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**UKRAINE**

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## Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name "Alliance Defending Freedom"), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Ukraine should take steps to ensure the freedom of religion or belief for all of its citizens, as well as to protect and reinvigorate natural marriage and the family as the fundamental group unit of society, and to respect the sanctity of life in all forms, especially with respect to the right to life and inherent dignity of the unborn.

### (a) Freedom of Religion or Belief

3. Notwithstanding the fact that official religious affiliation has been very low as a result of social developments during the Soviet era, the traditional and prevailing religion of Ukraine is Eastern Orthodox Christianity, although there is a significant minority of adherents to Greek Catholicism, mostly concentrated in the west of the country with historical ties to Poland and Austro-Hungary.
4. Orthodoxy in Ukraine, however, is divided into three main groups: the Ukrainian Orthodox Church of the Moscow Patriarchate (UOC-MP, the only Ukrainian church recognized as legitimate by the other mainstream Orthodox churches worldwide), the Ukrainian Orthodox Church of the Kiev Patriarchate (UOC-KP), and the Ukrainian Autocephalous Orthodox Church (UAOC).
5. Tensions and disputes over issues of legitimacy and identity have led to protracted legal battles over property and other issues, and, in some cases, this has led to harassment and social alienation.
6. In the midst of the Ukrainian Revolution, it was reported that attempts were made by nationalist groups to have UOC-MP properties forcibly transferred to the UOC-KP. In the midst of the ongoing civil war in eastern Ukraine, there have been attacks on parishes and religious communities of each side of the conflict.<sup>1</sup>
7. UOC-MP churches in the Donbass region have reportedly been damaged, and clergy and other faithful have been injured or killed as a result of shelling by the Ukrainian military and attacks by nationalist militants.<sup>2</sup> Fliers have circulated which threaten members with "radical measures" if they do not switch affiliations from the Moscow Patriarchate to the Kiev Patriarchate, and that "for every Ukrainian soldier killed in Crimea, one priest from the Moscow Patriarchate will be killed," although it must be noted that the Ukrainian Security Service has labelled this a "primitive provocation" and Ukrainian media has hypothesized that the flier may be a false flag by pro-Russian forces.<sup>3</sup>

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<sup>1</sup> TASS, Ukrainian authorities seeking to take Kiev Pechersk Laura away from Moscow Patriarchate, 2015, <http://tass.com/opinions/843140>.

<sup>2</sup> Pravoslavie, St. Alexander Nevsky Cathedral in Sloviansk again shelled during the Sunday liturgy, 2014, <http://www.pravoslavie.ru/english/71874.htm>.

<sup>3</sup> RT, War on religion: Orthodox Christian priests, churchgoers face threats in Ukraine, 2014, <http://www.rt.com/news/195692-ukraine-threats-orthodox-church/>.

8. Metropolitan Hilarion (Alfeyev) of Volokolamsk, the Chairman of the Department of External Church Relations for the Moscow Patriarchate, has stated that the UOC-MP has been subjected to regular attacks by radical groups, and that between 2014 and 2016 more than forty church buildings were seized by nationalists, which often happens in regions in which members of the UOC-MP are a minority so that local “referenda” can lend an air of legitimacy to such seizures.<sup>4</sup>
9. On the other hand, there has also been violence perpetrated by pro-Russian militants against UOC-MP clergy, including priest Pavlo Zhuchenko, who was shot dead on 9<sup>th</sup> May 2014 while talking to separatists manning a checkpoint in Donetsk. The UOC-MP authorities have made a point of not politically involving itself in the conflict between the Ukrainian government and the separatists, having defrocked clerics who have taken part in the insurgency and rejected offers from the separatist authorities to have UOC-KP properties transferred to them.<sup>5</sup>
10. The head of the UOC-KP has reported that separatists have banned his church from performing religious services in Luhansk Oblast, and that the local UOC-KP bishop was assaulted, kidnapped, taken outside the city, and told to leave Luhansk by separatist operatives.<sup>6</sup> Catholic clergy, both Latin and Eastern, have also been detained by separatists and subjected to degrading treatment before being released.<sup>7</sup>
11. The law across the country has also historically placed restrictions on the activities of religious groups based outside of Ukraine and narrowly defines the extent of permissible activities. Evangelical Christians are often perceived as being importers of foreign ideologies and as sectarian cultists, and have been reported to have undergone negative treatment as a result. Protestant and Restorationist communities (including Baptists, Pentecostals, and Adventists) have had their churches seized and ministers kidnapped by militants in eastern Ukraine, as well as members of their congregations killed as a result of being caught in the crossfire of the conflict.<sup>8</sup>

#### **(b) Marriage and the Family**

12. Article 51 of the Ukrainian Constitution explicitly defines marriage as the voluntary union of a man and a woman, and no legal provision exists for same-sex civil partnerships, nor are same-sex couples permitted to jointly adopt children.
13. In November 2015, however, the government adopted a decree “On approval of the action plan for the implementation of the National Strategy in the field of human rights for the period until 2020,” which includes a proposal to legalize same-sex civil partnerships by 2017.
14. Even assuming the indefinite retention of the constitutional definition of marriage, this reform would nevertheless be unfortunate, as it would do injury to the obligation of the State under Article 23 of the ICCPR to protect and support the family as the natural and fundamental group unit of society.

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<sup>4</sup> Moscow Patriarchate, *The Violation of Religious Rights and Freedoms: Intolerance, Discrimination and Persecution*, 2017, <https://mospat.ru/en/2017/01/13/news141083/>.

<sup>5</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *2014 Report on International Religious Freedom – Ukraine*, 2015, <http://www.pravoslavie.ru/english/71874.htm>.

<sup>6</sup> *Ibid.*

<sup>7</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *2014 Report on International Religious Freedom – Ukraine*, 2015, <http://www.pravoslavie.ru/english/71874.htm>.

<sup>8</sup> *Ibid.*

15. The public policy purpose of State recognition and involvement in romantic relationships and marriage at all is to safeguard the right of children to both a mother and a father, and to incentivize the stability and permanence of biological families whenever possible. Legal recognition of same-sex partnerships, a precursor to same-sex marriage, damages this ideal by placing potentially procreative relationships on the same conceptual level as relationships which are infertile in principle.
16. The relative ease with which female same-sex couples in Ukraine have access to IVF and assisted insemination treatments, as well as the potential future legalization of full adoption rights, ignores the reality that children do best, all other things being equal, with both a mother and a father, biological or otherwise.
17. Concerns also exist with respect to the erosion of other fundamental freedoms and rights as a result of redefining marriage and the family. For example, in other jurisdictions where same-sex marriage has either been legalized or its future legalization is all but inevitable, so-called "hate speech" laws have been utilized against the clergy and faithful of religious denominations for speaking on the issues of homosexuality and the definition of marriage according to traditional Christian teaching.<sup>9</sup>
18. Even if one disagrees with this sentiment, the rights to freedom of opinion and expression under Article 19 of the ICCPR should not be unnecessarily infringed for the sake of sparing hurt feelings where actual incitement to violence or gross mistreatment does not occur.
19. Similarly, people of faith who personally run businesses catering to the public, and who have no objection to serving individuals who identify as LGBT, have been fined, subjected to re-education orders, and in some cases forced to shut down as a result of not being able to creatively participate in same-sex marriage advocacy or a same-sex wedding in good conscience due to their sincere and deeply-held religious or moral beliefs regarding the nature of marriage.<sup>10</sup>
20. These are violations of the right to freedom of thought, conscience, and religion under Article 18 of the ICCPR, and all countries that have redefined marriage or are seeking to do so must take this into account when it comes to fulfilling their obligations to protect these rights.

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<sup>9</sup> ADF Legal, Approval of Same-Sex "Marriage" Leads to Censorship of Speech, 2013, <http://www.adflegal.org/detailspages/blog-details/allianceedge/2013/01/15/approval-of-same-sex-marriage-leads-to-censorship-of-speech>; ABC News Australia, Anti-discrimination complaint 'an attempt to silence' the Church over same-sex marriage, Hobart Archbishop says, 2015, <http://www.abc.net.au/news/2015-09-28/anti-discrimination-complaint-an-attempt-to-silence-the-church/6810276>; Catholic Herald, Spanish cardinal reported over 'hate crime,' 2016, <http://www.catholicherald.co.uk/news/2016/06/07/spanish-cardinal-reported-over-hate-crime/>.

<sup>10</sup> ADF Legal, Jack Phillips, <http://www.adflegal.org/detailspages/client-stories-details/jack-phillips>; ADF Legal, Jon and Elaine Huguenin, <http://www.adflegal.org/detailspages/case-details/elane-photography-v.-willock>; ADF Legal, Baronelle Stutzman, <http://www.adflegal.org/detailspages/case-details/state-of-washington-v.-arlene-s-flowers-inc.-and-barronelle-stutzman>; ADF Legal, 3 Common Myths Used Against Christian Bakers like Aaron and Melissa Klein and Jack Phillips, 2016, <http://www.adflegal.org/detailspages/blog-details/allianceedge/2016/04/07/3-common-myths-used-against-christian-bakers-like-aaron-and-melissa-klein-and-jack-phillips>; ADF Legal, Brush & Nib Studio, <http://www.adflegal.org/detailspages/case-details/brush-nib-studio-v.-city-of-phoenix>; Belfast Telegraph, Forcing Ashers bakery to make pro-gay marriage cake could amount to cruelty, appeal hears, 2016, <http://www.belfasttelegraph.co.uk/news/northern-ireland/forcing-ashers-bakery-to-make-progay-marriage-cake-could-amount-to-cruelty-appeal-hears-34709014.html>.

### (c) Right to Life

21. Abortion in Ukraine is legal on demand up to 12 weeks gestation, and is legal up to 28 weeks from conception “on judicial, genetic, vital, broad medical and social grounds, as well as for personal reasons with the special authorization of a commission of local physicians.”<sup>11</sup>
22. Maternal mortality in Ukraine is unusually high for Europe, standing at 24 maternal deaths per 100,000 live births in 2015, down from 46 per 100,000 in 1990. This is comparable to Russia’s rate of 25 maternal deaths per 100,000 live births, but much higher than Belarus’ rate of 4 per 100,000.<sup>12</sup>
23. Other European countries with much stricter abortion laws have much lower rates of maternal mortality, however, such as Poland’s 3 maternal deaths per 100,000 live births, Ireland’s 8 per 100,000, and Malta’s 9 per 100,000.<sup>13</sup> This indicates that it is not a lack of legal abortion that causes such high maternal mortality rates, but rather other systemic problems linked with development and healthcare infrastructure and services overall.
24. This is especially apparent given that Ukraine’s legal abortion regime plays out not just on paper, but in practice as well, as it has one of Europe’s highest abortion rates, with 21.2 abortions per 1000 women aged 15-44, so the high maternal mortality rate is not simply caused by “lack of access to safe abortion.”<sup>14</sup>
25. This also puts to death the falsehood that abortion being legal corresponds to its becoming safe. Medical infrastructure in parts of Ukraine, especially outside the bigger cities, remains underdeveloped, and women who receive abortions will still face the same poor conditions as women who give birth and deal with similar complications, such as bleeding and infection. Perpetuating such liberal access to abortion will mean more women will suffer from abortion complications.
26. A so-called international “right to abortion” is also incompatible with various provisions of international human rights treaties, in particular provisions on the right to life. Article 6(1) of the ICCPR states, “Every human being has the inherent right to life.” The ICCPR’s prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn.
27. Although the ICCPR allows for the death penalty to be imposed on both adult men and women, it explicitly prohibits applying the death penalty to pregnant women. Article 6(5) states that a “sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” This clause must be understood as recognizing the unborn child’s distinct identity from the mother and protecting the unborn child’s right to life.
28. The *travaux préparatoires* of the ICCPR explicitly state that “the principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence

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<sup>11</sup> United Nations Population Division, Department of Economic and Social Affairs, Abortion Policies: A Global Review – Ukraine, <http://www.un.org/esa/population/publications/abortion/doc/ukraine.doc>.

<sup>12</sup> World Bank, Maternal mortality ratio (modeled estimate, per 100,000 live births), 2015, <http://data.worldbank.org/indicator/SH.STA.MMRT>.

<sup>13</sup> *Ibid.*

<sup>14</sup> United Nations Population Division, Department of Economic and Social Affairs, World Abortion Policies 2013, <http://www.un.org/en/development/desa/population/publications/policy/world-abortion-policies-2013.shtml>.

should not be carried out on pregnant women was to save the life of an innocent unborn child.”<sup>15</sup> Similarly, other early UN texts note that the intention of the paragraph “was inspired by humanitarian considerations and by consideration for the interests of the unborn child.”<sup>16</sup> The Preamble to the Convention on the Rights of the Child also requires special safeguards and legal protection to be provided to children “before as well as after birth.”

29. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”
30. Article 1 of the CRC defines a child as “every human being below the age of eighteen years.” This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of “child” attaches. Moreover, Article 6 of the CRC holds that “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Viewed in the context of the preamble, both Articles 1 and 6 of the CRC indicate recognition of, and protection for, unborn life.
31. Almost all maternal deaths are preventable,<sup>17</sup> particularly when skilled birth attendants are present to manage complications and the necessary medication is available. In line with paragraph 8.25 of the ICPD, Ukraine must focus on introducing measures to avoid recourse to abortion by way of investing in social and economic development and by providing women with support throughout and after pregnancy.

#### **(d) Recommendations**

32. In light of the aforementioned, ADF International suggests that the following recommendations be made to Ukraine:
  - a. Protect the right to religious freedom of all citizens of and residents in Ukraine, promote religious harmony and interdenominational tolerance, and ensure both in law and in practice that all religious individuals and groups have their rights to freedom of expression and association guaranteed in all arenas of society;
  - b. Retain the current constitutional definition of marriage as the union of one man and one woman, and refrain from legalizing same-sex civil partnerships, in line with States’ obligation to protect and promote the family as the natural and fundamental group unit of society under Article 23 of the ICCPR;
  - c. Recognize and protect the basic and natural right of all children to be raised by a mother and a father, biological or otherwise, repeal laws which damage this ideal, and refrain from granting joint adoption rights to same-sex couples;

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<sup>15</sup> A/C.3/SR.819, para. 17 & para. 33; In accordance with the Article 32 of the Vienna Convention, the travaux préparatoires are considered to be a “supplementary means of interpretation.”

<sup>16</sup> Commission on Human Rights, 5<sup>th</sup> Session (1949), 6<sup>th</sup> Session (1950), 8<sup>th</sup> Session (1952), A/2929, Chapter VI, Article 10.

<sup>17</sup> World Health Organization, Fact Sheet No. 348, Maternal mortality, <http://www.who.int/mediacentre/factsheets/fs348/en/>

- d. Ensure that the rights to freedom of opinion, expression, thought, conscience, and religion under Articles 18 and 19 of the ICCPR are guaranteed and protected with respect to all citizens, and that these rights not be infringed upon, including by so-called “hate speech” laws.
- e. Affirm that there is no international human right to abortion and that the right to life applies from conception until natural death, and as such that the unborn child has the right to protection of his or her life at all points;
- f. Resist calls to further liberalize abortion, and instead implement laws aimed at protecting the right to life of the unborn;
- g. Improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health, with a focus on safely getting mothers and babies through pregnancy and childbirth, with special focus on ameliorating these issues for women from poor and/or rural backgrounds.