOC's links to the ROC, noting that:

The concept of a religious "expert examination" is also vague and legally questionable. Across the post-Soviet region, including in Belarus, occupied Crimea, and Central Asian states such as Kazakhstan, "expert analyses" are often used to justify freedom of religion or belief and other human rights violations, including jailing prisoners of conscience.⁵⁹

Dr Thomas Bremer, a professor at the University of Münster in Germany published an analysis of the expert commission in September. Dr Bremer concluded that the expert commission,

has significant flaws and shortcomings in both the methodological and the factual respects. It takes into account facts which speak in favor of the outcome and neglects the others. It is biased in its evaluation and misrepresents given facts. It presents no positive evidence of any kind that the UOC still belongs to the ROC. Therefore, the [expert commission] cannot be regarded as a proof, and its results are not convincing.⁶⁰

According to the US State Department Religious Freedom Report on Ukraine for 2022 which collated media reporting on the issue, at least 50 members of clergy of the UOC were interrogated and investigated over alleged collaboration with Russia, including 350 searches of church buildings under the UOC's authority. In some instances, SBU searches termed "security measures" against the UOC involved clergymen being questioned with the use of a polygraph.⁶¹

DESS head Yelensky justified the raids against the UOC by stating that UOC leadership was “poisoning the people with the ideas of the Russian world” and comparing the SBU’s heavy-handed approach to action taken by the US and other Western powers against Islamic extremism following the September 11, 2001 attacks. In the same breath, Yelensky dubiously declared that “Ukraine is still a safe haven for religious freedom”⁶² – a common refrain from Ukrainian officials since former president Poroshenko ushered through the OCU’s autocephaly when justifying their actions against other Orthodox communities in Ukraine.

In March 2023, authorities attempted to expel UOC clergy from Kyiv-Pechersk Lavra, ordering that some 200 UOC monks and 600 workers leave the premises, unilaterally terminating a 2013 agreement with the UOC to occupy the holy site.⁶³ The reasons for the expulsion are legally dubious: the government claimed the UOC violated the 2013 indefinite rental agreement by illegally constructing 36 buildings, allegedly discovered in an audit carried out from the end of 2022.⁶⁴

Commentary by Ukrainian officials and actions taken prior to the March 2023 expulsion suggest that the “illegal construction” of buildings at the Lavra is unlikely to be the true motivation behind the decision. Ukraine’s Culture and Information Policy Minister, for instance, said UOC members would be permitted to remain on the premises if they switched their allegiance to the autocephalous OCU.⁶⁵ Furthermore, according to media reports, the same day that the December 2022 presidential decree was passed to place restrictions on the UOC, the government also registered a Kyiv-Pechersk Lavra community under the OCU,⁶⁶ seemingly anticipating the attempted expulsion of the UOC from the holy site several months later. During Christmas the same

year, Metropolitan Epifaniy of the OCU was permitted to hold a Christmas service at the Lavra. At this Christmas service, Metropolitan Epifaniy addressed UOC monks, urging them to “finally free yourself from the non-canonical rule over you by Moscow and its servants.”⁶⁷

B. SANCTIONS AGAINST UOC MEMBERS AND CLERGY

President Zelensky’s decree of December 1, 2022, which purportedly aimed to protect Ukraine’s ‘spiritual independence,’⁶⁸ also included an announcement that individual sanctions would be levied against representatives of religious organizations with “centers of influence in the Russian Federation.” The Ukrainian government quickly followed through on this threat, sanctioning several high-profile UOC members. Of the individuals sanctioned in December, all are bishops, archbishops, or metropolitans, or deacons of the UOC, and in several cases, the reasons cited for the sanctions predate the imposition of martial law which came into effect on February 24, 2022.

On December 3, a list of ten names was published on the SBU’s website, accusing them of either offering to merge their diocese with the ROC; agreeing to cooperate with the occupation authorities; promoting pro-Russian narratives; or justifying Russia’s military aggression in Ukraine.⁶⁹ Later that month, sanctions were announced against seven more senior members of the UOC,⁷⁰ and in January, 21 more individuals associated with the UOC were sanctioned.⁷¹ The sanctions, termed “restrictive measures” by the SBU, are imposed for a period of five years and involve the blocking of assets, restrictions on trade, and restrictions on removing capital from Ukraine.⁷² These measures are imposed by the executive without judicial review or due process.

Among those sanctioned were Metropolitan Pavel Lebid, the Superior of the Kyiv-Pechersk Lavra. Metropolitan Pavel was accused of insulting the “religious feelings of Ukrainians” and for humiliating “the views of believers of other denominations and tries to form hostile sentiments towards them.”⁷³

Also among those sanctioned is Vadym Novynskyi, a successful businessman and a former MP in the Verkhovna Rada. Novynskyi is a well-known advocate for the UOC and currently is a protodeacon in the church. He was accused by the SBU of aiding Russia, which served as justification for the freezing of his assets. Citing the confidentiality of the investigation, SBU did not provide evidence or further explanation surrounding this accusation, even after his assets were frozen and property rights restricted.⁷⁴ Novynskyi has had no means to challenge these measures through Ukrainian legal processes.

The sanctions – and subsequent criminal charges – against Novynskyi appear to be motivated by his religious beliefs as well as political and business disagreements with certain officials in Zelensky’s inner circle. Novynskyi is on the public record condemning Russia’s renewed invasion. In March 2022 he declared “I believe that on February 24, the Russian Federation committed an act of aggression against Ukraine, and this is a fact.”⁷⁵

C. CRIMINAL CHARGES AND JAILING OF UOC BISHOPS

Several leaders of the UOC are also facing criminal charges and imprisonment on charges that appear to be politically motivated and highly disproportionate to the alleged crimes. In some instances, there are credible allegations of evidence planting.

In July 2023, the SBU declared that Metropolitan Pavel Lebid “denied the existence

of Ukraine as a sovereign state.” In an almost-comical misapplication of the law, Pavel was charged with violations of Article 161 of the Criminal Code of Ukraine, which relate to violations of the equality of citizens based on their religious beliefs – a charge that has been used in several cases against UOC clergy. In addition, Pavel faced charges under Article 436-2, which criminalizes denial of the armed aggression of the Russian Federation against Ukraine.⁷⁶ Metropolitan Pavel was detained in July and released on bail of Hr 33.3 million (USD 1 million) in August pending trial.⁷⁷ On October 20, the SBU announced it had completed its investigation against Pavel and filed a new indictment against him alleging that he “justified the actions of the Russian Federation” and “offended the religious feelings of Ukrainians.”

In August, 75-year-old Metropolitan Jonathan of Tulchyn and Bratslav was sentenced to five years in prison for allegedly “disseminating materials on Moscow’s policies against Ukraine.”⁷⁸ Metropolitan Jonathan’s lawyer noted that an examination carried out of the evidence revealed that the alleged leaflets found on Metropolitan Jonathan’s computer were created four days after his premises were searched, suggesting the evidence may have been planted.⁷⁹

Further undermining the prosecution’s case against Metropolitan Jonathan is the court’s finding that Jonathan committed a criminal offense by voicing his legitimate opinion in January 2022 – prior to Russia’s full-fledged invasion of Ukraine – that he questioned the OCU’s autocephalous status. In an Orwellian fashion, the prosecutor argues, and the court concurs, that these views are “guided by pro-Russian ideological motives” and therefore criminal. In essence, the state is criminalizing public criticism of the state’s effort to promote and achieve autocephalous

status for the OCU. A statement from the Office of the Prosecutor General reads,

The prosecutor proved in court that in January 2022, the metropolitan, guided by pro-Russian ideological motives, posted an author's article on the website of the diocese about the dominant role of the "Moscow Patriarchate" in Orthodox Christianity and denial of the independence of the OCU.⁸⁰

Metropolitan Theodosy of Cherkasy and Kaniv is currently under house arrest⁸¹ and faces charges under Article 161 as well as more serious charges under Article 436-2 alleging that he gave instructions to publish extremist content on the website of his church. Metropolitan Theodosy vehemently denied the charges in court, remarking,

The first and more serious charge is under Article 436-2 (Parts 2 and 3), alleging that I supposedly gave instructions to publish extremist materials on the official website of the Cherkasy Eparchy. But I never gave such instructions and never intended to do so. This statement is completely false and does not correspond to reality in any way. The prosecution has no facts, no evidence whatsoever to claim otherwise.⁸²

The Article 161 charges against Theodosy are also based on his public criticism of the OCU and its autocephalous status, raising serious questions about freedom of speech as well as freedom of religion in Ukraine. In a sermon in February, after his church as well as his Kyiv apartment were raided, he spoke eloquently in defense of his right to freedom of speech and to publicly state his religious views:

Over the past decade, as a hierarch of the UOC and a professor at the Kyiv Theological Academy, I systematically spoke about the position of our Church regarding the schism in Ukraine and in the world, showed the difference between the canonical Church and other denominations, including Orthodox, in Ukraine and in the world. I have appeared on television and online. Those videos where I express the ecclesiological position of our Church are imputed to me as a crime, since some expert said, 'What he says elevates one confession and humiliates others.'

Astonishingly, after Metropolitan Theodosy recorded videos and posted them on YouTube during his house arrest, the SBU brought forward new accusations which it posted on its official Telegram channel. The SBU's latest "evidence" of Theodosy's alleged criminal conduct includes his criticism of SBU raids on UOC property and alleged "offensive" comments against clergy of the OCU. The SBU concludes that this conduct proved he "acted in favor of the aggressor country." It is worth reading the SBU's absurd allegations in their own words:

It was established that in his "addresses," the suspect was contemptuous of believers and clergy of other denominations. He also tried to discredit the employees of law enforcement agencies in Ukraine who carried out security measures in the territories of religious communities of the region. After recording propagandistic videos, their author, in his cassock, spread destructive content on the "YouTube channel" of the website of the Cherkasy Eparchy of the Ukrainian Orthodox Church (Moscow Patriarchate). In this way, the metropolitan acted in favor of the aggress-

sor country and tried to destabilize the socio-political situation in the region.⁸³

Adding to the brazenly political nature of the charges and criminal trial of Metropolitan Theodosy of Cherkasy and Kaniv is the dangerous rhetoric from the city's mayor, Anatoliy Bondarenko, who declared in a video posted to Facebook in August which was later deleted, that he will "cleanse your Moscow filth from the city of Cherkasy," adding, "Get ready – in Cherkasy, there will be no Moscow priests, in Cherkasy, people will pray in the Ukrainian language."⁸⁴

Metropolitan Longin (Zhar) of Bancheny, who was awarded the Hero of Ukraine award in 2008 and the father of 400 adopted children – many of whom suffer from disabilities and require constant care which they receive from Metropolitan Longin as well as one hundred staff and helpers within the monastery⁸⁵ – also faces charges under Article 161 for allegedly insulting the OCU and thereby "insulting the religious feelings of believers" in Ukraine.⁸⁶

Metropolitan Longin suffered a serious stroke in July and was hospitalized.⁸⁷ Nevertheless, his case was sent to trial in September, despite his continuing recovery. Metropolitan Longin declared in a video message ahead of his trial, "I asked everyone today, both the prosecutor and the investigator - please tell me what you accuse me of? Show me where, where am I to blame? What have I done?" He added that "We, Ukrainians, we were born here, we live here! I want to tell you that we suffer for our Church, for our Faith in God."⁸⁸ Notably, Metropolitan Longin was highly critical of Patriarch Kirill for blessing Russia's invasion of Ukraine.⁸⁹

On November 9, Ukrainian security cordoned off Banchensky monastery in the Chervivtsi region of western Ukraine, where Metropolitan Longin's hundreds of adopted children reside, despite there being no court order for any raid of inspection of the premises. A video of the incident showed parishioners, clergy, as well as the adopted children coming to the defense of the monastery.⁹⁰

ENDNOTES

- 39 'Ukraine's parliament registers bill that could lead to ban on Moscow-linked church', *Reuters* (09/10/2023) <https://www.reuters.com/world/europe/ukraines-parliament-registers-bill-that-could-lead-ban-moscow-linked-church-2023-10-09/#:~:text=The%20bill%20proposes%20amendments%20envisaging,righs%20based%20on%20religious%20beliefs.>
- 40 'Ukraine Moves To Ban Moscow-linked Orthodox Church', *Barrons*, (19/10/2023), <https://www.barrons.com/news/ukraine-moves-to-ban-moscow-linked-orthodox-church-d1dd82d8>.
- 41 'ASG Brands Kehris briefs the Security Council on Ukraine', *OHCHR* (17/11/2023), <https://www.ohchr.org/en/statements-and-speeches/2023/11/asg-brands-kehris-briefs-security-council-ukraine>
- 42 'Church and State in Ukraine after the Euromaidan: President Poroshenko's Discourse on Religion, 2014-2018', *Cambridge University Press* (26/06/2019) <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/E375999BFAAADE3C2C2BBEC0695C99AA/S1755048319000221a.pdf/div-class-title-church-and-state-in-ukraine-after-the-euromaidan-president-poroshenko-s-discourse-on-religion-2014-2018-div.pdf> at page 155
- 43 '2022 Report on International Religious Freedom: Ukraine', *U.S State Department* (15/05/2022) <https://www.state.gov/reports/2022-report-on-international-religious-freedom/ukraine>
- 44 Рада не розглядатиме заборону УПЦ МП до кінця війни – Стефанчук [The Council will not consider banning the UOC-MP until the end of the war – Stefanchuk], *Ukrinform* (25/04/2022) <https://www.ukrinform.ua/rubric-politics/3466735-rada-ne-rozgladatime-zaboronu-upc-mp-do-kinca-vijni-stefanchuk.html> ; full interview here: 'Ruslan Stefanchuk: Any pro-Russian Party will no longer have a chance', *RBC-Ukraine* (25/04/2022) <https://www.rbc.ua/ukr/news/ruslan-stefanchuk-shansov-lyuboy-prorossiyskoy-1650837541.html>
- 45 '2022 Report on International Religious Freedom: Ukraine', *U.S State Department* (15/05/2022) <https://www.state.gov/wp-content/uploads/2023/05/441219-UKRAINE-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> at page 2
- 46 'Ukraine bans religious organisations with links to Russia', *The Associated Press* (02/12/2022) <https://apnews.com/article/zelsensky-kyiv-religion-europe-government-and-politics-7eaf9ac19b000a2147f0204877a0004e>
- 47 'Inter-Orthodox crisis in Ukraine: Recent Developments and Reflections', *Observatoire International Du Religieux* (May 2023) <https://obsreligion.cnrs.fr/bulletin/inter-orthodox-crisis-in-ukraine-recent-developments-and-reflections-english-version/>
- 48 '2022 Report on International Religious Freedom: Ukraine', *U.S State Department* (15/05/2022) <https://www.state.gov/wp-content/uploads/2023/05/441219-UKRAINE-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>
- 49 <https://pism.pl/publications/russian-aggression-speeding-up-changes-in-religious-situation-in-ukraine>
- 50 'Inter-Orthodox crisis in Ukraine: Recent Developments and Reflections', *Observatoire International Du Religieux* (May 2023) <https://obsreligion.cnrs.fr/bulletin/inter-orthodox-crisis-in-ukraine-recent-developments-and-reflections-english-version/>
- 51 Що відбувається в українському православ'ї та чому досі існує канонічний зв'язок з РПЦ [What is happening in Ukrainian Orthodoxy and why there is still a canonical connection with the Russian Orthodox Church], *RISU* (27/11/2022) https://risu.ua/shcho-vidbuvayetsya-v-ukrayinskomu-pravoslavnyi-ta-chomu-dosi-isnuye-kanonichnij-zvyazok-z-rpc_n134279
- 52 "Ідея законом заборонити УПЦ МП нині точно не найкращий варіант", - Олена Богдан ["The idea of banning the UOC-MP by law is definitely not the best option now," - Olena Bohdan], *RISU* (28/11/2022) https://risu.ua/ideya-zaboroniti-upc-mp-uhvalivshi-vidpovidnij-zakon-nini-tochno-ne-najkrashchij-variant---olena-bogdan_n134299
- 53 'Ethnopolitics: Banning UOC with 2 million believers will derail the country', *UOJ* (15/09/2022) <https://spzh.news/en/news/906660-gess-zapret-upc-s-2-mln-verujushih-puty-k-destabilizacii-strany>
- 54 'Богдан: Захвати храмов УПЦ вредят имиджу України на міжнародній арені [Bogdan: Seizures of UOC churches harm the image of Ukraine in the international arena], *UOJ* (15/09/2022) <https://spzh.news/ru/news/90665-bogdan-zahvaty-khramov-upc-vredyat-imidzhu-ukrainy-na-mezhdunarodnoj-arene>
- 55 'The conclusion of the religious examination of the Statute on the Administration of the Ukrainian Orthodox Church on the existence of a church-canonical connection with the Moscow Patriarchate', *State Service of Ukraine for Ethnopolitics and Freedom of Conscience* (Unknown) <https://dcss.gov.ua/vysnovok-relihiieznavchoi-ekspertyzy-statutu-pro-upravlinnia-ukrainskoi-pravoslavnoi-tserkvy/>
- 56 'Inter-Orthodox crisis in Ukraine: Recent Developments and Reflections', *Observatoire International Du Religieux* (May 2023) <https://obsreligion.cnrs.fr/bulletin/inter-orthodox-crisis-in-ukraine-recent-developments-and-reflections-english-version/>
- 57 'A statement was sent to remove biased experts from the composition of the commission for the examination of the UOC Statute and to involve international religious scholars in its work', *Legal Department of the Ukrainian Orthodox Church* (January 2023) <https://law.church.ua/2023/01/10/napravleno-zayavu-pro-viluchennya-zi-skladu-komisiji-z-ekspertizi-statutu-upc-uperedzhenix-ekspertiv-ta-zaluchennya-do-jiji-roboti-mizhnarodnix-religijeznavciv/>
- 58 'UPC MP is a "quasi-religion", which is not really a religious structure" - religious scholar Liudmyla Fylypovych', *Ukrainian Radio Symphony Orchestra* (17/12/2022) <http://www.nrcu.gov.ua/news.html?newsID=100314>
- 59 'UKRAINE: Draft law better than others, freedom of religion or belief concerns remain' *Forum 18* (02/02/2023) https://www.forum18.org/archive.php?article_id=2807
- 60 Thomas Bremer, 'Assessment of the "Experts' Commission Report" on the Ukrainian Orthodox Church', *WWU Munster*

- (15/09/2023), <https://www.dialogtut.org/wp-content/uploads/2023/09/review-uoc-report-2.pdf>
- 61 'Report on the Human Rights Situation in Ukraine 1 August 2022 - 31 January 2023', *United Nations Human Rights Office of the High Commissioner* (24/03/2023) <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/23-03-24-Ukraine-35th-periodic-report-ENG.pdf> at page 32 para 113
- 62 '2022 Report on International Religious Freedom: Ukraine', *U.S State Department* (15/05/2022) <https://www.state.gov/wp-content/uploads/2023/05/441219-UKRAINE-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> at 15
- 63 'Ukraine expels pro-Russian clergy from Kyiv cave monastery complex', *POLITICO* (29/03/2023) <https://www.politico.eu/article/ukraine-expels-pro-russian-clergy-from-kyiv-monastery-lavra-schism-dividing-orthodox-maidan-protesters-oleksandr-tkachenko-moscow-patriarchate/>
- 64 'Audit reveals 36 illegal new buildings on Kyiv Pechersk Lavra's territory - sources', *LB.ua* (11/03/2023) https://en.lb.ua/news/2023/03/11/19646_audit_reveals_36_illegal_new.html
- 65 'UKRAINE: Kyiv Pechersk Lavra conflict, draft law, impact on freedom of religion or belief', *Forum 18* (06/04/2023) https://www.forum18.org/archive.php?article_id=2823
- 66 'Ukraine expels pro-Russian clergy from Kyiv cave monastery complex', *POLITICO* (29/03/2023) <https://www.politico.eu/article/ukraine-expels-pro-russian-clergy-from-kyiv-monastery-lavra-schism-dividing-orthodox-maidan-protesters-oleksandr-tkachenko-moscow-patriarchate/>
- 67 'Assessing Kyiv's New Focus on "Spiritual Independence"', *Berkley Forum* (12/01/2023) <https://berkeleycenter.georgetown.edu/posts/assessing-kyiv-s-new-focus-on-spiritual-independence>
- 68 'We will guarantee spiritual independence to Ukraine - address by President Volodymyr Zelenskyy', *The Presidential Office of Ukraine* (01/12/2022) <https://www.president.gov.ua/en/news/mi-garantuyemo-ukrayini-duhovnu-nezalezhnist-zvernennya-prez-79577>
- 69 'The Security Service of Ukraine published a list of persons included in the "church list" of NSDC sanctions', *SSU Press* (03/12/2022) <https://ssu.gov.ua/novyny/sbu-opublikovala-perelik-osib-yaki-potrapyly-u-tserkovnyi-spysok-sanktsii-rnbo>
- 70 'Ukraine imposes sanctions on 7 more representatives of Moscow-linked Ukrainian Church', *Ukrainska Pravda* (11/12/2022) <https://www.pravda.com.ua/eng/news/2022/12/11/7380307/>
- 71 <https://kyivindependent.com/ukraine-sanctions-21-russian-orthodox-churches-clerics/>
- 72 'The Security Service of Ukraine published a list of persons included in the "church list" of NSDC sanctions', *SSU Press* (03/12/2022) <https://ssu.gov.ua/novyny/sbu-opublikovala-perelik-osib-yaki-potrapyly-u-tserkovnyi-spysok-sanktsii-rnbo>
- 73 <https://www.politico.eu/article/kyiv-accuses-orthodox-church-leader-of-justifying-russias-invasion/>
- 74 'Ukraine seizes assets of billionaire Novynskyi's Smart Holding', *bne INTELLINEWS* (14/04/2023) <https://www.intellinews.com/ukraine-seizes-assets-of-billionaire-novynskyi-s-smart-holding-275913/>
- 75 'Novynskyi condemned Russia's invasion of Ukraine, but did not call Putin a criminal', *Gordonua* (07/03/2022) <https://gordonua.com/news/war/novynskiy-osudil-vtorzhenie-rf-v-ukrainu-no-putina-prestupnikom-ne-nazval-1598739.html>
- 76 <https://spzh.news/en/news/74831-sbu-announces-new-charges-against-metropolitan-pavel>
- 77 'Moscow-Linked Priest Must Retain Electronic Monitor After Release on Bail' *Kyiv Post* (09/09/2023), <https://www.kyivpost.com/post/20366>
- 78 'Metropolitan Of Ukrainian Orthodox Church Sentenced To Five Years In Prison' *RFE/RL* (09/09/2023) <https://www.rferl.org/a/ukraine-orthodox-church-ionafan-sentenced/32539069.html>
- 79 'Lawyer: "Evidence" of Bishop Jonathan's guilt was created artificially', *UOJ* (14/09/2023) <https://spzh.news/en/news/75940-lawyer-evidence-of-bishop-jonathans-guilt-was-created-artificially>
- 80 'До 5 років позбавлення волі засуджено очільника Тульчинської єпархії УПЦ (МП)' [The head of the Tulchyn Diocese of the UOC (MP) was sentenced to 5 years in prison] *Office of the Prosecutor General* (07/08/2023) <https://www.gp.gov.ua/ua/posts/do-5-rokiv-pozbavleniya-voli-zasudzeno-ocilnika-tulcinskoyi-jeparxiyi-upc-mp>
- 81 'The court denies the request to take Cherkasy Metropolitan into custody' *UOJ* (10/09/2023) <https://spzh.news/en/news/76373-the-court-denies-the-request-to-take-cherkasy-metropolitan-into-custody>
- 82 'Cherkasy bishop: My case is fabricated, the Church is persecuted in my face' *UOJ* (21/08/2023) <https://spzh.news/en/news/75589-cherkasy-bishop-my-case-is-fabricated-the-church-is-persecuted-in-my-face>
- 83 'За матеріалами СБУ повідомлено про нову підозру митрополиту Черкаської єпархії УПЦ (МП), який під час домашнього арешту розпалював релігійну ворожнечу', According to the SBU, a new suspicion was reported to the Metropolitan of the Cherkasy Eparchy of the UOC (MP), who incited religious enmity during house arrest', Telegram, @SBUkr (06/10/2023) <https://t.me/SBUkr/9887>
- 84 'Cherkasy mayor: We will cleanse the Moscow filth from the city to the last' *UOJ* (08/08/2023) <https://spzh.news/en/news/75328-cherkasy-mayor-we-will-cleanse-the-moscow-filth-from-the-city-to-the-last>
- 85 'Metropolitan Longin faces arrest: what will happen to his 400 children?' *UOJ* (23/5/2023) <https://spzh.news/en/zashhita-very/73954-metropolitan-longin-faces-arrest-what-will-happen-to-his-400-children>
- 86 'Deputy Abbot Longin (Zhar) of Banchyn Monastery charged by law enforcement' *RISU* (22/5/2023), https://risu.ua/en/deputy-abbot-longin-zhar-of-banchyn-monastery-charged-by-law-enforcement_n139640
- 87 'У МИТРОПОЛИТА ЛОНГИНА ІНСУЛЬТ' [Metropolitan Longin Has a Stroke] Telegram @Pravoslavie (23/7/2023) <https://t.me/pravoslavie/52281>
- 88 'Дело митрополита Банченского Лонгина передали в суд' [The case of Metropolitan Longin of Banchensk was brought to court] *UOJ* (12/09/2023) <https://spzh.news/ru/news/75916-delo-mitropolita-banchenskoho-lonhina-peredali-v-sud>

- 89 'Проповедь Митрополита Лонгина - Вы ранили нас, это так не прощается. 05.06.2022' [Sermon by Metropolitan Longin - You wounded us, it cannot be forgiven. 06/05/2022] *YouTube* (05/06/2022) <https://www.youtube.com/watch?v=Lw6z6Y-n5nQ>
- 90 Силовики с автоматами оцепили Банченский монастырь [Security forces with machine guns cordoned off the Banchen Monastery] *UOJ* (11/09/2023) <https://spzh.news/ru/news/76904-siloviki-s-avtomatami-otsepili-banchenskij-monastyr>

III. LEGAL GUARANTEES OF THE FREEDOM OF RELIGION

Ukraine's actions against the UOC and its members constitute glaring and dangerous violations of the freedom of religion that should be of concern to all peoples of faith and the international community as a whole. The Freedom of religion is guaranteed in both international and Ukrainian law. By any interpretation of those rules, including that of the European Court of Human Rights, the Ukrainian government's attacks on the UOC are illegal and unacceptable.

A. THE INTERNATIONAL LEGAL FRAMEWORK

The freedom of religion is one of the core guarantees of international human rights law. In fact, the freedom of religion is at the core of the human rights system's commitment to the sanctity of the human person. Article 18 of the 1945 Universal Declaration of Human Rights provides:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.⁹¹

As a State Party to the International Covenant on Civil and Political Rights (ICCPR), Ukraine is obligated to respect the freedom of religion guaranteed in article 18 of that treaty:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.⁹²

Although the ICCPR does contemplate potential limits on the freedom of religion, "the freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."⁹³ Despite an active conflict between Russia and Ukraine, the actions of the Ukrainian government against the UOC are in no way *necessary* to protect public safety, order, health or morals, even more so in light of the separation of the UOC from the ROC and the UOC's continued support for Ukraine's national defense.

Ukraine is also a member of the European Convention on Human Rights, which likewise

guarantees the right of freedom of religion. Article 9 of the Convention states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.⁹⁴

Article 11 guarantees a related right to the freedom of association, including religious association. Article 11 provides:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.⁹⁵

Case law of the European Court of Human Rights (“**ECtHR**”) sets a very high bar for member states to pursue deregistration of a religious organization – which the Government of Ukraine is currently considering through draft legislation. Article 9 is a “qualified right,” meaning that it can be interfered with in limited circumstances “when necessary in a democratic society.” However, the ECtHR strictly limits when such interference is justifiable. The ECtHR’s guidance on Article 9 explains, “Such a drastic measure requires very serious reasons by way of justification in order to be recognized as “necessary in a democratic society.”⁹⁶

Furthermore, the ECtHR guidance notes that deregistering or banning a religious organization on the grounds that the State is protecting “its institutions and citizens from associations that might jeopardize them must be used sparingly,” and exceptions to

the rule of freedom of association (Article 11 of The Convention) should be considered strictly. The ECtHR has also found that Article 11 of The Convention ensures the right of religious organizations “to own or rent property, to maintain bank accounts, to hire employees, and to ensure judicial protection of the community, its members and its assets.”⁹⁷

In a 2017 case relating to an Orthodox Archdiocese in the Former Yugoslav Republic of Macedonia, for instance, the ECtHR ruled in favor of the applicant, that had been denied registration on the grounds that the name was too similar to the Macedonian Orthodox Church and that the Applicant was part of a foreign Orthodox church. The Court found that the reasons for refusal was “not relevant and sufficient” and that it was not justified in a democratic society, highlighting the obligation of the State to practice neutrality and impartiality towards religious groups.⁹⁸

The ECtHR has expressly prohibited a member state from banning a religious organization that it claims is engaged in activities harmful to it. In a 2001 case relating to the Metropolitan Church of Bessarabia, an Orthodox Church in Moldova which split with the Metropolitan Church of Moldova in 1992, the ECtHR ruled that Moldovan authorities could not refuse to register the church on the grounds of national security and Moldovan territorial integrity. The Court rejected Moldova’s arguments that the church was favorable to reunification of Moldova and Romania and damaged relations with Ukraine. The Court concluded that these allegations were “a mere hypothesis which, in the absence of corroboration, cannot justify a refusal to recognise it.”⁹⁹

The jurisprudence of the ECtHR provides ample precedent that the actions of the Ukrainian government against the OUC cannot be justified under the European Convention on Human Rights and, hence, constitute

grave violations of the freedom of religion. While litigation before the ECtHR is notoriously slow, in due course the Court will likely affirm the rights of the UOC and deem many of Ukraine's current actions to be a violation of the Convention.

B. THE UKRAINIAN CONSTITUTIONAL FRAMEWORK

The Ukrainian Constitution has implemented these international legal guarantees of the freedom of religion into domestic Ukrainian law. Article 35 of the Constitution provides:

Everyone has the right to freedom of personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and unimpededly religious rites and ceremonial rituals, and to conduct religious activity.¹⁰⁰

Any restrictions on the freedom of religion under Ukrainian law are strictly curtailed. Article 35 provides:

The exercise of this right may be restricted by law only in the interests of protecting public order, the health and morality of the population, or protecting the rights and freedoms of other person.¹⁰¹

The Ukrainian government has made no showing that the current attacks on the UOC are necessary for the protection of public order, health or morality or other's religions. Nor has the Ukrainian government created appropriate processes to challenge the necessity and legality of the measures undertaken.

Finally, the Ukrainian Constitution demands a separation of Church and State. Article 35 provides that:

The Church and religious organisations in Ukraine are separated from the State, and the school - from the Church. No religion shall be recognised by the State as mandatory.¹⁰²

Notwithstanding the legal requirement for the separation of church and state, the Ukrainian Government is actively intervening on behalf of one branch of the Orthodox Church, while attacking another. The government provides actual support to the OCU, while discriminating against and infringing upon the rights of the UOC parishioners. Its actions amount to an active persecution of UOC followers on account of their religious beliefs. Discrimination on religious grounds became common in Ukraine, persecution of parishioners of the UOC under guidance of the Government became systematic.

D. INTERNATIONAL CONDEMNATION OF UKRAINE'S ATTACKS ON THE UOC

While much of the world has turned a blind eye to the religious freedom and rule of law concerns surrounding the Ukrainian Government's ever-hardening policies against the UOC, they have not gone entirely unnoticed by the international community. In February, Metropolitan Onufriy appealed to the United Nations Secretary General Antonio Guterres about efforts to curtail the UOC, stating 'We hope our voice will be heard, and that citizens of Ukraine faithful to the Ukrainian Orthodox Church will receive necessary support and protection at the international level, with the timely implementation of all necessary measures to counter this incitement to religious enmity and discrimination.'¹⁰³

A March 2023 report by the United Nations High Commissioner for Human Rights

(“OHCHR”) found that searches carried out by the SBU in UOC properties were concerning, observing, “OHCHR is concerned that the State’s activities targeting the UOC could be discriminatory.” The report also raised rule of law concerns, writing, “OHCHR also recalls the necessity of ensuring that all those facing criminal charges enjoy the full spectrum of non-derogable fair trial rights.”¹⁰⁴

The OHCHR’s subsequent report covering February to July 2023 highlighted further instances of measures taken against the UOC, writing,

During the reporting period, the Government of Ukraine and local authorities took several measures against the Ukrainian Orthodox Church (UOC). Authorities notably searched places of worship and other UOC facilities, issued notices of suspicion and imposed measures of restraint against clergymen, including one of the UOC’s main hierarchs. Several city and regional councils also banned the “activities of the UOC” in the respective areas.¹⁰⁵

The OHCHR report also observed several instances of violence and threats committed against UOC parishioners, particularly from March-April 2023. On 28 March, for instance, teargas was sprayed inside a UOC church in Ivano-Frankivsk, resulting in several injuries, and “[a]lthough the police were within five meters of the incident, they did not separate participants or prevent violence.”¹⁰⁶

Ukraine’s Foreign Ministry spokesman Oleh Nikolenko dismissed the OHCHR report out of hand, suggesting the Human Rights Commissioner should “refrain from unbalanced political assessments and base its report on facts.” Nikolenko added, “Ukraine is a democratic state in which freedom of religion is guaranteed. At the same time, freedom

doesn’t equal the right to engage in activities that undermine national security.”¹⁰⁷

E. THE DANGEROUS PRECEDENT OF COLLECTIVE PUNISHMENT

Ukraine’s attacks on the UOC present a further violation of human rights norms in that they effectively impose collective guilt or collective punishment – which when conducted in appropriate circumstances may even rise to the level of a war crime.¹⁰⁸ Collaborating with Russia by any individual in Ukraine should be condemned and prosecuted according to law, but this should not result in the blanket banning and persecution of an entire organization – religious or otherwise – for the actions of individual members. The Ukrainian government’s efforts to punish the entire UOC and its members for the actions of a small number of individual members is deeply concerning. As Archbishop Iona, the head of the UOC’s youth department at the Lavra remarked to *Politico* journalists in March,

Only a few priests have indeed collaborated. It is not right to apply collective guilt to a church. There were also collaborators among SBU and other organs. But the government chose to attack the church.¹⁰⁹

Similarly, an expert writing for the Carnegie Endowment observed that “It’s also important to remember that despite individual cases of clergy and churchgoers siding with Russia, most priests and members of the UOC are loyal to Ukraine.”¹¹⁰

Indeed, collective guilt in the way that Ukrainian officials appear to be pursuing against the UOC, often with little subtlety as with Foreign Ministry Spokesman Nikolenko’s remarks above, raise freedom of religion concerns. As Dmytro Volk notes,¹¹¹ the Orga-

nization for Security and Cooperation in Europe (“OSCE”) – of which Ukraine is a member – has produced policy guidance related to freedom of religion and belief and the circumstances in which a religious entity should be banned or curtailed for security reasons. The guidance notes that illegal extremist activity by individuals of a religious organization should not be used to justify its deregistration:

Unproven concerns that individual believers, or even leaders of a religious or belief community, are involved in violent or extremist activities...are not sufficient grounds to deny legal personality or to de-register the whole community. The fact that some individuals engage in such acts is not an indication that an entire religious or belief community shares these views or condones these activities.¹¹²

In addition, the OSCE guidance recommends that “any wrongdoing on the part of individuals” should be addressed through criminal, administrative or civil proceedings

against the individual instead of targeting the entire religious organization.

The legal necessity of separating actions by a few individuals from actions of the Church as a whole is even more important given the organizational structure of the UOC. As Archimandrite Cyril Hovorun, a professor of Ecclesiology, International Relations, and Ecumenism at University College Stockholm explained, the UOC does not exist as a single legal entity; as with all religious entities in Ukraine, each community and diocese has its own separate legal status.¹¹³ There are around 11,000 UOC communities with their own separate legal status. “To ban or deregister the UOC,” Dmytro Volk noted, “the state would have to prove in court that the leadership or the majority of parishioners of each of the 11,000 are involved in illegal activities.”¹¹⁴ The present targeting of a religious organization with more than 11,000 communities – each of which is a separate legal entity – in response to the wrongdoing of a very few raises serious questions about Ukraine’s commitment to the rule of law and freedom of religion.

ENDNOTES

- 91 Universal Declaration of Human Rights (1945)
- 92 International Covenant on Civil and Political Rights (1977).
- 93 International Covenant on Civil and Political Rights (1977).
- 94 European Convention on Human Rights, Art. 9.
- 95 European Convention on Human Rights, Art. 11.
- 96 'Guide on Article 9 of the European Convention on Human Rights', *European Court of Human Rights* (31/08/2022) https://www.echr.coe.int/documents/d/echr/guide_art_9_eng also see *Biblical Centre of the Chuvash Republic v. Russia*, 2014, § 54
- 97 Case of Jehovah's WITNESSES Witnesses of Moscow and Others v Russia § 102
- 98 Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy) v. the former Yugoslav Republic of Macedonia, 2017
- 99 CASE OF METROPOLITAN CHURCH OF BESSARABIA AND OTHERS v. MOLDOVA 2001 <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-59985%22>} at 125.
- 100 Constitution of Ukraine, Art. 35.
- 101 Constitution of Ukraine, Art. 35.
- 102 Constitution of Ukraine, Art. 35.
- 103 'Ukraine's Moscow-linked Church appeals to UN for protection as divisions harden' *Church Times* (03/02/2023) <https://www.churchtimes.co.uk/articles/2023/3-february/news/world/ukraine-s-moscow-linked-church-appeals-to-un-for-protection-as-divisions-harden>
- 104 'Report on the Human Rights Situation in Ukraine 1 August 2022 - 31 January 2023', *United Nations Human Rights Office of the High Commissioner* (24/03/2023) <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/23-03-24-Ukraine-35th-periodic-report-ENG.pdf> at page 31 and 3
- 105 Report on the Human Rights Situation in Ukraine, OHCHR (October 2023), at para 114-116.
- 106 Report on the Human Rights Situation in Ukraine, OHCHR (October 2023), at para 114-116.
- 107 'Foreign Ministry dismisses UN claim that searches in Moscow-linked churches could be "discriminatory"', *Yahoo!news* (27/03/2023) <https://news.yahoo.com/foreign-ministry-dismisses-un-claim-123044068.html>
- 108 Common Article 3 of the Geneva Conventions of 1949.
- 109 'Ukraine expels pro-Russian clergy from Kyiv cave monastery complex', *POLITICO* (29/03/2023) <https://www.politico.eu/article/ukraine-expels-pro-russian-clergy-from-kyiv-monastery-lavra-schism-dividing-orthodox-maidan-protesters-oleksandr-tkachenko-moscow-patriarchate/>
- 110 'Holy War: The Fight for Ukraine's Churches and Monasteries', *Carnegie Endowment for International Peace* (11/04/2023) <https://carnegieendowment.org/politika/89496>
- 111 'UKRAINE: Draft law better than others, freedom of religion or belief concerns remain' *Forum 18* (02/02/2023) https://www.forum18.org/archive.php?article_id=2807
- 112 'Freedom of Religion or Belief and Security Policy Guidance', *OSCE Office for Democratic Institutions and Human Rights* (2019) <https://www.osce.org/files/f/documents/e/2/429389.pdf> at page 33
- 113 'What Is Behind the Ukrainian Orthodox Church (Moscow Patriarchate)?', *Ukraine World* (20/12/2022) <https://ukraineworld.org/articles/analysis/uoc-mp>
- 114 'UKRAINE: Draft law better than others, freedom of religion or belief concerns remain' *Forum 18* (02/02/2023) https://www.forum18.org/archive.php?article_id=2807

IV. CONCLUSION

The ongoing attacks on the UOC—its institutional structures, its members, and its beliefs—by the Ukrainian government constitutes a clear violation of the freedom of religion guaranteed by both international human rights law and the Ukrainian Constitution itself. Present efforts before the Ukrainian Parliament to outright ban the Church would constitute a dangerous precedent for undermining religious freedoms that should be of concern to the international community as a whole.

Despite many billions of dollars of Western aid, Ukraine has taken the road to authoritarian backtracking when it comes to a religion policy more closely resembling that of the Soviet Union in the 1920s than a progressive Western democracy of the twenty-first century. The sanctioning, harassment, intimidation, and jailing of clerics on the basis of “plots” and conspiracies and the embrace of collective punishment with respect to a church that is hundreds of years old should have no place in a free and democratic society.

The coordination between intelligence services, the presidential administration, and

the courts to expropriate and literally deny the existence of Ukraine’s historical home of worship represents a policy and practice that the West should condemn in unequivocal terms.

The Zelensky government’s effective adaptation of the OCU as a state church lies outside the bounds of Ukraine’s constitution, European law, and modern Western practice.

We call for international pressure on the State Service for Ethnopolitics and Freedom of Conscience (“DESS”) headed by Viktor Yelensky, which has played a central role in the persecution of the UOC and its believers while becoming a blatantly political agency following Yelensky’s appointment last December and its placement under the control of the Cabinet of Ministers rather than its previous position within the Ministry of Culture. We also call for sanctions and other measures against Ukrainian officials engaged in the UOC’s persecution and the undermining of human rights and freedom of religion at a time when Ukraine should focus on unity and the upholding of the rights of its citizens during wartime.