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**2024 WARSAW HUMAN DIMENSION CONFERENCE
Plenary Session 7: Fundamental Freedoms II**

WRITTEN STATEMENT

On violations of the rights of believers of the Ukrainian Orthodox Church, adoption of the law ‘on the ban of the UOC’ by the Parliament of Ukraine, criminal prosecutions of church hierarchs, journalists and human rights defenders.

SUBMITTED BY **PUBLIC ORGANIZATION PUBLIC ADVOCACY - non-governmental organizations in special UN ECOSOC consultative status**

supported by:

VSI «Zmogaus teisiu apsauga»,

Human rights Alliance “Church against xenophobia and discrimination”

dioceses, religious communities of Ukrainian Orthodox Church

1. A brief summary of the problems of the Ukrainian Orthodox Church

The protection of fundamental freedoms, particularly the rights of religious minorities, is paramount to achieving a stable and just society. According to Article 18 of the International Covenant on Civil and Political Rights, everyone has the right to freedom of thought, conscience, and religion; this includes the freedom to manifest religion or belief in worship, teaching, practice, and observance. Unfortunately, the believers of the Ukrainian Orthodox Church (UOC) have become increasingly marginalized and persecuted under Ukrainian state policies.

Since the onset of the conflict in 2022, the situation for UOC believers in Ukraine has drastically deteriorated. On August 20, 2023, the Ukrainian Parliament passed Law No. 3894-IX, which effectively bans the UOC unless this Church renounces its ties to the Russian Orthodox Church. This legislation constitutes a fundamental violation of both national and international law, as states cannot compel religious organizations to alter their charters if such charters were previously recognized as legitimate and compliant with the law.

International human rights organizations, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), have expressed deep concern regarding the treatment of UOC believers. The law in question perpetuates a climate of fear, prompting illicit

seizures of UOC churches and properties alongside persecution of clergy and bishops under dubious criminal proceedings. For example, Metropolitan Jonathan of the UOC has been sentenced to five years in prison merely for expressing his religious beliefs during sermons. Such actions not only signify an infringement of freedom of religion but also exemplify the systematic harassment directed at the UOC.

The political rhetoric fueling anti-UOC sentiment largely hinges on spurious claims of affiliation with Moscow, which incites public hostility and legitimizes state-sanctioned violence against UOC believers. Reports indicate rising incidents of harassment, physical assaults, and unlawful property seizures¹.

Moreover, many UOC hierarchs have been placed under undue sanctions and criminal investigations, infringing on their rights. Such measures contradict the foundational principles of human rights, symbolizing a selective application of justice rooted in political agendas rather than factual legal violations. In essence, these bishops face prosecution for exercising their freedom of expression and dissenting from the state-sanctioned narrative.

You will find more information on the situation of Ukrainian bishops in the press release of the human rights alliance 'Church Against Xenophobia and Discrimination' published by the Geneva Press Club: <https://pressclub.ch/communiqu/plea-to-free-press-representatives-of-the-un-human-rights-organizations-and-religious-leaders-express-concern-over-mass-violations-of-the-rights-of-the-believers-of-the-ukrainian-orthodox-church/?lang=en>

2.Types of violations of the rights of UOC believers and main directions of discriminatory policy on the part of Ukraine

Throughout 2024, several international organizations, including the Office of the United Nations High Commissioner for Human Rights (1), UN Special Rapporteurs (2), and the U.S. Department of State (3), have drawn attention to the violations of the rights of UOC believers. Significant reaction and criticism of Ukraine, related to the attempts to pass a law "banning the UOC", were reflected in statements by U.S. politicians during the presidential election campaign. There is a widespread opinion in the media that this political criticism from U.S. politicians prevented the Ukrainian parliament from passing the law "banning the UOC".

However, as will be demonstrated further, the problem goes far beyond the threat of passing the law "banning the UOC". The attempts to pass such a law are merely a new effort to legitimize the already existing violations of the rights of this Church's believers in Ukraine. The aim is to provide a new impetus for forceful seizures of shrines and land plots of the Ukrainian Orthodox Church and to coerce bishops, clergy, and believers of the UOC to transition to another denomination – the "Orthodox Church of Ukraine", created under the omophorion of the Ecumenical Patriarch Bartholomew.

In particular, the following actions by Ukrainian state bodies directly contradict international law norms, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, as well as the national legislation of Ukraine:

¹ www.protiktor.com/uoccases

1). Improper Sanctions Against its Own Citizens Instead of Bringing Them to Justice with the Right to Defense and Legal Guarantees of the Presumption of Innocence.

On December 1, 2022, by Presidential Decree No. 820/2022 (4), President Volodymyr Zelensky introduced so-called personal sanctions against metropolitans and clergy of the UOC, including the abbot of the Holy Dormition Kyiv-Pechersk Lavra, Pavel (Leved), as well as UOC bishops operating in the Autonomous Republic of Crimea and in the Donetsk region.

On December 11, 2022, by Presidential Decree No. 863/2022 (5), the list of bishops subject to sanctions was expanded. Sanctions were imposed against UOC metropolitans and clergy, including Metropolitan Luka (Kovalenko) of Zaporizhzhia and Melitopol, Metropolitan Panteleimon (Povorozniuk) of Luhansk and Alchevsk, Metropolitan Anthony (Pakanych) of Boryspil and Brovary, Metropolitan Meletiy (Yehorenko) of Chernivtsi and Bukovyna, Archbishop Paisiy (Shynkariov) of Kostiantynivka, the rector of the Holy Dormition Cathedral in Kherson, Alexander Fedorov, and the rector of the Holy Sava Monastery in Melitopol, Alexander Prokopenko (6).

All the aforementioned individuals are citizens of Ukraine.

According to the sanctions, the individuals affected are unable to conduct negotiations regarding any transactions or agreements. They are also prohibited from directly or indirectly managing assets, including those belonging to legal entities they control as diocese administrators or monastery abbots.

Additionally, all sanctioned individuals are forbidden from fulfilling any economic or financial obligations, conducting trade operations, or acquiring land ownership.

It is important to note that imposing sanctions on Ukrainian citizens is illegal according to Ukrainian legislation, as part 2 of Article 1 of the Law (7) stipulates: "Sanctions may be applied by Ukraine in relation to a foreign state, a foreign legal entity, a legal entity under the control of a foreign legal entity or a non-resident individual, foreigners, stateless persons, as well as entities engaged in terrorist activities."

Thus, sanctions applied to UOC hierarchs – citizens of Ukraine – lack legal grounds.

It is noteworthy that the imposition of sanctions on bishops, who manage numerous properties such as monastery buildings and churches, creates preconditions for increased raiding of this property.

2). Initiation of Criminal Cases Against UOC Bishops and Demonstrative Media Campaigns Related to Such Cases (without a Verdict Confirming Guilt).

In 2023, criminal cases were initiated in Ukraine against the hierarchs of the UOC – Metropolitan Theodosiy (Snigirev) of Cherkasy and Kaniv, Metropolitan Jonathan (Yeletsykh) of Tulchyn and Bratslav, Abbot of the Kyiv-Pechersk Lavra, Pavel (Lebed), and Metropolitan Longin (Zhar) of Bancheny.

After conducting a legal analysis of the charges brought against these religious leaders and reviewing the materials of their criminal cases, we have concluded that these criminal proceedings and accusations are unfounded and indicate organized discrimination against the UOC. Essentially, the listed criminal cases amount to persecution for freedom of speech, the protection of UOC believers, and the expression of religious beliefs based on church canons and doctrine.

Ukrainian investigative authorities improperly formulate their accusations and supplement the legal norm of Article 161 of the Criminal Code of Ukraine with nonexistent content, unjustifiably considering evaluative judgments and lawful criticism, deemed part of freedom of speech, to be crimes. A more detailed analysis of such cases is presented in our statement A/HRC/56/NGO/226 (UN documentary system <https://documents.un.org>).

It is worth noting that the aforementioned cases against UOC metropolitans were opened on charges of allegedly spreading hostile rhetoric (Article 161 of the Criminal Code of Ukraine). At the same time, state authorities never held accountable those individuals who publicly called for the seizure of UOC temples and the commission of other acts of violence against the followers of this denomination. We are aware of hundreds of statements by UOC believers seeking recourse from crimes committed against them, which were left unattended by law enforcement agencies.

This serves as clear evidence of double standards in justice and confirms the existence of a political agenda to deprive UOC believers of their rights.

3). Decisions by State Authorities and Lawsuits to Seize Churches and Land from the UOC.

Another sign of the state's systematic attack on the Ukrainian Orthodox Church (UOC) is the decisions made by various levels of state authorities to terminate agreements with UOC religious organizations for the use of churches and land plots, as well as refusals by state authorities to renew such agreements.

Specific examples of such actions are outlined in our written statement A/HRC/55/NGO/147 (UN documentary system <https://documents.un.org>).

In several cases, state authorities, in violation of international obligations to protect the right to freedom of religion, have filed lawsuits to evict religious organizations from churches that were previously returned to them through restitution, i.e., the return of church property confiscated by the Soviet authorities.

For instance, such a lawsuit against the UOC was filed by the state enterprise "Kremenets-Pochaiv State Historical and Architectural Reserve". Currently, the court has ruled to evict UOC believers from the church belonging to them (8).

Additionally, on April 17, 2023, the Ternopil City Council decided to terminate the right of the UOC religious community "St. Great Martyrs Vera, Nadezhda, Lyubov and their mother

Sophia"² to use a land plot, despite the existence of a church on that land, which belongs to the UOC by right of ownership. In August 2024, the Ternopil City Council began considering the transfer of this land plot to the "Orthodox Church of Ukraine" – a denomination under the omophorion of the Ecumenical Patriarchate.

4). Unpunished calls for violence in the media.

As noted above, as well as in numerous statements by our organization during regular sessions of the UN Human Rights Council, the State of Ukraine does not take any effective measures to curb hostility against UOC believers. This is most evident by the absence of criminal accountability for individuals inciting hatred against believers of this denomination and openly calling for violence, seizure of property, and expulsion of bishops, clergy, and ordinary parishioners from the country.

For instance, as reported by the media, a video was recently posted online showing Dmytro Odnorozhenko, the singer of the Ukrainian rock band "Hatespeech", calling for the killing of UOC priests during a concert in Odesa. In the original, a swear word was used, which quite allows for such a translation: 'to kill'. This is far from the only instance of extreme hatred directed towards the Church. One might recall how in 2022, artists from the "Kvartal 95" studio openly mocked the Orthodox faith and called for violence against priests³.

The impunity for open acts of aggression creates a favorable ground for committing new crimes.

We believe that the above facts are sufficient to conclude that the State of Ukraine fails to fulfill its international obligations to protect human rights within its territory.

3. Statements by UOC Metropolitan Theodosy (Snigirov) of Cherkasy and Kaniv, a UN human rights defender against whom the Ukrainian authorities have opened a criminal case for expressing his theological beliefs

Our organisation suggests that conference participants familiarise themselves with the case of Metropolitan Theodosy(Snigirov) of Cherkassy and Kaniv, who has been actively advocating for the rights of believers at the UN since 2023⁴. He is currently facing criminal charges for expressing his beliefs and for rhetoric during sermons in which he criticised representatives of other denominations, claiming that they violate the canons of the church. The metropolitan is currently under overnight arrest, and hearings of the criminal case are ongoing. Below we give the full text of one of his speeches during the 56th regular session of the UN Human Rights Council⁵:

² <https://spzh.live/en/news/80945-court-prohibits-uoc-from-using-the-cathedral-land-in-ternopil>

³ <https://spzh.live/en/zashhita-very/81338-calls-for-the-murder-of-priests-all-aspects-of-what-has-been-said>

⁴ <https://www.youtube.com/watch?v=HWMSmD3sgC8>

⁵

<https://hrcmeetings.ohchr.org/HRCSessions/RegularSessions/55/Pages/Statements.aspx?SessionId=74&MeetingDate=20/03/2024%2000:00:00>

Oral Statement of
Metropolitan of Cherkasy and Kaniv of the
Ukrainian Orthodox Church
Theodosy (Denys Snigirov)

During 56th UNHRC session

Item 10: Interactive dialogue on the High Commissioner's oral update on the situation of human rights in Ukraine and the interim report of the Secretary-General on the situation in human rights in Crimea

Dear Participants of the Meeting,

I am the Metropolitan of the Ukrainian Orthodox Church, managing the Cherkasy and Kaniv diocese. The Security Service of Ukraine has brought a total of 5 criminal charges against me for expressing my beliefs regarding the non-canoncity of another religious denomination.

However, according to the Rabat Plan against hatred and as repeatedly emphasized by the United Nations - different forms of criticism and even disrespect towards any religion that do not incite discrimination, hostility, or violence are not prohibited.

International law in the "Six Criteria" of the mentioned plan clearly defines the difference between those statements that constitute incitement to hatred or violence, and those that may be critical, but are not violations and are protected as freedom of speech.

So what are we being judged for in Ukraine today? Why do we not have the right to speak about how representatives of another denomination are taking over our churches, while the authorities take away our land, seize our monasteries previously returned to the Church as part of restitution?

As stated in OSCE documents: "Claims to possess the truth are inherent in many religious systems and are protected within the framework of the right to freedom of expression and the right to freedom of religion or beliefs."

However, today Ukrainian courts are basing their decisions on manipulative linguistic expertise and not delving into the aforementioned international legal standards. Today in Ukraine there is a political agenda to destroy our Church.

I urge the world community to influence Ukraine to immediately cease the criminal and other persecutions of the believers in my Church, as we have not violated the law and are defending our rights through legal means.

Thank you for your attention.

Metropolitan of Cherkasy and Kaniv of the
Ukrainian Orthodox Church
Theodosy (Denys Snigirov)

Considering that Metropolitan Theodosius (Snigirov) carries out human rights activities at the UN, we call on the international community to pay close attention to his case and to ensure that his prosecution for legitimate human rights activities and freedom of speech is stopped.

4. On the unlawful extension of the content of Ukrainian criminal law norms by special services and attempts to prosecute for freedom of speech and legitimate human rights activities

The problem described in this section refers to criminal cases opened against hierarchs of the Ukrainian Orthodox Church, as well as journalists and human rights defenders who express their beliefs on significant public issues.

We are deeply concerned by the fact that Ukraine is unjustifiably broadening the scope of criminal law, particularly Article 111 of the Criminal Code of Ukraine, which prescribes severe penalties for treason, as well as Article 161 of the Criminal Code of Ukraine, which the Ukrainian state prosecution system regularly uses to persecute bishops and other believers of the Ukrainian Orthodox Church for their criticism of other denominations and attempts to defend themselves against violence and the illegal seizure of their property.

According to the legal norms in force in Ukraine, specifically Articles 2 and 3 of the Criminal Code of Ukraine, an act can be considered a crime and can entail criminal liability only if it is expressly provided for by criminal law and defined with sufficient clarity. Every person must be able to clearly understand what is specifically the criminal behavior.

Unfortunately, in Ukraine, criminal cases are now initiated almost regularly for statements criticizing government officials, comments posted on social networks, journalistic publications, and opinions shared in interviews on YouTube.

In this regard, it is important to highlight the legal position of the European Court of Human Rights, which in its decision in the case of *The Sunday Times v. The United Kingdom* (Application no. 6538/74) stated: "49. In the Court's opinion, the expression 'prescribed by law' implies two requirements....a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate their conduct: they must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."

In the context of this ECHR decision, it should be noted that in Ukraine, not only ordinary people – social media users, but also professional lawyers and journalists could not have anticipated that they would be imprisoned and criminally prosecuted for treason merely for criticizing the authorities.

Delving into the substantive preparation of charges in such cases, one can conclude that they are uniform and follow a template accusation scheme. The Security Service of Ukraine collects publications, statements, and articles by individuals and sends them for linguistic examination to an institution subordinate to the Security Service of Ukraine even though criminal law stipulates that such examinations cannot be conducted by these kinds of institutions. However, this prohibition is widely ignored. The linguistic examination then comes up with a written report containing numerous non-legal constructs not provided for by law. The linguist accuses people without any legal basis of "discrediting Ukraine", "denying Ukraine", "negative biased tendentious information", "disseminating information that

contributes to (creates conditions for) the formation of a negative image of Ukraine at the international level, destabilizing the internal political situation; exacerbating and destabilizing the socio-political situation."

It is evident that these formulations are absurd, abstract, and lack legal definition, yet this does not prevent either the state prosecution or the courts from making decisions to arrest people.

And since the norms of Ukraine's criminal law do not define the aforementioned abstract verbal constructs as crimes, the prosecution generalizes these "expert conclusions" and subsumes them, for example, as "assistance in subversive activities against Ukraine", since this phrase, without any clarification of its meaning, is included in Article 111 of the Criminal Code of Ukraine.

To better understand the issue, let us quote the main definition of the crime under Article 111 of the Criminal Code of Ukraine: "1. High treason, that is an act wilfully committed by a citizen of Ukraine to the detriment of the sovereignty, territorial integrity and inviolability, defense capability, and state, economic or information security of Ukraine:

1. joining the enemy under martial law or armed conflict
2. espionage
3. assistance in subversive activities against Ukraine provided to a foreign state, a foreign organisation or their representatives."

Based on the principles of criminal law, Article 111 of the Criminal Code of Ukraine is not subject to any broad interpretation.

However, in most cases of persecution for dissent, the prosecution exploits the vague wording of "assistance in subversive activities against Ukraine", unjustifiably embedding freedom of speech, opinions, and expression of beliefs, including lawful criticism of the existing political power in Ukraine, opposition or journalistic activities, as well as criticism of corruption and embezzlement in state bodies in this definition.

A narrow (legally correct) understanding of "subversive activities", which excludes journalism, criticism, including negative criticism, is confirmed by the judicial practice of the highest cassation instance in Ukraine. In its review of case law from 2022-2024 (2), this court considers "assistance in subversive activities" to be very specific acts, such as collecting and transmitting information about Ukrainian Armed Forces units to the enemy, voting in referendums on occupied territories, or holding positions in the structures of the occupying authorities. There is no indication in this document that "subversive activities" could include publications in the media or the activities of journalists or lawyers.

Unfortunately, despite the contradiction with the review documents of the cassation criminal courts, in the courts of first instance and appellate courts, there is a practice where Ukrainian judges, at the stage of considering detention, preventive measures, or extending such measures, agree with the unfounded and illegal formulations of the prosecution based on an unlawful extension of criminal law norms. According to our observations, courts do not conduct a sufficient legal assessment of the prosecution's arguments. In some cases, they attempt to avoid involvement in such cases (by recusing themselves), but often they place individuals in detention without sufficient grounds.

Furthermore, the situation in these cases worsens as the prosecution delays transferring the case to trial and continues to submit motions to extend preventive measures. As a result, people are held in detention for extended periods and are unable to mount a proper defense, as the court at this stage is only authorized to consider the narrow aspect of the preventive measure's reasonableness.

For example, journalist Dmytro Skvortsov was arrested on charges of high treason on February 20, 2023, and has been deprived of his freedom ever since. He is being held in a pre-trial detention center and cannot get the court to consider his arguments about the illegality of his detention. Every two months, the court extends the preventive measure of detention in his case without moving to the consideration of the case on merits. The charges against him are based on his publications in various media, where he criticizes the government and expresses his political views.

A similar case is the February 2024 detention in the Lviv pre-trial detention center of Kyiv lawyer Svitlana Novytska, who defends clients accused of criminal offenses related to their rhetoric. The charges brought against lawyer S. Novytska are worded as "systematic information and propaganda activities on the Internet and public dissemination of manipulative materials with the aim of destabilizing the socio-political situation in the state."

Similar cases include the charges of high treason against journalists from the Orthodox media outlet "Union of Orthodox Journalists" – Andriy Ovcharenko, Valeriy Stupnitsky, and Volodymyr Bobechko. As in the cases of journalist Dmytro Skvortsov and lawyer Svitlana Novytska, Ukrainian courts regularly extend the preventive measure of detention for these individuals, and the charges against them are based on linguistic analysis of their publications.

Returning to the nature of the charges against the individuals mentioned, as well as many others not named in this statement, it should be emphasized once again that the Prosecutor's Office and the Security Service of Ukraine are establishing a practice of repressive persecution of dissidents in Ukraine, based on an extralegal construct not provided for by criminal law.

They subsume lawful criticism of the government, freedom of speech, and the right to express opinions and beliefs under the definition of "subversive activities".

We emphasize once again that freedom of speech and the right to express opinions and beliefs are protected by international law, and any restrictions on these rights must be established in a clear-cut legal form. In the case of Ukraine, such restrictions are imposed only with regard to rhetoric as defined by Articles 110 (trespass against territorial integrity and inviolability of Ukraine), 111-1 (public denial of armed aggression), and 436-2 (justification, recognition as lawful, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants).

Conclusions:

We call on OSCE to facilitate the release from detention of journalists, lawyers, and other individuals who have been unjustifiably prosecuted for exercising their freedom of speech and expression of opinions and beliefs.

We are grateful to the international community for expressing concern about the issues of violations of the rights of UOC believers in communications from UN Special Rapporteurs, as well as in comments at a high level. However, it is necessary to send the State of Ukraine more substantive communications and resolutions concerning this issue.

In particular, we urge those bodies of the international human rights mechanism to respond with appropriate concrete legal actions.

In our view, the actions taken by the Ukrainian government towards the UOC not only violate international human rights obligations but also threaten the integrity of religious pluralism in Ukraine. The intermingling of state policy with ecclesiastical affairs, underpinned by hostility towards UOC believers, has led to a significant deterioration in societal tolerance and an increase in discrimination based on faith.

Recommendations:

1. The OSCE and its participating States must urgently address the ongoing violations of the rights of UOC believers through public statements condemning these actions.
2. Calls should be directed at the Ukrainian government to halt the implementation of Law No. 3894-IX and any other discriminatory legislation targeting religious minorities.
3. Monitoring bodies within the OSCE should initiate inquiries into the treatment of UOC clergy and congregants and assess the legal integrity of ongoing and future criminal prosecutions against them.
4. We encourage international organizations to provide support for UOC believers facing persecution and help facilitate interfaith dialogues to mend societal divisions.

5. It is necessary to ensure international monitoring of the fact of the criminal prosecution of Metropolitan Theodosius (Snigirov), a UN human rights defender, and to obtain from Ukraine comprehensive information about the essence of the charges brought against him. It should be ensured that the criminal cases opened against him for rhetorical statements and sermons are closed, as such activities fully comply with the standards of freedom of speech and are protected by international law in terms of the right to freedom of expression.

6. The international community, including the OSCE and authorised UN mandate holders, should take action to drop criminal charges formulated by the Ukrainian authorities through an unlawful expansive interpretation of criminal law and through the preparation of fictitious, manipulative indictments based on linguistic expertise and other subjective assessment of publications, speeches, sermons and social media posts. Ensure the immediate release and discharge of criminal charges against journalists, lawyers, activists, clerics and others accused for legitimate professional activities or freedom of expression.

As a human rights organization with consultative status with the UN Economic and Social Council, we strongly advocate for the rights of the UOC and call for the immediate cessation of policies that undermine religious freedoms.

Thank you for your attention.

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