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Abraham Cooper
Chair
United States Commission on International Religious Freedom
732 North Capitol Street, NW
Suite A-714
Washington, DC 20401

April 23, 2024

Dear Chairperson Cooper:

I represent the Ukrainian Orthodox Church (UOC) in our effort to ensure the freedom of religion and the rule of law for all Ukrainians. I write in response to the rapidly deteriorating situation of religious freedom in Ukraine. Given the statutory authorities of the United States Commission on International Religious Freedom (USCIRF), I urge you to recommend to the United States Department of State that Ukraine be designated a Country of Particular Concern or, at the very least, be placed on the Special Watch List.

I am not alone in bringing the situation in Ukraine to your and the world's attention. Volker Turk, the United Nations High Commissioner for Human Rights has noted "concerns regarding freedom of religion and belief in Ukraine, given continuing action by the authorities against the Ukrainian Orthodox Church."¹ The Office of the United Nations High Commissioner for Human Rights has indicated that it "is closely monitoring how legislative developments in Ukraine may impact enjoyment of freedom of religion and has, in a previous Human Rights Monitoring Mission in Ukraine report, expressed concern over the cumulative impact of Government actions targeting UOC that could be discriminatory."²

Ilze Brands Kehris, Assistant Secretary-General for Human Rights in the Office of the United Nations High Commissioner for Human Rights (OHCHR) has said in response to the lawlessness and violence against the UOC and its members that "Ukrainian law enforcement's response in these cases has failed to sufficiently investigate incidents and take action to protect members of the Ukrainian Orthodox Church."³ These statements come amidst periodic observations by the

¹ Office of the High Commissioner for Human Rights (OHCHR). "Russia should immediately cease its use of force against Ukraine: Turk." December 2023. Available at: <https://www.ohchr.org/en/statements-and-speeches/2023/12/russia-should-immediately-cease-its-use-force-against-ukraine-turk>

² OHCHR. "ASG Brands Kehris briefs Security Council on Ukraine." November 2023. Available at: <https://www.ohchr.org/en/statements-and-speeches/2023/11/asg-brands-kehris-briefs-security-council-ukraine> and United Nations Press Release SC/15500. Available at: <https://press.un.org/en/2023/sc15500.doc.htm>

³ OHCHR. "Report on the human rights situation in Ukraine: 1 December 2023 - 29 February 2024." Available at: <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-december-2023-29-february-2024>

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OHCHR that the Ukrainian government is not protecting and affirmatively persecuting the UOC and its members.⁴

The Church of England has raised concerns about how religion has become “increasingly weaponized” by the Ukrainian government, and how “recent legislative developments in Ukraine may impact enjoyment of FoRB” (Freedom of Religious Belief). It has described Draft Law 8371 as an act of “ethno-religious nationalism.”⁵ The Norwegian Human Rights NGO, Forum 18, has found that Draft Law 8371 “would not implement Ukraine’s legally-binding international obligations to respect and protect the freedoms of religion or belief, expression, and association.”⁶

These concerns are well founded and the state of religious freedom on the ground in Ukraine is worsening by the day. The UOC has been subjected to a systematic campaign of discrimination by the Ukrainian government as outlined in more detail in these submissions. The ultimate goal of this campaign is to dismantle and eradicate the church and disperse the millions in its flock. The Ukrainian government has deployed significant state resources including its police and security services to harass, intimidate, arrest, and jail UOC clergy and parishioners. Of particular concern are the arbitrary arrests of numerous senior members of the clergy on spurious charges that call in to question Ukraine’s commitment to the freedom of religion and the rule of law. Beyond these attacks on the church, Draft Law 8371, currently pending a second reading before Ukraine’s parliament, threatens the very existence of the UOC. With the final passage of the legislation likely in the coming weeks, the Ukrainian government will destroy a centuries-old religious institution and deprive many Ukrainians of the church that serves as their religious home.

Given these developments in Ukraine and its government’s ongoing campaign against the UOC, the commitment of both USCIRF and the Government of the United States of America to protect and affirm the right to the freedom of religion around the world must be called upon. Ukraine must be designated a Country of Particular Concern or, at the least, be placed on the State Department’s Special Watch List.

This letter proceeds as follows. First, I briefly review the international law standards for the protection of the freedom of religion in relation to which USCIRF bases its recommendations. Second, I review the statutory authority of USCIRF, including both the standards for designation and the sanctions that may flow from the US State Department’s determinations. I then document in detail the deterioration of religious freedom in Ukraine and particularly the Ukrainian government’s campaign against the UOC, considering (a) discrimination by the Ukrainian government against the UOC in favor of the church recently established by the government of Ukraine, and therefore the government’s preferred Orthodox church, the Orthodox Church of Ukraine (OCU), (b) the promotion of religious hatred by officials of the Ukrainian government, (c) legislative efforts by Ukraine’s parliament to ban the UOC and its religious practices, (d)

⁴ OHCHR. "Report on the human rights situation in Ukraine: 1 August - 30 November 2023," and "Report on the human rights situation in Ukraine: 1 February - 31 July 2023." Available at: <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-august-30-november-2023> and <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2023>

⁵ Church of England. "War in Ukraine." February 2024. GS 2348. Available at: <https://www.churchofengland.org/sites/default/files/2024-02/gs-2348-war-in-ukraine-final-final.pdf>

⁶ Forum 18 Archive. "Ukraine: Religious freedom survey, February 2024." Available at: https://www.forum18.org/archive.php?article_id=2896

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illegal seizure of UOC property, including places of worship, (e) acts of religious violence against UOC clergy and parishioners by or with the acquiescence of the Ukrainian government and (f) arresting and silencing of journalists attempting to document these events. Finally, I conclude by demonstrating that, based on the standards used in past USCIRF annual reports, the Ukrainian government's actions merit designation of Ukraine as a Country of Particular Concern.

I. International Standards

USCIRF makes clear in its annual reports that it “bases these recommendations ... on the standards in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and other international documents.”⁷ Before turning to current events in Ukraine, it is necessary to briefly review the relevant international standards for the protection of the freedom of religion.

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

Everyone has the right to freedom of thought, conscience, and religion; this right includes the freedom to change his religion or belief, and freedom, either alone or in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.⁸

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:

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.⁹

Although the ICCPR does contemplate potential limits of 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 freedom of others.”¹⁰ 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 UOC's denunciations of Russia's illegal invasion¹¹, the church's self-governing status, and its continued support for Ukraine's self-defence.

Ukraine is also a State Party to the European Convention on Human Rights, which likewise guarantees the right of freedom of religion. Per Article 9:

⁷ United States Commission on International Religious Freedom (USCIRF). "Annual Report 2022." p. 1.

⁸ Universal Declaration of Human Rights. "Article 18." 1945.

⁹ International Covenant on Civil and Political Rights (ICCPR). "Article 18."

¹⁰ *Id.*

¹¹ Associated Press. "Russia-Ukraine: Religion-Poland-Warsaw." Available at:

<https://apnews.com/article/russia-ukraine-europe-religion-poland-warsaw-74c62faf4531a4bf90902470e026b9bf>

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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.¹²

Article 11 of the European Convention 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 interest.

Case law of the European Court of Human (ECtHR) rights sets a very high bar for member states to pursue deregistration of a religious organization – which is exactly what Draft Law 8371 (discussed in more detail, below) would do. Article 9 is a “qualified right,” meaning that it can be interfered with in limited circumstances, but again only “when necessary in a democratic society.” The ECtHR strictly limits when such interference is justifiable. The Court’s guidance on Article 9 explains: “Such a drastic measure [the deregistration of a religious organization] requires very serious reasons by way of justification in order to be recognized as ‘necessary in a democratic society.’”¹³

The ECtHR has expressly prohibited a member state from banning a religious organization that it claims engaged in prejudicial activities. 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. The Court rejected Moldova’s arguments that the church was supporting the reunification of Moldova and Romania and damaging Moldova’s relations with Ukraine. The Court concluded that these allegations were a “mere hypothesis which, in the absence of corroboration, cannot justify a refusal to recognize it.”¹⁴ While there is no evidence that the UOC has engaged in “prejudicial activity” since the 2022 invasion, even if the allegations of the Ukrainian government were true, the same logic would apply to an ECtHR review of Ukraine’s Draft Law 8371.

The unambiguous legal rules contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights, along with the jurisprudence of the ECtHR, provide the framework for demonstrating the illegality of Ukraine’s current attack on the UOC. Against this legal framework and in light of the events in Ukraine, described below, Ukraine must be designated by USCIRF.

II. Statutory Authorities

¹² European Court of Human Rights (ECHR). "Guide on Article 9 of the European Convention on Human Rights." August 31, 2022.

¹³ Guide on Article 9 of the European Convention on Human Rights, European Court of Human rights (31/8/2022) See also: Biblical Centre of the Chuvash Republic v. Russia, 2014. p. 54.

¹⁴ ECHR. "Case of Metropolitan Church of Bessarabia and others v. Moldova." 2001. para. 125.

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The International Religious Freedom Act of 1998 (IRFA) mandates USCIRF to “review ... the facts and circumstances of violations of religious freedom presented in the Country Reports on Human Rights Practices, the Annual Report, and the Executive Summary, as well as information from other sources as appropriate.” Thereafter USCIRF is empowered to make “policy recommendations to the President, the Secretary of State, and Congress with respect to matters involving international religious freedom.”¹⁵ The Commission is obligated “on an ongoing basis, [to] monitor facts and circumstances of violations of religious freedom, in consultation with independent human rights groups and nongovernmental organizations, including churches and other religious communities, and make such recommendations as may be necessary to the appropriate officials and offices in the United States Government.”¹⁶

USCIRF has broad authority to collect information and investigate violations of the freedom of religion around the world. As needed, it may hold hearings, seek information from the US government, and collect other information from sources as it sees fit.¹⁷ Ultimately, the Commission has both an obligation and legal authority to investigate and evaluate the ongoing violations of the freedom of religion in Ukraine.

The Frank R. Wolf International Religious Freedom Act (Public Law 114–281) provides statutory guidance for USCIRF’s evaluation of particular countries’ practices relating to the freedom of religion. USCIRF must make annual recommendations to the President and Secretary of State, who, in turn, may formally designate any country that has “engaged in or tolerated particularly severe violations of religious freedom” as a Country of Particular Concern.¹⁸ Countries that have “engaged in or tolerated severe violations of religious freedom during the previous year” are to be placed on the “Special Watch List.”¹⁹

In conducting its evaluation of a country’s religious practices, USCIRF must look for “particularly severe violations of religious freedom,” which should trigger a recommendation for designation as a Country of Particular Concern. The Wolf Act defines “particularly severe violations of freedom of religion” as:

“systematic, ongoing, egregious violations of religious freedom, including violations such as—

- (a) torture or cruel, inhuman, or degrading treatment or punishment;
- (b) prolonged detention without charges;
- (c) causing the disappearance of persons by the abduction or clandestine detention of those persons; or
- (d) other flagrant denial of the right to life, liberty, or the security of persons.”²⁰

USCIRF has looked to a wide constellation of facts on the ground in finding “particularly severe violations of the freedom of religion.” In the past, recommendations have been based, for example, upon a “government seeking total dominance over religious life in the country”²¹ or a

¹⁵ International Religious Freedom Act of 1998 (as amended) §6432

¹⁶ International Religious Freedom Act of 1998 (as amended) §6432.

¹⁷ International Religious Freedom Act of 1998 (as amended) §6432a.

¹⁸ Frank R. Wolf International Religious Freedom Act. "Public Law 114–281 §6442(b)."

¹⁹ *Id.*

²⁰ Frank R. Wolf International Religious Freedom Act. "Public Law 114–281 §6402(13)."

²¹ *Id.*

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government “imprisoning clergy, shuttering church-affiliated organizations, and prohibiting Catholic rituals.”²² The application of these standards is discussed further in Part IV, below.

The Wolf Act does not provide further guidance for what constitutes “severe violations of religious freedom” sufficient for a country to be placed on the Special Watch List.” USCIRF has interpreted the relevant standard as “violations that meet two of the elements of IFRA’s systematic, ongoing, and egregious standard (i.e., that the violations are systematic and ongoing, systematic and egregious, or ongoing and egregious).”²³ Again, as applied, USCIRF has taken a broad approach to such analysis, recommending countries be placed on the Special Watch List due to, for example, “discrimination against religious minorities in the form of targeted arrests using problematic legislation and appropriation of land and property.”²⁴

USCIRF’s recommendations to designate a country as a Country of Particular Concern or place it on the Special Watch List are weighty and significant, with sanctions for both the country and government officials responsible for violations of religious freedom. The President and Secretary of State are obliged to consider USCIRF’s recommendations in the development of the State Department’s annual International Religious Freedom Report.²⁵ They must “make designations no later than 90 days after the issuance” of that report.²⁶

Given the importance the United States places on respect for the freedom of religion, under the Wolf Act the consequences for countries designated as Countries of Particular Concern or placed on the Special Watch List are severe. These legislatively mandated consequences include: public condemnation; the delay or cancelation of scientific or cultural exchanges; the denial of working, official, or state visits; the withdrawal, limitation, or suspension of development or security assistance; US opposition to a country’s access to international financial institutions and loans; denial of exports under the Arms Export Control Act; prohibition on loans from US financial institutions.²⁷

In addition to these state-level sanctions, the Wolf Act also provides for sanctions against individuals who are “responsible for or directly carried out particularly severe religious freedom violations.” Individual sanctions include visa bans that would make such individuals “inadmissible to the United States.”²⁸ Designation may trigger application of the Global Magnitsky Human Rights Accountability Act and additional sanctions provided for in Executive Order 13818. These instruments allow the President to “deny U.S. visas to and block assets of foreigners in corruption or human rights abuses, including violations of religious freedom.”²⁹

²² Id.

²³ United States Commission on International Religious Freedom (USCIRF). “2023 Annual Report.” p. 2.

²⁴ Id.

²⁵ United States Commission on International Religious Freedom (USCIRF). “2023 Annual Report.”

²⁶ United States Commission on International Religious Freedom (USCIRF). “Factsheet: International Religious Freedom Act (IRFA).” March 2021. Available at: <https://www.uscirtf.gov/sites/default/files/2021-03/2021%20Legislation%20Factsheet%20-%20IRFA.pdf>

²⁷ Frank R. Wolf International Religious Freedom Act (Public Law 114–281) §6445

²⁸ Frank R. Wolf International Religious Freedom Act (Public Law 114–281) §6473(a): “The Secretary of State, in coordination with the Ambassador at Large and in consultation with relevant government and nongovernment experts, shall establish and maintain a list of foreign individuals to whom a consular post has denied a visa on the grounds of particularly severe violations of religious freedom under section 1182(a)(2)(G) of title 8, or who are subject to financial sanctions or other measures for particularly severe violations of freedom religion.”

²⁹ United States Commission on International Religious Freedom (USCIRF). “Factsheet: International Religious Freedom Act (IRFA).”, March 2021, p. 6. Available at: <https://www.uscirtf.gov/sites/default/files/2021-03/2021%20Legislation%20Factsheet%20-%20IRFA.pdf>

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Designations can also trigger application of Section 7031(c) of the State Department's Appropriation Act that require the Secretary of State to "make foreign officials and their immediate family members ineligible for U.S. entry if there is credible evidence that such individuals have been involved in 'a gross violation of human rights.'"³⁰

III. Violations of International Religious Freedom in Ukraine

The Ukrainian government has undermined the freedom of religion in Ukraine through a systematic attack on the UOC. This egregious and on-going assault on the church through both physical and legislative mechanisms is a gross violation of the freedom of religion and in breach of Ukraine's commitments under the European Convention on Human Rights, and the International Covenant on Civil and Political Rights. This campaign against the UOC meets the standards for designation of Ukraine as a Country of Particular Concern or, at the very least, placement on the Special Watch List.

A. *The Ukrainian government actively discriminates against the Ukrainian Orthodox Church and uses its powers to promote the Orthodox Church of Ukraine, its preferred branch of Orthodoxy*

The very highest levels of the Ukrainian government are engaged in a systematic campaign of discrimination against the UOC in an effort to support the state's created, and therefore preferred branch of Orthodoxy, the Orthodox Church of Ukraine (OCU). While current legislative efforts to ban the UOC are perhaps the most flagrant acts of discrimination, they are part of a far larger and on-going effort by the government to use its powers to advance the interests of one religious group at the expense of another.

Understanding this campaign of discrimination against the UOC requires historical context. In Ukraine, Orthodox Christianity has a long and contested history, dating back to the times of Kyivan Rus in the 10th century. For historical reasons, the Orthodox Metropolitanate of Kyiv remained since 1686 canonically subordinated to the Patriarchate of Moscow until the Revolution of 1917. After the fall of the Soviet Union, the Ukrainian Orthodox Church remained canonically subordinate to the Russian Orthodox Church (ROC) and continued as the dominant force in Ukrainian Orthodoxy, even after other Orthodox church organizations were established in a newly independent Ukraine. After the Maidan events in 2014 and in light of Russia's illegal invasion in February 2022, underlying religious divides within Orthodox Christianity in Ukraine have become politicized. Ukrainian politicians seeking nationalist favor have found the UOC a convenient political target and have used such attacks to buttress political support.

Beginning in 2018, the religious debate in Ukraine changed sharply when the Ukrainian government intervened by lobbying the Ecumenical Patriarchate of Constantinople to grant autocephaly to the OCU. Petro Poroshenko, Ukraine's president at the time, weaponized and actively instrumentalized religious issues, using the "formation of an autocephalous church in Ukraine as an important component of his election campaign."³¹ In April 2018, Poroshenko formally requested autocephaly for the new church from the Ecumenical Patriarchate of Constantinople and in January of 2019, autocephaly was granted by Bartholomew I. The OCU

³⁰ Id.

³¹ Observatoire international du religieux. "Inter-Orthodox crisis in Ukraine: Recent Developments and Reflections." May 2023.

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quickly became the government's preferred church and has subsequently received considerable state backing and support at the expense of other religious groups. There were, however, problems for the state that was seeking to cleanse and eradicate the UOC in favor of the OCU: the OCU lacked followers, clerics, churches, and parishes.

Throughout the process of obtaining autocephaly and since that time, the Ukrainian government has staunchly backed the OCU, while actively discriminating against the UOC. For the Poroshenko government, the granting of autocephaly appears to have been driven by discriminatory, nationalist aims. Poroshenko's campaign slogan was "Army, Language, Faith" and support for the new OCU was a core pillar of his campaign effort. Poroshenko has declared his support for the OCU to be part of an "anti-imperialist struggle against Russia."³²

After Zelensky became president in May 2019, the pro-OCU campaign halted, but has now resumed in full force as part of a broader political effort under the guise of severing ties with Russia but in fact aimed to consolidate political support within Ukraine. It must be said that in the early days of the Zelenskyy presidency, the previous head of the Ministry of Cultural and Ethnic Affairs (the ministry in Ukraine tasked with monitoring and regulating religious affairs) conducted a thorough study that demonstrated there was no material difference between an OCU and UOC adherent in terms of their support for Ukraine over Russia. Now, however, due to political pressure and a misguided belief that forcible unification of two materially different churches can be achieved, religion has again been weaponized under the Zelensky government as an instrument of discrimination against the UOC. This move has been reinforced by a slow but deliberate attempt by the Ukrainian security services, the presidential administration, and local governments to delegitimize, stigmatize, and silence the UOC, strip it of its right to church property, and restrict its activities all in favour of the OCU.

As the attached White Paper of January 2024 (Annex I) demonstrates, since 2018 the Ukrainian government has mounted extraordinary interventions into the religious affairs of the UOC that constitute unjustifiable discrimination. It has gone to extreme lengths to support the OCU—over the UOC. Victor Yelensky, the above referred minister's successor and current head of the government department responsible for religious affairs (the "State Service of Ukraine on Ethnopolitics and Freedom of Conscience", or "DESS") has been a long-time critic of the UOC and key supporter of the policy of autocephaly that created the OCU. As a Deputy in the Rada, Yelensky has sponsored a number of anti-UOC legislative efforts. In his current position he has spearheaded the attack on the OUC, coordinating an effort across the Ukrainian government to undermine and eradicate the church through legislative efforts to outright ban the UOC as well as well as physical attacks on church members, clergy, and property.

B. Senior leaders of the Ukrainian government are engaged in acts of religious hatred that incite violence against the UOC, its clergy, and its parishioners

Senior members of the Ukrainian government and leaders within Ukraine's parliament (the Verkhovna Rada) are vocally advocating religious hatred against the UOC. These statements have incited actual violence against the church, its clergy, its parishioners, and its property. These

³² MDPI. "Russian World and Ukrainian Autocephaly: Religious Narratives in Anti-Colonialist Nationalism of Ukraine." Exploring Modern Religious Changes from the Perspective of Narrative Theology, December 4, 2022.; and Ukrinform. "Law banning Russia-affiliated churches set to cleanse Ukraine's religious realm of Russian ideology adherents: MP." Available at: <https://www.ukrinform.net/rubric-polytics/3836093-law-banning-russiaaffiliated-churches-set-to-cleanse-ukraines-religious-realm-of-russian-ideology-adherents-mp.html>

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ongoing statements by Ukrainian government officials are particularly egregious. They provide important context for the current legislative efforts aimed at the UOC and have fuelled a religious-nationalism that is now eroding the rights of the Ukrainian people.

Deputies of the Verkhovna Rada have unfairly labelled the UOC and its clergy as collaborators with Putin's regime, completely disregarding the complex historical and canonical relationship between the UOC and the ROC. Such inflammatory statements prove that the government is not taking efforts to prevent religious intolerance but in fact fostering such intolerance. For example, in an interview published by *Ukrinform* on 5 March 2024, Mykyta Poturaiev, the Chairman of the Verkhovna Rada Committee on Humanitarian and Information Policy, attempted to defend Draft Law 8371 on the basis that the "implementation of the law will help cleanse Ukraine's religious realm of Russia's ideology supporters."³³ Poturaiev's use of the language of religious cleansing is deeply troubling. It has placed many thousands of loyal Ukrainian priests in harm's way by suggesting that the UOC has been infiltrated by traitors of Ukraine. As such, it feeds into a narrative that the UOC is a threat that needs to be systematically eradicated from Ukraine.

Poturaiev's statement is just the latest example of the use of hostile language by deputies of the Verkhovna Rada. In another instance, Inna Sovsun, one of the key instigators of Draft Law 8371, stated in November 2022 that the UOC needed to be banned as soon as Russia's full-scale invasion commenced. She also asserted that "there is no doubt that representatives of the Russian Orthodox Church are agents of the Kremlin." These incendiary remarks—not based on any factual evidence—were designed to implicate all priests of the UOC as "agents" of Russia and make them the targets of reprisals.³⁴ In today's world, especially in Ukraine, labelling someone or an organization as a "Russian affiliate or collaborator" is an intentional black mark with dire and sometimes violent consequences.

Beyond the Rada, numerous senior Ukrainian government officials have voiced religious hatred toward the UOC. On 30 March 2023, during a televised interview on Ukraine's Channel 24, Mykhailo Podolyak, Senior Advisor to the Head Office of the President, called the UOC an "abscess" that has to be removed.³⁵ On 8 April 2023 Oleksiy Danilov, the then State Secretary of the Security Council of Ukraine gave a televised interview on Radio Liberty in which he welcomed the demolition of the UOC temple in Lviv and the seizures of churches in Khmelnytskyi. Danilov stated:

"In addition to the Verkhovna Rada, there are local authorities. I welcome what happened in Khmelnytsky, what is happening in Lviv, in other cities. What concerns Moscovia, it has nothing to do here, they should go to themselves. There should be no ties with Moscow," (...) These people represent the Moscow diocese and represent the pop Gundyayev, who says that it is necessary to kill citizens of our country, and you go and start praying to them and giving them money. It doesn't fit in my head".³⁶

³³ Ukrinform. "Law banning Russia-affiliated churches set to cleanse Ukraine's religious realm of Russian ideology adherents: MP." Available at: <https://www.ukrinform.net/rubric-politics/3836093-law-banning-russiaaffiliated-churches-set-to-cleanse-ukraines-religious-realm-of-russian-ideology-adherents-mp.html>

³⁴ Golos Zmin. "Besides criminal proceedings, we must go to a full ban on the UOC MP: Inna Sovsun." Available at: https://goloszmin.org/news/okrim-kriminalnih-provazhzen-mayemo-jti-do-povnoyi-zaboroni-upc-mp-inna-sovsun?fbclid=IwAR1_E74fjCzGYhHpOiHaHLCats6cfGg6VV8_eCXF4G52TXX7cL7qJ0luFqg

³⁵ Youtube. "PODOLIAK Pasha will give the Mercedes to the ZSU! Important about the counterattack!! 24 Channel 30 Mar. 2023". at minute 8:33. Available at: <https://www.youtube.com/watch?v=a-j7sMP8O-0>.

³⁶ Youtube. "Danilov live: the fight against the UOC (MP), new fighter jets, the counteroffensive of the Armed Forces, China | Freedom Live". Available at: <https://www.youtube.com/watch?v=FBTTUqOjqOs&t=1597s>

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On 6 April 2023, Danilov discussed the priests of the UOC during a televised interview on Ukraine’s Channel 24. Danilov alleged that the priests of the UOC were Russian agents, saying: “if someone wants to communicate with God, please communicate, but if God is represented by the FSB of Russia, then this is about other things.”³⁷ During a discussion with the interviewer about Metropolitan Pavel of the Kyiv-Pechersk Lavra, Danilov explained that the process of removing representatives of the UOC from Ukraine had already begun:

“I can say that this is an exchange fund. We all, citizens, know that representatives of the Moscow patriarchate they gladly exchange for our prisoners of war. And such events have already happened repeatedly, they were not public. If the procedure is organized in an appropriate way, we will gladly exchange them for our prisoners of war, and not only this gentleman you named [Metropolitan Pavel], but representatives of the FSB of the Russian Federation to take them to their homes in exchange for our prisoners of war.”³⁸

In yet another example, Vasyl Malyuk, head of Ukraine’s security service, the SBU, echoed this description of UOC believers as mere chattel for exchange, describing UOC worshipers as Russian “agents in cassocks” to be traded away.³⁹ The metaphors employed by the government against the UOC are discriminatory and seek to incite hatred and violence. If taken literally, the proposed exchange of a country’s own citizens for prisoners of war based simply on their religious belief is unthinkable and a violation of the Geneva Conventions on the Law of War.

These and similar statements by a wide range of elected and appointed government officials are words of religious hatred. They are paramount examples of the very systematic, egregious, and ongoing incitement to violence and discrimination that has become rampant in Ukraine today.

C. The Ukrainian government and, particularly, the leadership of the Verkhovna Rada, now seek to completely ban the UOC

Draft Law 8371, now awaiting a second reading before the Verkhovna Rada is meant to accelerate the process of extermination of the UOC referred to above. When passed into law (which is expected in the coming days) it will designate the UOC as a religious organization associated with Russia, strip and terminate its legal status as a recognized religion in the country, pave the way for total deprivation and taking of property, and, finally, outlaw its religious activities. In short, the law would nullify the very existence of a church in the most egregious act of religious discrimination in modern European history.

Draft Law 8371 is intentionally narrowly tailored to single out and attack the UOC. Yet it is both vague in drafting and broad in scope of impact so as to give the government broad discretion to ban the UOC. The Bill first outlaws the Russian Orthodox Church, based on the fact that the ROC is headquartered in a country at war with Ukraine (Article 3.1). Thereafter, it bans Ukrainian religious organizations “that are in any way affiliated with a prohibited religious organization” directly or indirectly (Article 3.2). The law provides a nearly limitless set of potential grounds for a finding of “affiliation,” such that the mere historical and canonical

³⁷ Channel 24. “Putin is constantly in quarantine, there is confirmation: a conversation with Danilov”. Available at: https://24tv.ua/ru/u-putina-edet-krysha-danilov-rasskazal-chego-bolshe-vsego-boitsja-diktator-24-kanal_n2289298

³⁸ Id.

³⁹ Interfax.com. “Head of the SBU Vasyl Malyuk: We neutralize the networks of traitors that Russia has been preparing for 30 years”. Available at: <https://interfax.com.ua/news/interview/905447.html>

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connections between the UOC and the ROC are sufficient for the government to ban the UOC. For example, mentions of prohibited religious organizations in a church's statutory instruments, mentions of the Ukrainian church in a prohibited religious organization's statutory instruments, any perceived control, endorsement, or blessings between a prohibited religious organization and the Ukrainian church would constitute forms of "affiliation" (Article 5). In a deeply unfair formulation of "affiliation," many of these grounds for potential findings of affiliation between the UOC and the ROC are outside of the control of the UOC and relate simply to the statutes or actions of the ROC.

The UOC has self-governing since 1990, which has also been officially, recognized also by the ROC. In May 2022, it severed its canonical subordination to the ROC by, among other actions, withdrawing its members from all ROC bodies. Despite the UOC's self-governing status and administrative disconnection since Russia's illegal invasion of Ukraine, immutable historical ties between the UOC and the ROC may fall within the legislation's definition of "affiliation" (Section II, Article 5). Moreover, the drafting of the law ensures that each and every one of the thousands of individual UOC parishes in the country will be deemed "affiliated" with the ROC and in violation of statutory requirements imposed by the legislation. As a result, after passage, the UOC as a whole and its individual parishes will be shuttered by operation of law.

This targeting of the UOC based on "subordination in canonical and/or organizational matters" to the ROC is unwarranted, even on national security grounds. Prior to Russia's illegal invasion of Ukraine in 2022, the UOC was a self-governing church, but canonically tied to the ROC. The UOC found itself in the position of being spiritually and historically connected to the ROC while the ROC leadership supported Russia's actions in Ukraine. Following Russia's 2022 invasion of Ukraine, the UOC condemned Russian aggression and severed its last remaining organizational ties with the ROC. 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. The day of the invasion, the UOC's leader, Metropolitan Onufriy, declared the Church's opposition to the war and called on Putin to reverse course.⁴⁰ The UOC has collected more funds and humanitarian aid in support of Ukraine's defence than any other Ukrainian religious organization. The UOC has also worked diligently to support Ukrainian refugees abroad, establishing parishes in 32 European cities. These new UOC parishes abroad affirm the UOC's independence from the ROC. Whereas in the past, the ROC served UOC worshipers outside of Ukraine, after May 2022 the UOC established its own parishes abroad as part of its complete separation from the ROC.

Subsequently, in May 2022, the UOC held an unprecedented meeting at which changes were made to its Charter, confirming its self-governing status, and emphasizing that the centre of control of the UOC is Kyiv.⁴¹ The amendments to the UOC Charter removed all mention of the ROC except a reference to the October 1990 document which established the UOC. The new Charter removed references to a UOC primate representative in the ROC synod and removed reference to the need for the UOC primate, after his election in Ukraine, to be blessed by the Russian patriarch.

Despite the UOC's severance of connections with Moscow and clear move to self-governance, the Ukrainian government has intentionally written Draft Law 8371 in a way that makes a finding

⁴⁰ Front News. "Metropolitan Onufry of the UOC MP supported the AFU and urged Russia to stop the war". Available at: <https://www.frontnews.eu/en/news/details/20111>

⁴¹ Reuters. "Moscow-led Ukrainian Orthodox Church breaks ties with Russia". Available at: <https://www.reuters.com/world/europe/moscow-led-ukrainian-orthodox-church-breaks-ties-with-russia-2022-05-28/>

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of “affiliation” with the now-banned ROC unavoidable as a matter of law. As noted above, historical ties and links can be the source of such an affiliation, and these are immutable characteristics. So too, references to the UOC in the charter and documents of the ROC are sufficient to establish “affiliation,” but are fully beyond the control of the UOC. Based on these statutory definitions of “affiliation,” when implemented the legislation will trigger a judicial process that inevitably results in the banishment of the UOC in an act of unprecedented religious discrimination.

The impact of this legislation on the UOC would include termination of UOC’s legal status as a religion recognized by the state, thereby relinquishing its right to have individual parishes as legal entities. In addition, the law provides for the “liquidation” of its operations and parishes (Article 16) and the confiscation of all its property (Article 18). “Public religious events” of the Church, including “worship, rites, marches, ceremonies, etc.,” would be prohibited (Article 18).

Draft Law 8371 also uses legislative tools and judicial enforcement power to deny members of the UOC the ability to manifest their religion. Based on a finding of even spiritual affiliation between the UOC and the ROC, the bill would make illegal “activities of religious organizations (associations) that are in any way affiliated with a prohibited religious organization.” (Article 5). The legislation provides “any activity of legal entities whose owner, participant or shareholder is a prohibited foreign religious organization is prohibited.” Given past indications by the Ukrainian government that it deems the ROC to be a “participant” in the UOC and given the prohibition of the ROC, it is likely that any activity—including mere religious worship—would be illegal if Draft Law 8371 is passed. As such, even if the UOC’s parishioners were to go underground to worship, those congregations would be deemed unsanctioned gatherings promoting the aggressor state and unprotected as religious gatherings. The result could include criminal charges against worshippers. This exact phenomenon has already happened in some areas of Ukraine where local governments have already taken it upon themselves to outlaw the UOC.

In addition, Article 5 of the draft imposes severe viewpoint limitations on the ideas that a Church may express. Specifically, the legislation prohibits “propagating the ideology of the Russian world, including the dissemination of such propaganda.” While the UOC shares Ukraine’s valid national security concerns, this prohibition of speech is particularly antithetical to religious dialogue. The draft law’s reference to “Russian world ideology” is vague and under-specified, leading to a broad chilling of religious speech. For example, might discussion of historical or canonical aspects of Orthodoxy be considered propaganda of “Russian world ideology”? Based on the past “expertise” produced by DESS and its handpicked “experts,” as well as the Security Service of Ukraine, even such benign thoughts or discussions would be prosecutable offenses under the Ukrainian criminal code.

It is important to note again that the UOC has expressly denounced Russia’s illegal invasion of Ukraine, repeatedly affirmed its support for Ukraine’s self-defence, and does not in any way subscribe to a so-called “Russian world ideology.” In fact, the UOC has issued a clear statement against this Russian world ideology.⁴² Yet, in the current political context in Ukraine, the express prohibition of the poorly defined concept of “Russian world ideology” imposes a severe restraint on religious speech and inter-faith dialogue. Without clarity of what dialogue and views are

⁴²Synodal information and educational Department of the UOC. “Calls for the destruction of Ukraine and the justification of a military aggression are inconsistent with the Gospel teaching” — statement from the UOC Department for External Church Relations”. Available at: <https://news.church.ua/2024/03/28/calls-for-the-destruction-of-ukraine-and-the-justification-of-a-military-aggression-are-inconsistent-with-the-gospel-teaching-statement-from-the-uoc-department-for-external-church-relations/?lang=en#2024-04-18>

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prohibited and, in a context where even canonical or historical religious traditions may be interpreted as serving “Russian world ideology,” this limitation on the freedom of speech and religious practice cannot be reconciled with the rights of freedom of religion.

Further, Article 4 of Draft Law 8371 prohibits contacts or engagement with certain other religious organizations. More specifically, Article 4 prohibits Ukrainian religious organizations from having “relations and (or) contacts of religious organizations [and] any legal entities of private law with foreign religious organizations located in a state that is recognized by law as having committed military aggression against Ukraine.” This prohibition subjects any interfaith dialogue with religious organizations based in Russia to control and censorship by the Cabinet of Ministers of Ukraine, thereby blocking open, religious debate and dialogue among all faiths, including not just the UOC but other religious organizations as well. Unfortunately, this is the very kind of religious dialogue that is most urgently needed in a time of conflict and has proved invaluable to political settlement and social reconciliation in past conflicts the world over.

There is no more egregious, systematic, and ongoing attack on religion than to make it illegal and infeasible for a church’s clergy and parishioners to practice *their* faith in *their* church. Where the very practice of a religion in one’s own church is prohibited by law and physical attacks on worshippers have become commonplace, members of the UOC religious community have no ability to “manifest their religion” as guaranteed by international human rights law.

D. The Ukrainian government is engaged in an egregious and on-going seizure of UOC property, including sacred sites of worship

Across Ukraine, the property of the UOC, including sacred religious sites, is under threat of seizure by the government and theft by OCU adherents with the support and acquiescence of the Ukrainian government. The Ukrainian government has taken no steps and implemented no policies to protect UOC places of worship and religious sites from interference, attacks, and seizure by other actors. Its police and security services—when not undertaking attacks on the Church themselves—simply stand by and allow the invasion and desecration of UOC religious sites.

For example, on 28 March 2023, a group of men forced their way into the UOC’s Cathedral Church of Ivano-Frankivsk to forcibly remove UOC priests and worshippers from the Church. The attackers used tear gas in the church and were accompanied by priests and believers of non-UOC denominations.⁴³ Even OCU members deplored these actions publicly. On 28 March 2023, the Church of the Blessed Virgin Mary of the UOC in the village of Kordyshev, Shumskiy district, Ternopil region, was burned down during the night. According to the rector of the temple, Archpriest George Tsezaruk, arsonists threw Molotov cocktails and then later poured gasoline onto the blaze.⁴⁴

⁴³ Forum 18 Archive. “In Ivano-Frankivsk, a crowd came to drive out UOC believers from the cathedral.” Available at: https://www.forum18.org/archive.php?article_id=2823; and SPZH. “In Ivano-Frankivsk, a crowd came to drive out UOC believers from the cathedral.” Available at: <https://spzh.media/ru/news/72707-v-ivano-frankovske-tolpa-prishla-izhonjat-verujushchikh-iz-sobora-upts>

⁴⁴ Synodal information and educational Department of the UOC. “In Ternopil Oblast, a UOC temple was set on fire (photo, updated)”. Available at: <https://news.church.ua/2023/03/28/na-ternopilshhini-pidpalili-xram-upc-foto/#2024-04-19>; and Ternopil Diocese. “The antimins and all the shrines in the altar burned down: in the village. The Kordyshev set fire to the household premises, which had been adapted as a UOC community temple”. Available at: <https://ternopil.church.ua/2023/03/28/zgoriv-antimins-i-vsi-svyatini-u-vivtari-u-s>

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On 8 February 2024, a large group of men in military uniform attempted to seize the UOC's Church of Peter and Paul in the village of Lenkovtsi, Chernivtsi region.⁴⁵ The men barricaded the church, which prevented villagers from entering and worshipping in the building. Those who tried to gain entry were forcefully led away by the armed men. As footage shows, this resulted in an outbreak of violence, during which several lay believers were beaten by the men attempting to seize the church.⁴⁶ The Ukrainian government was either responsible for this attack or, at the very least, was aware of the attack and failed to stop it.

Many of these incursions and seizures of UOC property have been undertaken by OCU adherents, often with government acquiescence. The region of Khmelnytsky has witnessed several forced appropriations of UOC church property by OCU supporters in the past year. On 5 April 2023, the parish church of the Nativity of the Mother of God in Khmelnytsky was seized by the OCU following a vote of local residents, contrary to the wishes of the parishioners of the Church.⁴⁷ This followed just days after the keys to the Holy Intercession Cathedral in Khmelnytsky were handed over to the OCU in circumstances that remain unclear.⁴⁸ Meanwhile, on 27 January 2024, the Intercession Church in the village of Pecheski (Khmelnytsky region) was forcibly seized by OCU activists, again in contravention of the wishes of the parishioners.⁴⁹ This provides just a snapshot of the seizure of UOC property in the region, which has been replicated in dioceses across Ukraine and to which the Ukrainian government has failed to respond.

The Ukrainian government is also directly responsible for interference with and seizure of UOC property. The government has deployed its own security services, notably the SBU, to invade such sites with increasing frequency. The most prominent example concerns the Kyiv-Pechersk Lavra, a monastery considered by worshippers to be one of the most important sites of Orthodox Christianity. The Ukrainian Ministry of Culture has terminated the UOC's rental agreement with

[kordishiv-pidpalili-xram-gromadi-upc/?fbclid=IwAR3SLtq-xdFeNkRHt9XVod4rd7B1snxaf7hOoXrXbg3ECNvINdFECsrwKbs#2024-04-19](https://www.kordishiv-pidpalili-xram-gromadi-upc/?fbclid=IwAR3SLtq-xdFeNkRHt9XVod4rd7B1snxaf7hOoXrXbg3ECNvINdFECsrwKbs#2024-04-19)

⁴⁵ SPZH. "In Lenkivtsi, Bukovina, people in military uniform and the police seized the UOC temple". Available at: <https://spzh.live/ua/news/78758-u-lenkivtsjakh-na-bukovini-ljudi-u-vijskovij-formi-i-politsija-zakhopili-khram-upts>

⁴⁶ SPZH. "A video of the brutal beating of UOC believers in Lenkivtsi was published on the Internet". Available at: <https://spzh.live/ua/news/78800-u-merezhni-opublikovali-video-zhorstoko-pobittja-virjan-upts-u-lenkivtsjakh>; and [Chernivtsi-Bukovyna Diocese of the UOC](https://www.facebook.com/orthobuk/videos/320267104333415/). Facebook. Available at: <https://www.facebook.com/orthobuk/videos/320267104333415/>

⁴⁷ SPZH. "In Khmelnytskyi, the UOC Church of the Nativity of the Virgin was transferred to the OCU". Available at: <https://spzh.live/ua/news/73021-u-khmelnitskomu-khram-upts-rizdva-bohoroditsi-pereveli-u-ptsu>; and

⁴⁷ Synodal information and educational Department of the UOC. "People's Deputy Artem Dmytruk appealed to the Minister of Internal Affairs regarding the systematic seizure of UOC churches in Khmelnytskyi". Available at: <https://news.church.ua/2023/04/15/narodnij-deputat-artem-dmitruk-zvernuvsya-do-ministra-vnutrishnix-sprav-shhodo-sistemnogo-zaxoplennya-xramiv-upc-u-m-xmelnickij/#2024-04-19>

⁴⁸ SPZH. "In Khmelnytskyi, OCU raiders seized the UOC cathedral". Available at: <https://spzh.live/ua/news/72939-u-khmelnitskomu-rejderi-ptsu-zakhopili-sobor-upts>; and SPZH. "In Khmelnytskyi, the raiders organized a vote on the transfer of the cathedral to the OCU". Available at: <https://spzh.live/ua/news/72937-u-khmelnitskomu-rejderi-vlashtuvali-holosuvannja-shhodo-perevedennja-soboru-v-ptsu>

⁴⁹ Synodal information and educational Department of the UOC. "During the seizure of the temple of the Ukrainian Orthodox Church in Khmelnytskyi, a local priest of the OCU distinguished himself by using profanity and criminal jargon (video)". Available at: <https://news.church.ua/2024/01/28/pid-chas-zaxoplennya-xramu-ukrajinskoji-pravoslavnoji-cerkvi-na-xmelnichchini-miscevij-blagochinnij-pcu-vidznachivsyavikoristannyam-lajki-ta-kriminalnogo-zhargonu-video/#2024-04-19>

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the state-owned Kyiv-Pechersk Lavra,⁵⁰ citing “unauthorized building activities on the territory of national monuments.”⁵¹ In August 2023, the UOC’s Kyiv Theological Academy was forced to vacate its premises at the monastery and has had to relocate to a new location. This has proved highly disruptive to its educational activities. Later in 2023, Ukrainian authorities have attempted to seize the complex on the basis that the UOC had breached provisions of a lease agreement, a claim which the UOC strongly contests.

Meanwhile, the authorities have restricted access to the monastery’s buildings and a significant portion of its territory. Not only has this seriously disrupted the life of the community, but it has prevented believers from worshiping freely at the monastery. Following a court decision, there have been repeated attempts to expel monks living in the community. The monks were informed that if they wanted to remain, they had to agree to join the OCU, an attempted act of forced religious conversion. The one monk who made the requested religious conversion was subsequently granted access to the Lavra.

While the Kyiv-Pechersk Lavra may be the most symbolically significant seizure of UOC property, it is far from the only one. To date, approximately 1,500 churches have been converted from UOC property to OCU property with assistance of the Ukrainian government. Similar government-backed property seizures have impacted the Pochayiv Lavra in Western Ukraine.⁵² The General Synod of the Church of England has issued a statement that notes that several municipal councils across Ukraine have terminated property rental agreements with the church.

Passage of Draft Bill 8371 will create a legal justification for the seizure and expropriation of all UOC property en masse. Again, based on an unsubstantiated “affiliation” between the UOC and the ROC, the law would render “null and void” “all transactions related to the use of property (rent, lease, leasing, etc.)” (Article 17). This clause would invalidate any lease agreements with the Church and would prevent the provision of public services to Church properties. Even more troubling, the law authorizes outright confiscation of UOC property on an expedited basis with no due process. Specifically, “the property, funds and other assets” of the Church not involved in active religious worship “become the property of the state.” (Article 20). Religious property, such as sites of active worship, are to be seized by the state and transferred to “other religious organizations,” presumably the OCU. (Article 20). This is nothing short of a discriminatory weaponization of law to convert assets and holy places of the UOC into property of the OCU. The net effect of the pending legislation is the total seizure of UOC property and places of worship by the Ukrainian state and the transfer of religious sites to the government’s preferred branch of Orthodoxy.

Despite its obligations both under the International Covenant on Civil and Political Rights to respect and protect places of worship, the Ukrainian government is doing the exact opposite. Recognizing that owning and possessing the physical churches equates to political control, the Ukrainian government has designed a legal framework to steal the UOC’s property in an illegal and discriminatory fashion.

E. The Ukrainian government has engaged in and allowed religious violence targeted at UOC clergy and parishioners

⁵⁰ General Synod of the Church of England. "The War in Ukraine and the Challenge to International Order." Church of England, 7 February 2024.

⁵¹ Ibid.

⁵² Ibid.

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The Ukrainian government has also deployed the powers of the state and judiciary—including civil and criminal processes—to discriminate and target the UOC and its worshipers. Sanctions have been imposed on senior UOC leaders, including Metropolitan Pavel Lebid, the Superior of the Kyiv-Pechersk Lavra. The SBU has carried out extensive searches of buildings under the UOC’s authority. It has opened unfounded criminal investigations of UOC clergy for alleged collaboration or treason ostensibly based purely on their religious beliefs. Some of these clerics have even been questioned under polygraph.⁵³

One of the most prominent cases concerns Metropolitan Theodosy of Cherkasy and Kaniv, whose apartment has been repeatedly raided by security officials and who was placed under house arrest for allegedly giving instructions to publish “extremist content.”⁵⁴ Certain of the charges against Metropolitan Theodosy relate to academic and public speeches given over the last ten years. Metropolitan Theodosy’s speeches were not inflammatory and merely presented a factual description of the ecclesiological position of the UOC and the schism in Ukrainian Orthodoxy.⁵⁵ The SBU brought new accusations against Metropolitan Theodosy after he recorded and posted videos on YouTube during his house arrest. These videos detailed the attacks on the UOC and the broader threat to religious freedom in Ukraine. The SBU claimed that Metropolitan Theodosy’s criticism of SBU raids on UOC property were criminal and proved that the Metropolitan had “acted in favor of the aggressor country.”⁵⁶ Following Metropolitan Theodosy’s arrest, Anatoliiy Bondarenko, the mayor of Cherkasy, declared in a video posted to Facebook in August 2023 that he would “cleanse your Moscow filth from the city of Cherkasy.” Bondarenko added: “get ready – in Cherkasy, there will be no Moscow priests, in Cherkasy, people will pray in the Ukrainian language.”⁵⁷ I would note here, that again, this is a common misrepresentation of the UOC, whose worshipers do not pray in Russian, but rather in Church Slavonic or Ukrainian. Such statements are, again, unjustified attempts by Ukrainian government officials to create a black mark on UOC clergy.

⁵³ Office of the United Nations High Commissioner for Human Rights. "Report on the Human Rights Situation in Ukraine, 1 August 2022 - 31 January 2023." 24 March 2023.

⁵⁴ SPZH. “Cherkasy bishop in court: The case is fabricated, they are chasing the Church in my person”. Available at: <https://spzh.live/ua/news/75589-cherkaskij-arkhijerej-u-sudi-sprava-sfabrikovana-v-mojij-osobizhenut-tserkvu>; and SPZH. “Hierarch of Cherkassy on the SBU threats: God leads us through sorrow to joy”. Available at: <https://spzh.live/ua/news/76340-ijerarkh-cherkaskij-pro-pohrozi-sbu-boh-cherez-skorbotu-vedenas-do-radosti>; and Synodal information and educational Department of the UOC. “The court ordered the ruling bishop of the Cherkasy Diocese to be placed under house arrest with the wearing of an electronic bracelet”. Available at: <https://news.church.ua/2023/04/12/sud-priznachiv-pravlyachomu-axijereyu-cherkaskoji-jeparxiji-zapobizhnij-zaxid-u-viglyadi-domashnogo-areshtu-z-nosinnyam-elektronnogo-brasleta/#2024-04-19>; and Synodal information and educational Department of the UOC. “After the release of Metropolitan Theodosius from round-the-clock arrest, the prosecutor's office demands to change the composition of the court”. Available at: <https://news.church.ua/2024/01/17/pislya-zvilnennya-mitropolita-feodosiya-z-pid-cilodobovogo-areshtu-prokuratura-vimagaje-zminiti-sklad-sudu/#2024-04-19>

⁵⁵ Synodal information and educational Department of the UOC. “I do not regret a single word that I said on television or in support of the persecuted clergy - Metropolitan Theodosius of Cherkasy and Kaniv about the opening of a criminal case against him (video)”. Available at: <https://news.church.ua/2023/02/20/ya-ne-zhalkuyu-ni-pro-odne-slovo-yake-skazav-na-telebachenni-chi-u-pidtrimku-gnanogo-duxovenstva-mitropolit-cherkaskij-kanivskij-feodosij-pro-vidkrittya-proti-nogo-kriminalnoji-spravi-video/#2024-04-19>

⁵⁶ Ukrinform. "SBU announced suspicion to the head of the Cherkasy diocese of the UOC MP." Available at: <https://www.ukrinform.ua/rubric-society/3770604-sbu-povidomila-se-odnu-pidozru-kerivniku-cerkaskoi-eparhii-upc-mp.html>

⁵⁷ SPZH. “Cherkasy mayor: We will cleanse the Moscow filth from the city to the last”. Available at: <https://spzh.live/ua/news/75328-mer-cherkas-mi-vichistimo-moskovsku-nechist-z-mista-do-ostannoho>

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Since his arrest, Metropolitan Theodosy has continued to publicize the threat to religious freedom in Ukraine. On 8 October 2023, he appeared by video link at a meeting of the UN Human Rights Council.⁵⁸ Following this appearance, Metropolitan Theodosy was subject to further investigations by the SBU and was threatened with detention in a pre-trial facility.⁵⁹ When I conducted a fact-finding mission to Kyiv in February 2024, I had the opportunity to meet Metropolitan Theodosy in person. The day after our meeting, his flat was raided again by the SBU, following which Theodosy suffered a heart attack.⁶⁰ This response by the SBU is not unique to meetings with me, however. Just last week, Vice Chairman of the Office of External Affairs for the UOC, Archpriest Mykolay Danylevych, met with a delegation of the Conference of European Churches in Ukraine to discuss issues relating to religious freedom including concerns over Draft Bill 8371. The next day, the SBU arrested him for “glorifying the Russian Federation and inciting religious strife”.⁶¹ Metropolitan Theodosy and Archpriest Danylevych are but two of many UOC clergy who have been systematically and egregiously oppressed.

Attacks on UOC clergy and parishioners have limited and, at times, prevented their ability to worship, to manifest their religion, and to contribute to society on equal footing with other religions. For example, on 19 April 2023, deputies of the Novovolynsk City Council of Volyn region banned the activities of the UOC on its territory and deprived UOC congregations of the right to use land plots and, hence, to practice their religion.⁶² On 20 May 2023, armed OCU raiders, allegedly supported by men from a private security company, broke into and seized the Holy Ascension Church of the UOC in the village of Rynghach in Chernivtsi region. The rector of the parish, Archpriest Serafim Dumitrovich, and two parishioners attempted to stop the raiders who broke the church fence and windows to gain entrance. The raiders broke into the shrine and attacked Father Seraphim, throwing him to the floor and kicking him in the head. Father Seraphim was treated for his injuries by EMTs at scene.⁶³

On 11 November 2023, in the village of Lug, Rakhiv district in Transcarpathia, men dressed in camouflage and wearing badges from the private security firm Armor, and supported by police and military, cut the locks and seized the Holy Ghost Church of the UOC. The Facebook page of

⁵⁸ Synodal information and educational Department of the UOC. “Metropolitan Theodosius of Cherkasy and Kaniv spoke at the UN Council”. Available at: <https://news.church.ua/2023/10/09/mitropolit-cherkaskij-i-kanivskij-feodosij-vistupiv-u-radi-oon/#2024-04-19>

⁵⁹ SPZH. “The court refused the request to take the Cherkasy Metropolitan into custody”. Available at: <https://spzh.live/ua/news/76320-sbu-pohrozhuje-mitropolitu-cherkaskomu-tjurnoju>; <https://spzh.live/ua/news/76373-sud-vidmoviv-u-vimohi-vzjati-cherkaskoho-mitropolita-pid-vartu>

⁶⁰ Synodal information and educational Department of the UOC. “As a result of regular searches, Metropolitan Theodosius of Cherkasy and Kaniv suffered a heart attack (updated)”. Available at: <https://news.church.ua/2024/02/22/vnaslidok-provedennya-chergovix-obshukiv-mitropolit-cherkaskij-i-kanivskij-feodosij-zaznav-sercevogo-napadu/#2024-04-19>

⁶¹ The Kyiv Independent. “SBU carries out searches at archpriest of Moscow-linked church.” <https://kyivindependent.com/sources-sbu-carries-out-searches-at-archpriest-of-moscow-linked-church/>

⁶² New Volyn City Council. “An extraordinary session of the Novovolynsk City Council took place.” Available at: <https://nov-rada.gov.ua/2023/04/19/vidbulasia-pozacherhova-sesiia-novovolynskoi-miskoi-rady-3/>.

⁶³ Synodal information and educational Department of the UOC. “Supporters of the OCU seized the Ascension Church in the village of Rynghach in Bukovina and beat the abbot”. Available at: <https://news.church.ua/2023/05/20/pribichniki-pcu-zaxopili-voznenskiy-xram-u-seli-ringach-na-bukovini-ta-pobili-nastoyatelya/#2024-04-19>; and SPZH. “The abbot of the UOC church in Ringach needs treatment after being beaten, media reports”. Available at: <https://spzh.live/ua/news/73908-nastojateljju-khramu-upts-u-rinhachi-pislja-pobittja-neobkhidne-likuvannja-zmi>

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the rector of the temple, Archpriest Vladimir Legach, published a video broadcast of the event. The raiders closed the gates and blocked parishioners from accessing the building.⁶⁴

Communities of UOC parishioners whose churches have been seized often resort to praying outside in the open air next to their sealed houses of worship. For example, on 13 July 2023, congregants and deacons of the cathedral of Bila Tserkva diocese of the UOC gathered in the street to attend services beside the fence of their former temple.⁶⁵ Similarly, UOC parishioners of the Church of St. Seraphim of Sarov in the village of Bar, Bar district, Vinnytsa region, gather every week to pray outside of the closed doors of their former church.⁶⁶ In so doing, these UOC worshipers are put at grave risk and, at times, may be blocked from practicing their religion. Many videos of such events are available on social media.

F. The Ukrainian government continues to intimidate and arrest journalists seeking to cover the on-going attack on the UOC

The Ukrainian government has now turned its attack against journalists brave enough to speak out about these egregious violations of the freedom of religion. Recent events demonstrate that journalistic independence and freedom of expression are now being eroded by the government. Journalists who seek to cover the suppression of and discrimination against the UOC are systematically arrested, harassed, and silenced.

On 12 March 2024, the SBU conducted 20 searches of orthodox journalists across 4 provinces.⁶⁷ In particular, SBU agents raided the offices of representatives of the Union of Orthodox Journalists (UOJ)—one of the few remaining Ukrainian news outlets still reporting on the unlawful seizures and raids of UOC churches—forcing open doors, breaking locks, and seizing computers and phones.⁶⁸

Four journalists were placed into pre-trial custody and the SBU alleges that it recovered evidence implicating a total of 15 individuals.⁶⁹ A statement from the SBU, published on its official telegram account, claimed that these 15 persons are members of the Russian Security Service (FSB)⁷⁰ – an allegation that was noticeably absent from the statement of the Office of the Prosecutor General released on that same day and for which there is no corroborating evidence.⁷¹ SBU agents also raided the offices of the Legal Defense Centre of the Ukrainian Orthodox

⁶⁴ SPZH. “In Luz in Transcarpathia, people in camouflage broke down the door and took over the church”. Available at: <https://spzh.live/ua/news/76936-u-luzi-na-zakarpatti-ljudi-v-kamufljazhi-zlamali-dveri-ta-zakhopili-khram>

⁶⁵ SPZH. “In Bila Tserkva, cathedral parishioners pray behind the fence”. Available at: <https://spzh.live/ua/news/74773-u-bilij-tserkvi-parafijani-soboru-moljatsja-za-ohorozheju>

⁶⁶ Vinnytsa Diocese. “Faithful of the seized temple prayed in the open air on the day of the patronal feast.” Available at: <https://eparhia.vn.ua/2023/08/02/viryani-zahoplenogo-hramu-molilis-prosto-neba-v-den-prestolnogo-svyata/>

⁶⁷ OrthoChristian.com. “UOC Metropolitan of Bila Tserkva arrested for supporting Russian world ideology.” Available at: <https://orthochristian.com/159126.html>

⁶⁸ Id.

⁶⁹ Security Service of Ukraine. “Searches conducted at the UOC Metropolitan's residence.” Telegram. Available at: <https://t.me/SBUkr/11399>

⁷⁰ Id.

⁷¹ Prosecutor General's Office of Ukraine. Facebook. Available at: https://www.facebook.com/pgo.gov.ua/posts/pfbid02CLmPCm1Axa3iyy6nbqmoJjoge5eVqEP4hVvYgKm6QZGB2cqSKGoDgcP4fxrSLAWKl?locale=ru_RU

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Church, an organization established specifically to assist clergy and parishioners of the UOC facing persecution from state authorities.⁷²

Public officials have explicitly stated that the raids were targeted at the UOC. The arrested individuals stand accused of belonging to “a criminal organization of the so-called media block of the UOC (MP)”, and (amongst other things), carrying out “the development and coverage in the media, including in Western countries, of distorted information about the process of the transition of the religious communities of the UOC to the OCU.”⁷³ For these and other actions, the four arrested journalists may now be charged with “high treason committed under martial law, collaborative activities, creation of and participation in a criminal organization, incitement of religious enmity and hatred by an organized group, [and] justification or denial of the armed aggression of Russian against Ukraine”.⁷⁴ If convicted, they face the possibility of a life sentence.⁷⁵ These searches and arrests are deeply inconsistent with both the freedom of religion and the freedom of expression. Most recently, the Ukrainian government has deployed geo-blocking to prevent access to Union of Orthodox Journalist websites from within the territory of Ukraine.

IV. Based on USCIRF’s past practice, USCIRF must recommend Ukraine be designated a Country of Particular Concern or, at the least, placed on the Special Watch List

In the five reports issued between 2019 and 2023, UNCIRF has recommended that 19 countries be designated as Countries of Particular Concern and 15 be placed on the Special Watch List.⁷⁶ Based on UNCIRF’s analysis of the state of religious freedom in each of these countries and the logic used by UNCIRF in making its recommendations, Ukraine must be designated a Country of Particular Concern. Ukraine has “engaged in or tolerated particularly severe violations of the freedom of religion” equivalent to or worse than those in the countries UNCIRF has recommended for sanctioning. These violations are systematic, ongoing, and egregious. They meet both the statutory requirements and past precedents for Country of Particular Concern designation.

A. Ukraine should be recommended for designation as a Country of Particular Concern

UNCIRF has based recommendations for countries to be designated a Country of Particular Concern based on facts very similar to Ukraine’s systematic, ongoing, and egregious attack on the UOC. Past designations have been based on discriminatory legislation, the weaponization of

⁷² OrthoChristian.com. "UOC Metropolitan of Vinnitsa under house arrest". Available at: <https://orthochristian.com/159175.html>

⁷³ Prosecutor General's Office of Ukraine. Facebook. Available at: https://www.facebook.com/pgo.gov.ua/posts/pfbid02CLmPCm1Axa3iyy6nbqmoJjoge5eVqEP4hVvYgKm6QZGB2cqSKGoDgcP4fxrSLAWKI?locale=ru_RU

Prosecutor General's Office of Ukraine. Facebook. Available at: https://www.facebook.com/pgo.gov.ua/posts/pfbid02CLmPCm1Axa3iyy6nbqmoJjoge5eVqEP4hVvYgKm6QZGB2cqSKGoDgcP4fxrSLAWKI?locale=ru_RU; and OrthoChristian.com. "UOC Metropolitans persecuted for defending the church against OCU". Available at: <https://orthochristian.com/159126.html>

⁷⁵ OrthoChristian.com. "UOC Metropolitans persecuted for defending the church against OCU". Available at: <https://orthochristian.com/159126.html>

⁷⁶ United States Commission on International Religious Freedom (USCIRF). "Annual Reports 2018-2023."

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religion as a political tool, and harassment of clergy and worshippers. The conduct of the Ukrainian government meets each of these standards.

First, USCIRF frequently bases Country of Particular Concern designation on the existence of discriminatory legislation that impacts some or all religious groups' ability to worship freely. For example, in 2020 USCIRF recommended Russia be designated a Country of Particular Concern due to "legislation [that] criminalizes "extremism" without adequately defining the term, enabling the state to prosecute a vast range of non-violent religious activity."⁷⁷ In 2022, Pakistan was recommended for designation because minority religious "communities faced the continued threat of persecution via harsh and discriminatory legislation."⁷⁸ That same year, USCIRF recommended Vietnam as a Country of Particular Concern, noting a 2018 Law on Belief and Religion, under which religious "groups encountered challenges with registration due to the law's uneven and inconsistent application ..., contravening international standards."⁷⁹

In other situations, USCIRF has recommended designation as a Country of Particular Concern where a government engages in the politicization or weaponization of seeks to dominate the religious space in the country, through support for a preferred religious organization. For example, in 2022 USCIRF recommended Cuba be designated a Country of Particular Concern based on "the government seeking total dominance over religious life in the country."⁸⁰ In 2022 China was recommended for designation based on "its Sinicization of religion policy and demand that religious groups support" the government.⁸¹

A third set of circumstances that trigger Country of Particular Concern designation involve systematic and egregious harassment of clergy and worshippers. In 2022, for example, India was recommended for designation due to the Indian government continuing to "supress critical voices—particularly religious minorities and those advocating on their behalf—including through surveillance, harassment, demolition of property, and detention."⁸² The 2022 recommendation for Nicaragua was based on "persecution of the Catholic Church by imprisoning clergy, shuttering church-affiliated organizations, and prohibiting Catholic rituals."⁸³

Countries should be designated as Countries of Particular Concern where there are particularly severe violations of religious freedom based on discriminatory legislation that impacts some or all religious groups' ability to worship freely, governmental politicization or weaponization of religion in an effort to dominate the religious space in the country, or systematic and severe harassment of clergy and worshippers. While any one of the three circumstances discussed above are sufficient for a country to be recommended for designation as a Country of Particular Concern, all three are present in Ukraine today.

The Ukrainian government is directly interfering with the practice of religion and threatens to ban the UOC outright through discriminatory legislation. The Ukrainian government is not only acquiescing in religious violence against the UOC but actively encouraging and engaging in such violence through the SBU. Draft Law 8371 is a particularly egregious piece of discriminatory legislation that undermines the very existence of the UOC. The Ukrainian government has turned

⁷⁷ USCIRF. "Annual Report (2020)." p. 34.

⁷⁸ USCIRF. "Annual Report (2022)." p. 34.

⁷⁹ USCIRF. "Annual Report (2022)." p. 46.

⁸⁰ Id.

⁸¹ USCIRF. "Annual Report (2022)." p. 16.

⁸² USCIRF. "Annual Report (2022)." p. 24.

⁸³ Id.

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religion into a weapon of social control, dominating the religious space in the country through its support for the OCU. My law firm has implored the Supreme Rada of Ukraine to send Draft Bill 8371 to the Venice Commission for their review countless times, which has fallen on deaf ears. The clergy, parishioners, and property of the UOC have been harassed, arrested, and/or seized. Ukraine is, no doubt, a Country of Particular Concern for its particularly severe violations of religious freedom.

B. If Ukraine is not recommended for designation as a Country of Particular Concern, it must be placed on the Special Watch List

Even if USCIRF does not recommend Ukraine be designated as a Country of Particular Concern, USCIRF's statutory duties require it to recommend Ukraine for placement on the Special Watch List. As shown above, Ukraine clearly meets the tests for Country of Particular Concern designation given its particularly severe violations of the right to freedom of religion. Given that placement on the Special Watch List merely requires severe violations of the right to freedom of religion, Ukraine's inclusion on that list is unavoidable. In fact, USCIRF has found a wide range of violations of the freedom of religion far less severe than those currently being perpetrated by the Ukrainian government as the basis for a country's placement on the Special Watch List.

Special Watch List designations are frequently based on government interference with the practice of religion often through legislative process. For example, in 2022 Algeria was placed on the Special Watch List due to the government "forcibly closing churches" and prosecuting members of minority religious groups based on "blasphemy, proselytization, and unauthorized worship."⁸⁴ USCIRF noted particularly that the "government continued to deny several religious minority groups the registration required to worship collectively."⁸⁵ Azerbaijan was added to the Special Watch List due to concerns about its Law on Freedom of Religious Belief, which "requires religious communities to register to engage in religious activities."⁸⁶ Indonesia was placed on the list due to problematic legislation that "either constitute blasphemy laws or effectively function as such."⁸⁷ USCIRF recommended Sri Lanka for inclusion on the Special Watch List based on a finding of "discrimination against religious minorities in the form of targeted arrests using problematic legislation and appropriation of land and property."⁸⁸ Kazakhstan's status on the Special Watch List was based on "amendments to the country's expansive religion law...that systematically violate freedom of religion or belief."⁸⁹

Inclusion of a country on the Special Watch List can also be based on the government's acquiescence to religious hatred and violence. For example, in 2022, the Central African Republic was placed on the Special Watch List due to "the politicisation of religious identity...[that] resulted in violence based on religious or ethnoreligious affiliation."⁹⁰ Similarly, in 2018 India was placed on the Special Watch List due to the government's failure to address "communal violence" against religious minorities, its "affiliations with Hindu extremist groups," and its "use of discriminatory language about religious minorities."⁹¹ Egypt was placed on the

⁸⁴ United States Commission on International Religious Freedom. "Annual Report (2023)." p. 48.

⁸⁵Id.

⁸⁶United States Commission on International Religious Freedom. "Annual Report (2023)." p. 50.

⁸⁷ United States Commission on International Religious Freedom. "Annual Report (2023)." p. 56.

⁸⁸ United States Commission on International Religious Freedom. "Annual Report (2023)." p. 2.

⁸⁹United States Commission on International Religious Freedom. "Annual Report (2023)." p. 60.

⁹⁰United States Commission on International Religious Freedom. "Annual Report (2023)." p. 52.

⁹¹ United States Commission on International Religious Freedom. "Annual Report (2018)." p. 162.

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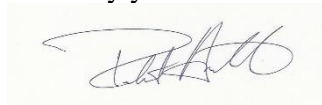
Special Watch List in 2019 due to the government allowing “religious bigotry and discrimination” against Coptic Christians.⁹²

USCIRF’s past practice for designation for inclusion on the Special Watch List has set a relatively clear standard. Countries should be included on the Special Watch List where there are severe violations of religious freedom based on either government interference with the practice of religion often through legislative process or systematic governmental acquiescence to religious hatred and violence. Ukraine has manifestly meets this standard and must be placed on the Special Watch List if, for some reason, it is not designated as a Country of Particular Concern

I urge you and USCIRF to undertake a more detailed investigation of the situation in Ukraine today and its attacks on the UOC. You will find powerful confirmation of Ukraine’s systematic, on-going, and egregious violations of the freedom of religion. I hope that you will use the full statutory powers of the Commission—including holding public hearings and requests for documents and information from the government and private parties—to develop a full picture of the ongoing violations of religious freedom in Ukraine today.

I ask you and USCIRF to recommend Ukraine for designation as a Country of Particular Concern based on its particularly severe violations of the freedom of religion. Such a recommendation, and subsequent action by the Secretary of State including sanctions and travel bans, are urgently needed to protect not only the UOC, but the freedom of religion in Ukraine and around the world.

Sincerely yours



Robert Amsterdam
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Enclosure: White Paper prepared by Amsterdam & Partners LLP

⁹² United States Commission on International Religious Freedom. "Annual Report (2020)." p. 66.