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His Excellency Volodymyr Zelenskyy
President of Ukraine
11 Bankova Street
01220, Kyiv
Ukraine

August 6, 2024

EMERGENCY COMMUNICATION CONCERNING THE CAMPAIGN AGAINST THE UKRAINIAN ORTHODOX CHURCH

Dear Mr. President

I am putting you on notice that your government is at serious risk of committing crimes against humanity under Article 7 of the Rome Statute of the International Criminal Court by virtue of your systematic attack on the Ukrainian Orthodox Church (UOC) and its priests and parishioners. I write this letter to implore you, as President of Ukraine, to fulfil your duty to protect your own people from crimes against humanity that will have serious consequences for Ukraine both domestically and internationally and may entail personal liability for you under the international legal doctrine of command responsibility.

My firm has come into possession of internal documents, which detail plans to establish a new exarchate (diocese) in Ukraine to subsume the UOC under the administration of the Ecumenical Patriarchate of Constantinople (EP). These documents suggest this is a first step towards an eventual forced unification of the UOC and Orthodox Church of Ukraine (OCU). I have reason to believe that the plans, as laid out in these documents and described in detail in Annex One of this letter, have been developed by members of your administration. I am making them public to show how the attack on the UOC is being manufactured as part of a narrow and pernicious nationalist agenda against the wishes of large swathes of Ukrainians, who remain committed to the UOC.

These documents also provide crucial evidence that there is a risk that crimes against humanity are or will soon be committed in Ukraine that would fall within the jurisdiction of the International Criminal Court. While there has long been evidence of “attacks directed against ... a civilian population,” these documents appear to confirm that these attacks are “pursuant to or in furtherance of a state or organizational policy to commit such an attack,” as required under the Rome Statute. The evidence we set out in this letter forms a sound basis for an investigation by the Prosecutor of the International Criminal Court of the possible commission of crimes against humanity as part of a systematic attack on the UOC and its adherents.

The plans laid out in these documents provide context for and build on the ongoing harassment and intimidation of the UOC, its priests and parishioners. These actions are being carried out by and in complicity with the Security Service of Ukraine (SBU), the State Service of Ukraine for Ethnopolitics and Freedom of Conscience (DESS), nationalist deputies of the Verkhovna Rada led

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by Ukraine's former president, Petro Poroshenko, and the OCU. The SBU is arresting priests and Orthodox journalists on false charges, detaining them without a fair trial. We have witness statements confirming that the SBU is at risk of committing war crimes by offering some detained priests as barter in exchange for prisoners of war held by the Russian Federation. Parishioners of the UOC are being harassed and attacked; their churches illegally appropriated and transferred to the OCU. The Verkhovna Rada stands prepared to pass legislation developed by your government that will ban the UOC (Draft Law 8371), in violation of the international legal rules guaranteeing freedom of religion and belief as set out in Annex Two of this letter.

Each of the elements to the attack on the UOC is designed to prepare the way for the destruction of the UOC as an independent Church. This amounts to a collective punishment of innocent citizens on religious grounds. As President of Ukraine, you bear personal criminal responsibility for the actions of your subordinates that are intentionally causing great suffering and serious injury to a civilian population.¹

Furthermore, it has come to my attention that the Office of the Prosecutor General of Ukraine is preparing criminal proceedings against me for my defence of the UOC. Such a criminal charge would violate the UOC's right to legal representation and constitute legal harassment of human rights defenders protected by international law.

Your government's interference in the religious affairs of the UOC is predicated on the false claim that the Church remains subordinate to the Russian Orthodox Church (**ROC**). Officials in your administration, including Viktor Yelenskiy, whom you appointed head of the DESS in December 2022, deliberately ignore the steps taken by the UOC to separate from the ROC. This is a stark shift from the policy of Yelenskiy's predecessor, who was renowned for her balanced and judicious handling of religious affairs in Ukraine and who recognised the independence of the UOC. Since Russia's full-scale invasion of Ukraine, the UOC has built on the self-administration and broad autonomy it achieved in 1990. The UOC has taken concrete actions to demonstrate its independence from the ROC. It has amended its statute, established parishes abroad to serve the needs of Ukrainian refugees, and changed the liturgical practice of its priests and bishops, who now only offer prayers to local Ukrainian bishops and Metropolitan Onufriy. In addition, the UOC has provided significant financial and moral support to the Ukrainian state and people during the war.

My conclusions about the ongoing threat to religious freedom in Ukraine are shared by a range of international organisations. For example, Volker Turk, the United Nations High Commissioner for Human Rights, has noted his "concerns regarding freedom of religion and belief in Ukraine," and the "continuing action by the authorities against the Ukrainian Orthodox Church."² The Norwegian Human Rights NGO, Forum 18, and the Church of England, have expressed their own objections to Draft Law 8371, as documented in this letter. Such statements are just the tip of the iceberg of international condemnation of Ukraine's actions against the Church. I shall now detail the newly revealed plan, evident in the internal documents of which we are in possession, to establish a new exarchate in Ukraine as well as the tangible effects of that plan as implemented by your government.

- (i) The Ukrainian government's secret plan to establish a new exarchate in Ukraine

¹ Article 7 of the Rome Statute of the International Criminal Court

² 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>

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The documents we have in our possession shed new light on the purpose of Draft Law 8371 and the Ukrainian government's intentions for the future of the UOC (see Annex One). The contents of these internal documents suggest that they have been drafted in recent months by individuals with authority and access to internal government planning. One of these documents provides guidance on your government's plans to establish a new exarchate in Ukraine to be administered by the EP. It appears to be the goal of your government for this new exarchate to subsume the UOC following the passage of Draft Law 8371. This is framed as the first step in a process that will lead to the unification of the UOC and OCU, in full violation of the UOC's rights to manage its organisational and administrative affairs and the international legal guarantees of religious freedom (see Annex Two).

This document contemplates a series of steps to be taken by your government against the UOC in pursuit of this goal of forced unification. These steps include reducing the influence of the church; creating a positive image of the OCU; imposing sanctions against sponsors of the UOC; creating a toxic perception in society of the very fact of belonging to the UOC; and ensuring that all leases concluded with the UOC are reviewed by national, regional and local authorities, with a view to terminating those leases. That many of these steps are already underway, suggests that this document is authoritative and is being implemented by officials under your command. Not only are these actions illegal under international and Ukrainian law, but they are also seriously harmful to social cohesion in Ukraine at a time of war.

Significantly, the plans presented in this document fail to consider canonical barriers to the establishment of a new exarchate in Ukraine, which suggests that it has been developed by officials ignorant of canon law. Canon law forbids the existence of two churches in one Orthodox state, since there is an ancient principle that there can only be one bishop in one town. Although the establishment of the OCU has already created this state of affairs, the UOC and OCU each only acknowledge the bishops in their own church, thereby papering over the violation of canon law. Should the new exarchate be established in Ukraine, this would entail the EP recognising two bishops in any given town—one for the OCU, and one for the new exarchate of the UOC. Given the importance placed on tradition and canon law, it is inconceivable that the EP would agree to this plan or that it would be accepted by global Orthodoxy.

It is also quite unclear how the plan would succeed in uniting the UOC and OCU, other than through violence. Your government's arrests of UOC priests and the forcible transfers of UOC parishes, often with the involvement or tacit support of OCU adherents, has created divisions between the two churches that will last generations. Indeed, the plans to create a "toxic perception" of the UOC undermines your very aim of unification and confirms your government's intent to further poison the well of Orthodoxy in Ukraine.

The other document in our possession reveals that there are dissenting voices in your government who are concerned about how poisoned the religious landscape of Ukraine has become. Significantly, this document provides a critical assessment of the key "players" behind the attack on the UOC, including the OCU, DESS (under Zelenskyy) and Poroshenko's political party, all of whom are complicit in the intended destruction of the UOC. The document paints a picture of naked political ambition and shows that the OCU has unchecked influence on religious policy in Ukraine. It recognizes the danger inherent in "the OCU leadership's unbalanced policy and excessive ambitions [that] have led to catastrophic consequences - polarization of society by religious affiliation, and condemnation of the methods of policy-making by international partners." Having raised well-founded concerns about the hijacking of Ukraine's religious policy by the OCU, the

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document urges your government to enact policy initiatives in a more balanced way to avoid undermining Western support for Ukraine. Unfortunately, these wiser voices have been ignored at the higher levels of your administration. However, despite the note of caution in this document, it still envisages the transfer of the UOC under the canonical guarantees of the EP.

(ii) Harassment of and abuse of law against UOC priests and journalists

The plan to destroy the UOC as an independent church is predicated on the intimidation of UOC clerics and supporters in order to reduce the influence of the Church. The Ukrainian government has deployed the powers of the state and judiciary—including civil and criminal processes—to discriminate against and harass the UOC and its priests, as well as Orthodox journalists. Your government has unjustifiably imposed sanctions on senior UOC leaders. The SBU has opened unfounded criminal investigations of UOC priests and has carried out extensive searches of buildings under the UOC's authority and the homes of priests and journalists. Some of those arrested have been subject to highly dubious investigative techniques, including questioning under polygraph.³ Your government has turned to “psycho-linguistic” examinations as a form of “expert” evidence in a concerning throwback to Soviet-era legal procedures. I draw attention to just two of the most egregious cases of wrongful arrest as illustrative of Ukraine's failed commitment to the rule of law and willingness to arrest the innocent on false charges as a means of intimidation.

Metropolitan Arseniy, the superior of the Sviatohirsk Lavra of the Holy Dormition was arrested in April 2024 for the alleged crime of betraying the location of military checkpoints under Article 114-2 of the Criminal Code. In September last year, Arseniy preached a sermon in which he complained that pilgrims had been prevented from reaching the monastery due to temporary checkpoints erected in the region. Although his complaints were accurate and innocuous, Metropolitan Arseniy was charged by the SBU six months later and remains in detention, facing a jail term of eight years.

In February 2023, Metropolitan Feodosii of Cherkasy and Kaniv was informed that a criminal case had been opened against him under Article 161 of Ukraine's Criminal Code for inciting national and religious hatred. The case was based on talks on ecclesiological and theological matters given by Feodosii over a period of ten years. Metropolitan Feodosii has been placed under house arrest and is permitted to leave only for court appearances, during which he is often humiliated by large groups of protesters, likely with government encouragement. In a grave violation of the laws of war, the SBU has offered Metropolitan Feodosii freedom if he agrees to be sent to Russia in exchange for Ukrainian prisoners of war. Ukraine and its officials may bear responsibility for this illegal offer under the Third Geneva Convention of 1949 and the Rome Statute of the International Criminal Court. A Ukrainian patriot, Metropolitan Feodosii has refused all such proposals. The wrongful arrests of Metropolitans Arseniy and Feodosii are just two among many.

(iii) Harassment of parishioners and illegal transfers of churches

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 authorities. The government has taken no steps and implemented no policies to protect UOC places of worship from interference, attacks, and seizure. Its police and security services—when not undertaking attacks on the Church themselves—simply stand by and allow the invasion and

³ 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.

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desecration of UOC religious sites. To date, around 1,500 churches have been seized, most of them illegally. These seizures are fully consistent with the government's secret plans to merge the UOC into the OUC as envisaged in the recently released documents in our possession.

For example, on March 28, 2023, a group of men forced their way into the UOC's Cathedral Church of Ivano-Frankivsk to forcibly remove UOC priests and worshippers. The attackers, accompanied by priests and believers of the OCU, used tear gas in the church, desecrating holy places of worship.⁴ On the same day, the Church of the Blessed Virgin Mary of the UOC in the village of Kordyshev in Ternopil region, was burned. According to the rector of the church, arsonists threw Molotov cocktails and then later poured gasoline onto the blaze.⁵ These are just two of the many attacks on UOC property.

Many of the churches seized by the OCU have been closed and turned into "ghost" parishes. Quite simply, the OCU does not have the numbers of believers to fill these empty churches. UOC parishioners who have had their churches seized are being left with no choice but to attend liturgies in private apartments and even in the open air. These actions are dividing Ukrainian society and undermining national unity during a time of war.

(iv) Draft Law 8371 will ban the UOC

In accordance with the government's secret plan revealed in the documents we have in our possession, the Verkhovna Rada is in the final stages of a legislative effort to ban the Church. Your government, with significant direction from Mr. Yelenskyi, has prepared Draft Law 8371, a deeply divisive piece of legislation that bears all the hallmarks of a Soviet-era approach to religious affairs. In January this year, my firm published a detailed legal review of the version of the law that passed its first reading in the Verkhovna Rada on October 19, 2023. By drawing upon the opinions and legal guidance of the Venice Commission, the Council of Europe's advisory body on constitutional and administrative matters, this analysis showed that Draft Law 8371 would fail not just one, but all the criteria required for permissible restrictions on the freedom of religion under the European Convention of Human Rights.⁶ A legislative ban on the UOC constitutes collective punishment, in violation of international law on the freedom of religion and belief (see Annex Two). Consequently, my firm has called on Ukraine to submit Draft Law 8371 for review by the Venice Commission, a call echoed by others in the international community, including the Church of England.⁷

Draft Law 8371 has been amended several times since its first reading in the Rada. While its provisions have been significantly expanded, nothing has been done to address the myriad of legal problems with the bill, including its discriminatory impact and violation of international religious

⁴ 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 Kyiv Post. "Skirmish Between Rival Orthodox Churches in Ivano-Frankivsk." Available at <https://www.kyivpost.com/post/15073>

⁵ 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. See also "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-kordishiv-pidpalili-xram-gromadi-upc/?fbclid=IwAR3SLtq-xdFeNkRHt9XVod4rd7B1snxaf7hOoXrXbg3ECNyINdFECsrwKBs#2024-04-19>

⁶ "Legal Analysis of Ukrainian Draft Law 8371," available at <https://savetheuoc.com/document-library/>

⁷ See the questions raised by the Right Reverend Nicholas Baines, the Lord Bishop of Leeds, to the Foreign, Commonwealth and Development Office of the United Kingdom, available at <https://questions-statements.parliament.uk/written-questions/detail/2024-05-20/h14779>

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freedom. The bill empowers DESS to undertake an examination of the relationship between the UOC and ROC, and it provides a near limitless set of grounds for a determination that the two churches remain “affiliated.” It ignores the efforts of the UOC to separate from the ROC. Most egregiously, several of the grounds for affiliation are wholly outside the control of the UOC (namely the statutes, administrative documentation and actions of the ROC, which can, independently of any actions by the UOC, lead to a determination of affiliation). Once such a determination has been made, DESS can apply to court to denude the UOC of its legal status and property rights, and outlaw its religious activities. Given the government plan revealed to us, there is every reason to assume that even acts of worship would be included in this prohibition.

In what appears to be a calculated attempt to pass the law with minimum oversight and scrutiny and in violation of basic democratic norms, the most recent versions of Draft Law 8371 have not been made publicly available. Despite this, my firm, along with other international organisations, have been able to obtain copies of each version of the law. In its review of the legislation, Forum 18 opined that the revised bill “would not implement Ukraine's legally-binding international obligations to respect and protect the freedoms of religion or belief, expression, and association.”⁸ The Church of England sharply criticised the legislation in a report for its General Synod in February this year, raising “concerns that recent legislative developments in Ukraine may impact enjoyment of FoRB [Freedom of Religion and Belief],” and concluding that “Draft Law 8371 threatens Ukraine’s social cohesion at a time when it needs a unified societal response to Russian aggression.”⁹ The Church of England observed that the bill “encourages an ethno-religious nationalism that will be detrimental to Ukraine’s long term Western trajectory.”¹⁰

In recent weeks, militantly nationalist deputies in the Verkhovna Rada have renewed momentum to pass Draft Law 8371. Led by Poroshenko, these deputies are promoting a radical political program of ethno-religious nationalism, just as the Church of England’s report feared. Your government has assessed that Poroshenko’s political party is responsible for creating “information and psychological support” for the attacks on the UOC. For Poroshenko, enacting Draft Law 8371 would be the culmination of the state policy on religion, which he set in motion during his presidency by actively promoting the OCU and lobbying the EP to grant the new church a *Tomos* of autocephaly.

Poroshenko, with the support of other deputies, is demanding a second reading of Draft Law 8371 to secure its final approval by blocking any urgently needed legislative activities until the bill is approved. Poroshenko’s obstruction of the Verkhovna Rada’s legislative business amounts to a severe infringement of Ukraine’s democratic process. Should Draft Law 8371 be passed into law, Poroshenko will claim a significant victory in his efforts to promote the OCU as the sole Orthodox Church in Ukraine. However, Ukraine will suffer from a grave breach of religious freedom and international standing.

Public statements by the chairman of the Verkhovna Rada indicate that Draft Law 8371 is undergoing further revision and will be added to the legislative agenda when the Rada reconvenes

⁸ Forum 18 Archive, "Ukraine: Religious freedom survey, February 2024". Available at: https://www.forum18.org/archive.php?article_id=2896

⁹ 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>

¹⁰ Id.

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in late August.¹¹ Given your government's secret plan as revealed in the internal documents of which we have possession, there is every reason to assume that the revised bill will remain as problematic as prior iterations, if not worse. The passage of this legislation would breach Ukraine's international legal obligations and seriously undermine its efforts to join the European Union pursuant to the Copenhagen Criteria.

Your government's pernicious, secret plans outlined in the documents that have come into our possession reveal a systematic effort to undermine religious liberty and insert the Ukrainian state into independent religious affairs. Ukraine has the right to defend itself against Russia's illegal aggression. Even as it does so, however, it must preserve basic human rights, including the freedom of religion. Particularly in light of what now can only be understood as a state policy to destroy the UOC, I call on you to reverse course and protect the rights of the UOC. In so doing, you will preserve Ukraine's international standing and uphold the rights of all Ukrainians to worship freely. Before there is any further damage to Ukrainian society and the country's reputation, you must withdraw Draft Law 8371 from the Verkhovna Rada and disavow the plans your government has laid out to forcibly transfer the UOC to the EP and, ultimately, unite the Church with the OCU. As President of Ukraine, and based on legal doctrines of command responsibility, you bear personal responsibility for the actions of your government and subordinates. Should you fail to stop them, you will be at risk of being held personally responsible for crimes against humanity.

Yours Sincerely,



Robert Amsterdam
Amsterdam & Partners LLP

¹¹ Ukrainews. "Chairman of the Verkhovna Rada Ruslan Stefanchuk: Ukraine cannot unequivocally hold one-on-one talks with Russia." Available at <https://ukrainews.com/ua/interview/3122-ruslan-stefanchuk-ukrayina-ne-mozhe-odnoznachno-provodyty-peremovyny-odyn-na-odyn-z-rosiyeyu>

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Annex One

Documents Setting Out the Plan to Transfer the UOC under Canonical Guarantees Provided by the EP

The documents in our possession include:

- Strategic Course: Creation of a Single Local Church in Ukraine (**Strategic Course Note**); and
- State Policy in the Religious Sphere and Personal Benefits (**State Policy Note**).

The Strategic Course Note provides a road map for the elimination of the UOC as an independent entity, and its eventual unification with the OCU, under the canonical and administrative control of the EP. This document appears to have been developed by figures inside the presidential administration.

The State Policy Note is a position paper, which is highly critical of the different actors in Ukrainian Orthodoxy, including the OCU, DESS and Poroshenko's political party. It also appears to have been drafted by someone in the presidential administration, albeit with a view to urge a change in religious policy. However, despite the concerns raised in this document, it still envisages the transfer of the UOC under the canonical guarantees of the EP.

(a) Strategic Course Note

The Strategic Course Note sets a goal to “unite the UOC-MP and the OCU, to remove the parishes of the Moscow Patriarchate in Ukraine from subordination to the religious center located in the aggressor state, and to neutralize the levers of hostile influence.” To do this, the document details several objectives. These include reducing the influence of the church; creating a positive image of the OCU; imposing sanctions against sponsors of the UOC; creating a toxic perception in society of the very fact of belonging to the UOC; and ensuring that all leases concluded with the UOC are reviewed by national, regional and local authorities, with a view to terminating those leases. The plan outlined in this document is predicated on Draft Law 8371 being passed into law. It takes no consideration of the steps already taken by the UOC to become independent of the ROC.

With respect to the objective of reducing the influence of the UOC, the Strategic Course Note suggests “creating a negative image of church representatives who do not support the separation from Moscow, eliminating their influence on the clergy and believers, including through controlled media and the Internet.” The use of the term “eliminating” is sinister, and it suggests that any means will be used to meet the aim. The Strategic Course Note also suggests the “neutralization” of church-related media, including the Synodal Information and Educational Department of the UOC. This represents a severe infringement of the freedom of expression, and is already being carried out, as seen in the arrests of Orthodox journalists. At the same time, support is proposed for “pro-Ukrainian religious information and analytical resources, including with the involvement of national media, authoritative bloggers, and opinions leaders.” This marks yet another worrying step of state interference into Ukraine's religious affairs.

With respect to creating a toxic perception of membership of the UOC, the Strategic Course Note suggests:

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“[supporting] the idea of inevitable responsibility for cooperation with the occupiers among the clergy of the Moscow Patriarchate; to create a toxic perception in society of the very fact of belonging to the UOC (MP); to create an image of the state as a permanent and active participant in resolving the religious issue in Ukraine. At the same time, it is extremely important to prevent acts of lynching, violent actions against the clergy and believers of the UOC (MP) and other illegal measures/means of bringing them to collective responsibility.”

Given the restive mood in Ukraine, this is an incredibly dangerous course of action to take. The attacks on UOC churches and the protests against UOC priests shows that it takes little to provoke anti-UOC sentiments. Indeed, the statement above shows that the author of the Strategic Course Note is all too aware that such sentiments can boil over into violence. It is already apparent that the Ukrainian authorities have lost control of the situation, and even appear to be encouraging it.

The Strategic Course Note also envisions the “transition of part of the parishes of the Ukrainian Orthodox Church (MP) to the Orthodox Church of Ukraine.” To do this, the document proposes the Ecumenical Patriarch act as an arbitrator. As part of this process, the Strategic Course Note envisages a campaign to create a “positive image of the OCU.” In order to carry out this transition, the Strategic Course Note sets out plans for UOC parishes to transfer to the “temporary omophorion of the Ecumenical Patriarchate,” which effectively means the creation of a new exarchate in Ukraine. This appears to be a stop-gap measure, which the Strategic Course Note describes as “a canonical alternative through the mediation of the Ecumenical Patriarchate with their [i.e. the parishes] subsequent subordination to the OCU with the help of the exarchs of the Ecumenical Patriarchate.” No consideration is given to the challenges posed by Orthodox canon law to fulfilling this plan. Nor does the document consider the broad opposition that will greet this plan by the UOC and global Orthodoxy.

According to the Strategic Course Note, those parts of the UOC that refuse to transfer to the canonical jurisdiction of the EP will be subject to “liquidation [...] as a religious organization and legal entity”. Furthermore, an agreement will be signed with the remaining leadership “which will provide for the deprivation of the said religious organization of benefits or cancellation of its state registration in case of open or veiled political and other activities to the detriment of national security and contrary to the national interests of Ukraine.” In no way will this be considered a permissible restriction to the law on the freedom of religion and belief under the ECHR (See Annex Two).

(b) The State Policy Note

The State Policy Note provides a critical overview of the actors involved in the attack on the UOC. The document does not state who the intended audience is, although it appears to be addressed to the working group that is developing the plans to subsume the UOC. The State Policy Note gives vital insight into how figures within the presidential administration view what is taking place in Ukraine. The picture it presents is wholly unedifying, and it provides a scathing assessment of the behaviour of the OCU, DESS, and Poroshenko’s European Solidarity party. It even criticises figures in the EP for facilitating the crisis in Ukrainian Orthodoxy.

With respect to the OCU, the State Policy Note observes that the OCU has been the “main beneficiary of the state policy in the religious sphere of Ukraine.” Given the facts presented in this

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letter, including Poroshenko’s efforts to establish the Church, this is certainly true. However, the State Policy Note is highly critical of the OCU’s behaviour:

“Since the beginning of the full-scale invasion, the OCU leadership has had unprecedented influence on the formation of state policy in the religious sphere. At each stage of the OCU leadership's increasing influence on the policy-making process, the policy was increasingly deviating from state interests towards the personal interests of the OCU leaders. Over the past year, the consequences of the OCU leadership's unbalanced policy and excessive ambitions have led to catastrophic consequences - polarization of society by religious affiliation, and condemnation of the methods of policy-making by international partners.”

Significantly, the State Policy Note suggests that the OCU has worked with the Ukrainian state to implement a “vendetta of the OCU hierarchs against the UOC-MP.” This includes supporting the arrests of UOC clergy on spurious charges of “inciting sectarian strife.” The note observes that while such accusations could also be made against the OCU, the Church is protected as the government’s preferred branch of Orthodoxy.

This section of the State Policy Note is also critical of Draft Law 8371. It states that the law “will only legalize selective "reprisals" against representatives of the UOC-MP, sow chaos in society for years and cause condemnation in the international community.” It is striking how this observation reflects the Church of England’s own assessment on Draft Law 8371 in its report for the General Synod in February this year. Notwithstanding the pernicious intent of Draft Law 8371, the State Policy Note does not suggest abandoning it. Instead, it states that it should be allowed to hang over the heads of the UOC like “the sword of Damocles.”

According to the State Policy Note, the OCU’s support for the government’s religious policy is driven by “selfish” interests. The note observes that “this is due to personal enmity with the hierarchs of the UOC-MP, under whose oppression they lived and formed. Now that the socio political program of the OCU has brought them to the top, the OCU hierarchs are seeking a "vendetta" over their former persecutors.” This suggests that the OCU has actively courted the support of the Ukrainian authorities in order to get revenge. Strikingly, the State Policy Note even claims that the OCU is seeking to obtain the status of a “patriarchate,” notwithstanding the limits imposed on the Church by the *Tomos* of autocephaly.

The State Policy Note is also critical of attempts being made by the OCU to establish its own parishes abroad, just as the UOC has been able to do, despite the fact that this is a breach of the terms of the *Tomos* of autocephaly issued by the EP. The State Policy Note also claims that the OCU has “created a network of its own lobbyists in government positions, who, in turn, have been using state resources to realize the OCU’s ambitions.” Significantly the State Policy Note names Yelenskyi as one of these lobbyists. This accusation is proven by his role in the development of Draft Law 8371 and his support for the attack on the UOC.

Such observations reveal that there are serious doubts among some with the presidential administration about the OCU as a trustworthy institution. Indeed, the State Policy Note strongly suggests that the OCU is working against the interests of Orthodox believers in Ukraine.

The State Policy Note is also critical of Yelenskyi’s appointment as the head of DESS. It asserts:

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“The style of work of the current Head of the DESS can be characterized as outright indulgence in the interests of the OCU leadership, even when these interests prevail over those of the state. As a highly educated person in religious matters, Viktor Yelensky deliberately manipulates facts, downplays risks and threats, creates a substitution of cause and effect, and in various places offers mutually contradictory statements that his interlocutor wants to hear, just to get concrete steps from the interlocutor in support of the OCU. There are suspicions that such activities of the state official are not only due to the gratitude of the OCU for being appointed to a respected state post, but are also supported by other ‘additional bonuses’.”

Quite what “additional bonuses” means is not explained, but it could amount to financial support.

With respect to Petro Poroshenko’s political party, European Solidarity, the State Policy Note, observes that it is in a “synergistic” relationship with the OCU. This is not surprising, given Poroshenko’s active promotion of the new church. The State Policy Note also claims:

“It is [ES] that creates information and psychological support for the most radical scenarios regarding the UOC-MP, while the OCU and the DESS are trying to reap their benefits in the shadow of this information wave. [ES] is interested in this, as they have convinced the society inside the country that radical methods are the only way to go, which the state cannot do because such scenarios are unrealizable. And the [ES] can then sow treason. For the OCU, the [ES] is a battering ram tool to force the state authorities to follow the vector of state policy in line with the interests of the OCU.”

The State Policy Note then suggests that Poroshenko’s party does not really support the attacks on the UOC that its deputies promote. Rather, it is a political game, designed to put pressure on the Servants of the People, the party of government. According to the note, European Solidarity will put all the responsibility of the violation of religious freedom on the current government in order to reap the rewards in the next elections. This explains the recent efforts of Poroshenko to push for the second reading of Draft Law 8371 in the Verkhovna Rada.

With respect to the EP, the State Policy Note states that the “main goal in the Ukrainian issue was to bring part of society (the UOC-KP and the UAOC) out of the split and unite the divided Ukrainian Orthodoxy.” Quite clearly, the EP has failed in these aims. Indeed, even the State Policy Note observes that “for Constantinople, the issue of “unity” remains unresolved.” The State Policy Note then raises a concern that the “the showdown between the two Orthodox jurisdictions directly affects the authority of the Ecumenical Patriarchate in the eyes of the international community.”

However, the State Policy Note observes that within the EP there are hierarchs who support the “destructive policy of the OCU.” The note names Metropolitan Emmanuel Chalcedon in this regard. Significantly, the State Policy Note suggests that by participating in a meeting with the “Presidential Administration” – presumably of Ukraine – Metropolitan Emmanuel:

“thus solved his financial problems and recorded the autocephaly of the OCU as his own asset to realize his ambitions to become the next patriarch. The OCU, for the unquestioning indulgence of its own interests from the representative of Constantinople, also pays Emmanuel with a proclamation of his election program: it convinces everyone that it is “successor” and “it’s already been decided”, so “Emmanuel should already be treated as a patriarch”. That is why Emmanuel is

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received in Ukraine "as a personal guest of the president" and is required to conduct a dialogue only with him."

The State Policy Note further claims that Emmanuel facilitated Poroshenko's meeting with the Ecumenical Patriarch in December 2021 to help the former president in his battle against interrogation for allegedly committing high treason. In a passing comment, the State Policy Note observes that this meeting was arranged "not for free," which alludes to a financial incentive for Metropolitan Emmanuel. Given the role of Emmanuel in church matters in Ukraine, this is a highly concerning allegation, which suggests he is a nefarious figure with ulterior motives.

The State Policy Note concludes with some further observations on the Government's approach to religious affairs in Ukraine. It states:

"'Coercion' without 'carrots' leads to the consolidation of this community against 'enemy' of the OCU and the state authorities, which in fact has become an instrument for realizing the ambitions of the OCU. All this, in turn, turns the UOC into an eternal enemy of the Ukrainian state. Collective legal liability leads to the polarization of Ukrainian society with a clearly defined border - confessional affiliation."

Consequently, the State Policy Note proposes the adoption of a "carrot and stick" method: "The criminals must be punished, and an adequate part of the UOC must be drawn to our side." This is an apparent reference to the plan for the EP to provide canonical guarantees to the UOC. To achieve this, the note suggests that the EP – without the participation of Metropolitan Emmanuel – should engage in dialogue with the UOC to "provide canonical guarantees to representatives of the UOC who wish to leave the MP." Again, the State Policy Note describes Draft Law 8371 as the "sword of Damocles" that will help separate the "wolves in sheep's clothing" from the "sheep." Quite how such plans will improve the situation in Ukraine is far from clear. Given the shocking behaviour of the OCU, DESS, and Poroshenko's party, as well as figures within the EP, as documented in the State Policy Note, it is impossible for the UOC to trust these actors in a process that seeks to transfer it to the control of the EP and to ultimately unite the OCU and UOC.

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Annex Two

International standards for the freedom of religion and belief

The freedom of religion and belief is one of the core guarantees of international human rights law and it is at the centre of 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.¹²

As a state party to the 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.¹³

Although the ICCPR does contemplate potential limits to 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.”¹⁴ 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 invasion, the church’s self-governing status, and its continued support for Ukraine’s self-defence. The UOC is the only Orthodox denomination in Ukraine to have established a network of parish churches abroad, which support countless Ukrainians displaced by the war. In addition, the UOC’s Department of External Church Relations has denounced the pernicious ideology of the “Russian World.”¹⁵

Ukraine is also a State Party to the ECHR, which also guarantees the right of freedom of religion. Article 9 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 worship, teaching, practice and observance.¹⁶

¹² Universal Declaration of Human Rights. "Article 18." 1945.

¹³ International Covenant on Civil and Political Rights (ICCPR). "Article 18."

¹⁴ *Ibid.*

¹⁵ “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,” Synodal information and educational Department of the UOC, 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>

¹⁶ European Court of Human Rights (ECHR). "Guide on Article 9 of the European Convention on Human Rights." August 31, 2022.

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

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 Rights (**ECtHR**) sets a very high bar for member states to pursue deregistration of a religious organization – which is exactly what Draft Law 8371 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 in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” The ECtHR strictly limits when such interference is justifiable. The Court’s guidance on Article 9 explains: “where a particularly important facet of an individual’s existence or identity is at stake, the margin of appreciation accorded to a State will be restricted.”¹⁷

The ECtHR has expressly ruled that religious communities must be protected from state interference:

Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in this perspective, the believers’ right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual’s freedom of religion would become vulnerable.

The Court went on to state that, “facts demonstrating a failure by the authorities to remain neutral in the exercise of their powers in this domain must lead to the conclusion that the State interfered with the believers’ freedom to manifest their religion within the meaning of Article 9 of the Convention.”¹⁸ The Ukrainian Government’s efforts to ban the UOC, and the clear preference that the state has shown to the OCU, can only be seen as unjustified and arbitrary state interference in breach of the protections expounded on by the ECtHR.

The ECtHR has also 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

¹⁷ Guide on Article 9 of the European Convention on Human Rights, European Court of Human rights, updated on 29 February 2024.

¹⁸ Hasan & Chaush v. Bulgaria, Application no. 30985/96, judgment of 26 October 2000.

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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." 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 examination by the ECtHR of Ukraine's Draft Law 8371. Furthermore, it is not "necessary" to ban the UOC, more so given the fact that the UOC is now independent of the ROC. Any such ban of the Church would amount to a collective punishment. Instead, cases involving national security can only be brought against specific individuals who break Ukrainian law by committing treason and collaborating with the aggressor state.

The Court further provided:

in principle the right to freedom of religion for the purposes of the Convention excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed. State measures favouring a particular leader or specific organs of a divided religious community or seeking to compel the community or part of it to place itself, against its will, under a single leadership, would also constitute an infringement of the freedom of religion. In democratic societies the State does not need to take measures to ensure that religious communities remain or are brought under a unified leadership.¹⁹

The plans to pass Draft Law 8371 and force the UOC to accede to a new exarch of the EP would amount to a severe infringement of UOC's freedom of religion and violate the principles as detailed in this judgment of the ECtHR.

The unambiguous legal rules contained in the Universal Declaration of Human Rights, the ICCPR, and the ECHR, along with the jurisprudence of the ECtHR, provide the framework for demonstrating the illegality of Ukraine's current attack on the UOC.

¹⁹ Metropolitan Church of Bessarabia and Others v. Moldova, Application no. 45701/99, judgment of 13 December 2001