

Ensuring Accountability for Russian Hate Speech – Q&A on FIDH’s Article 15 Communication to the ICC

Today, the International Federation for Human Rights (FIDH), jointly with its Ukrainian member organizations, the Kharkiv Human Rights Protection Group (KHPG) and the Center for Civil Liberties (CCL), as well as a Russian NGO, submitted an Article 15 Communication to the Office of the Prosecutor of the International Criminal Court (ICC) alleging that six Russian nationals committed the crime against humanity of persecution in the form of hate speech in Ukraine. To accompany the [Communication](#), FIDH and its partners are publishing this Q&A addressing the reasons behind the submission, its main findings, and our main requests.

1. What exactly is an Article 15 Communication to the ICC and what are your goals?

An Article 15 Communication is a formal submission to the ICC Prosecutor providing information on alleged crimes within the Court's jurisdiction. Under Article 15 of the Rome Statute, these Communications can trigger the Prosecutor to initiate investigations if, based on the evidence supplied by the Communication, he concludes that there is a reasonable basis to proceed. This mechanism allows non-governmental organizations, States and other entities to highlight serious crimes, such as those occurring in the context of the ongoing war in Ukraine, which might not have been in the focus of the ICC Prosecutor previously.

Since an investigation into the situation in Ukraine has already been opened, with four arrest warrants issued against Russian perpetrators, the aim of this Article 15 Communication is to raise awareness on the role of rhetoric in the war in Ukraine, highlighting that hate speech constitutes the crime against humanity of persecution within the meaning of the Rome Statute, and that the individuals identified in the Communication should be prosecuted and held to account for such conduct.

2. What specific crimes are alleged to have been committed in Ukraine that are the focus of this Communication?

This Communication focuses on **hate speech** as a type of **crime against humanity**, namely **persecution**, under Article 7(1)(h) of the Rome Statute. Like incitement to commit genocide, hate speech constitutes an **international speech crime** falling under the jurisdiction of the International Criminal Court.

Persecution is defined as the **intentional and severe deprivation of fundamental rights** of any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, and must be committed in connection with any act referred to in this paragraph or any crime within the jurisdiction of the ICC.

This Communication shows how the hate speech disseminated on Russian television, radio and social media platforms **calls for violence against Ukrainians, severely denigrates and dehumanizes** them, violating their rights to security, human dignity and self-determination. This includes calling for the **destruction of Ukraine or the killing of Ukrainians who oppose Russia’s aggression**, comparisons of Ukrainians with “worms”, “Nazis”, “demons” or “satanists”, the denial of a distinct Ukrainian identity and Ukraine’s right to exist as a sovereign State, the portrayal of Ukrainians as “brainwashed” by “the West” into opting for greater separation from Russia, or asserting that the Ukrainian “state ideology is hatred for everything Russian”; and

advancing conspiracy theories, including that Ukrainians have repressed and even committed genocide against Russians and Russian-speakers in Eastern Ukraine.

Importantly, hate speech is an **inchoate crime**, meaning that the speech act, in itself, constitutes a violation of fundamental human rights. No causal link between the speech act and any further crime or any further act of violence, including war crimes or crimes against humanity committed against Ukrainian civilians on the ground, must be proven.

3. Have there been previous cases where individuals were prosecuted by an international court for speech offenses like hate speech?

Yes, individuals have indeed been previously convicted by international tribunals for hate speech. The origin of such prosecution can be traced back to the Nuremberg Trials, where Julius Streicher was convicted for disseminating anti-Semitic propaganda, which “infected the German mind”. Subsequent international tribunals have also dealt with speech crime cases. Notably, the International Criminal Tribunal for Rwanda (ICTR) found three media figures, Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze, guilty of persecution as a crime against humanity. The Court stated that similar to Streicher’s anti-semitic articles, like “poison”, the “virulent writings of Kangura and the incendiary broadcasts of RTLM” created a “climate of harm” and conditioned the population for further violence. In a more recent example, the International Residual Mechanism for Criminal Tribunals, as the successor of the International Tribunal for the Former Yugoslavia (ICTY), convicted Serbian politician Vojislav Šešelj for publicly calling for the expulsion of Croats from the town of Hrtkovci, qualifying his speech as persecution. In addition, hate speech has been extensively prohibited in national jurisdictions, with over 100 States prohibiting hate speech, in one way or another, in their criminal legislation, including Russia itself.

Overall, the jurisprudence of international tribunals shows that hate speech reaching a sufficient level of gravity can amount to the crime against humanity of persecution, and that there is a legal basis for the prosecution of hate speech as a crime against humanity under Article 7(1)(h) of the Rome Statute.

4. Who are the main alleged perpetrators? Why were they selected?

The Communication identifies **six Russian nationals** who have participated in a hateful campaign against Ukrainian civilians, encouraging and facilitating Russia’s war crimes and other atrocities, including:

- former President and current Deputy Chairman of the Security Council of the Russian Federation, **Dmitry Medvedev**,
- **Vladimir Solovyov**, host of a popular television show on the State-owned television channel Russia-1,
- **Margarita Simonyan**, Editor-in-Chief of Russia Today,
- **Dmitry Kiselyov**, head of the state-owned media group Rossiya Segodnya, and
- **Sergey Mardan**, a radio and television presenter.

Additionally, this submission outlines the responsibility of First Deputy to the Chief of Staff of the Presidential Executive Office, **Alexey Gromov**, for the issuance of written and oral directives that set the main propaganda narratives to be disseminated by major Russian media outlets, and the arrangement of weekly meetings with their representatives, demonstrating his control over the hate speech broadcast by Russian media.

In line with the prosecutorial strategy adopted by the ICC Office of the Prosecutor to focus its efforts on the most responsible perpetrators of international crimes, this selection of individuals is based on their **leadership positions** as Russian State officials or State media representatives, their **prominent roles as recognizable television/radio hosts or presenters**, singling them out as **top propagandists**, at a time when independent media and journalists are being banned, silenced and persecuted in Russia, the **wide dissemination** of their statements, potentially reaching millions of viewers, listeners and readers across Russia and beyond, including in the Russian-occupied territories of Ukraine, as well as the **gravity, amount, and frequent repetition** of statements denigrating Ukrainians by these individuals.

5. Who are the victims of persecution?

The perpetrators' statements and the surrounding circumstances reveal that the victims are targeted on national and political grounds. They are nationals of Ukraine, or other individuals identifying as a part of the Ukrainian nation, who support their government's stance on maintaining Ukrainian independence and sovereignty, and remain within the reach of Russian propaganda especially in the occupied territories of Ukraine. They uphold their distinct national identity and right to self-determination, including the right to pursue a democratic model of governance, and oppose the Russian invasion and other actions of the Russian authorities. This is why they are targeted by Russian propagandists.

6. Why do the documented crimes amount to crimes against humanity?

To constitute a crime against humanity under Article 7 of the Rome Statute, hate speech, as the underlying crime of persecution, must be committed as part of a widespread or systematic attack directed against a civilian population.

All speech acts described in the Communication were **committed as part of a widespread or systematic attack against the civilian population of Ukraine** that continues to this day, including the unlawful imprisonment, murder, torture, deportation and unlawful transfer of civilians, as well as rape and other forms of sexual and gender-based violence against the civilian population of Ukraine.

As described above, the documented speech acts qualify as persecution because they incite discriminatory violence and hatred of Ukrainians because of their belonging to a national-political group. Given the context of these speech acts, their intensity, repetitiveness and reach, these speech acts amount to severe deprivation of fundamental rights to security, human dignity and identity of the protected group. In addition, they were committed intentionally with the knowledge that the rhetoric was an indispensable part of a widespread or systematic attack against a civilian population, meeting the criteria for persecution under Article 7(1)(h).

7. What role does hate speech play in the ongoing armed conflict?

Hate speech has been pivotal in the conflict by dehumanizing Ukrainians and justifying violence against them, facilitating the actual acts of violence they are being subjected to. Russian media has engaged in

numerous techniques to portray Ukrainians as enemies, creating a hostile environment that encourages and legitimizes abuse. For example, Russian soldiers have referred to Ukrainians as "Nazis" during acts of torture and killings, including in the territories of Ukraine they occupied, illustrating how hate speech encourages, facilitates and perpetuates violence and persecution. Highlighting this connection is crucial for recognizing hate speech as an international crime.

8. Why is this crime different from incitement to genocide?

Both the direct and public incitement to commit genocide and hate speech as the crime against humanity of persecution are **international speech crimes** falling under the jurisdiction of the International Criminal Court. However, hate speech as a crime against humanity of persecution involves severe deprivation of rights and discriminatory intent, whereas incitement to genocide must include a public call to destroy, in whole or in part, a national, ethnic, racial, or religious group. Persecution must be part of a widespread or systematic attack on civilians based on their identity, and be committed in connection to another crime within the ICC's jurisdiction, making it distinct from the direct call to commit genocide. This communication underscores the need for international recognition of hate speech as a serious crime in itself.

9. Why does the ICC have jurisdiction to consider the crimes denounced by the communication?

Ukraine has not ratified the ICC Statute and is therefore not an ICC State Party. However, on 17 April 2014, Ukrainian authorities lodged a declaration with the registrar of the International Criminal Court, recognising the jurisdiction of the ICC for the purposes of identifying, prosecuting, and judging the authors and accomplices of acts committed in Ukraine between 21 November 2013 and 22 February 2014. On 8 September 2015, the Foreign Minister of Ukraine submitted a second declaration to the ICC Registrar, accepting "the jurisdiction of the Court for the purpose of identifying, prosecuting and judging the perpetrators and accomplices of acts committed in the territory of Ukraine since 20 February 2014".

These two declarations grant the ICC jurisdiction over crimes listed in Article 5 of the ICC Statute committed by nationals of any state on the territory of Ukraine from 21 November 2013 onwards.

The crimes described in the Article 15 Communication amount to crimes against humanity as described in Articles 7(1)(h) of the ICC Statute. They are committed 'on the territory' of Ukraine because the speech emanating from Russia is transmitted in the occupied and non-occupied territories of Ukraine.

10. What is the next step for the ICC Prosecutor following this submission?

Following the submission, the ICC Prosecutor will evaluate the communication to determine whether there is enough evidence to supplement or undertake his own investigation of the crime in question. The Filing Parties believe that the Communication provides strong evidence to conclude that there is a reasonable basis to believe that the crime against humanity of persecution has been committed, warranting further investigation and an application for arrest warrants.

Our analysis is based on a robust methodology, which includes the analysis of over 2,000 video segments containing potentially criminal speech acts, distilled into a list of 316 statements with links to the original sources of such statements. We have also conducted three interviews with media insiders and an independent Russian journalist, and received copies of Talking Points – tools of control over traditional media – prepared

by the Presidential Administration of the Russian Federation. These materials will be provided to the Office of the Prosecutor in confidential annexes to the Communication.

11. Who are the Filing Parties of this Article 15 Communication?

The filing parties are the International Federation for Human Rights (FIDH), the Kharkiv Human Rights Protection Group (KHPG), the Center for Civil Liberties (CCL), and a Russian NGO whose name is withheld for security reasons.

FIDH is an international and independent human rights NGO established in 1922, today uniting 188 member organisations in 116 countries around the world. FIDH's mandate is to take action for the protection of victims of human rights violations, for the prevention of these violations, and to bring perpetrators to justice. In order to do so, FIDH works with its member and partner organisations to document human rights violations, conduct advocacy work as well as strategic litigation in support of victims' rights to truth, justice and reparation. One of FIDH's priorities is to fight impunity and protect populations from the most serious crimes.

KHPG was founded in 1993. Prior to that it was operating as a human rights group of the Kharkiv 'Memorial' society. KHPG work is aimed at 1) protecting human rights in specific instances where human rights violations have occurred, handling over 3,000 individual requests annually; 2) informing the Ukrainian state and society about the human rights situation in Ukraine; and 3) analysing human rights compliance in Ukraine. KHPG strives to improve the human rights situation in Ukraine by ensuring respect for fundamental human rights, such as the right to life, freedom from torture or inhuman or degrading treatment, freedom from arbitrary arrest and detention, freedom of expression and information, as well as protecting the rights of the most vulnerable groups of the population, which include prisoners, persons with HIV/AIDS, persons suffering from substance abuse, internally displaced persons and others.

Center for Civil Liberties was established in 2007 and has been actively working for the protection of human rights in Ukraine and the OSCE region for 15 years. CCL's mission focuses on human rights, democracy, and solidarity in Ukraine and the OSCE region. It supports the development of civic activism, the formation of public policy, and the promotion of human rights in the region. The Center for Civil Liberties is a 2022 Nobel Peace Prize Laureate.

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