



30 April 2015

The Right Honorable Ms. Fatou Bensouda
Prosecutor of the International Criminal Court
International Criminal Court
Post Office Box 19519
2500 CM, The Hague
The Netherlands

**REQUEST FOR THE INITIATION OF AN URGENT INVESTIGATION
(PURSUANT TO ARTICLE 15 OF THE ROME STATUTE) INTO THE
RACIALLY MOTIVATED HATE CRIMES COMMITTED AGAINST AFRICAN
AND ASIAN MIGRANTS BY KATIE HOPKINS, A COLUMNIST AND
EMPLOYEE OF THE BRITISH BASED "THE SUN" NEWSPAPER.**

Dear Madam Prosecutor,

We write on behalf of the Society of Black Lawyers of England and Wales ("SBL").

The SBL has campaigned vigorously for over 40 years to achieve equality, diversity and social justice for all. We have been at the epicentre of several national and global campaigns for equality; from the unlawful "Sus" laws of the 1970's in the UK to the anti-apartheid movement of the 1980's, and more recently, the campaign against racism and anti-semitism within European football.

The SBL has been following the crises spurred by the disastrous plight of African, Arab and Asian migrants seeking to cross the Mediterranean Sea in search of greener pastures in Europe. Unfortunately, to our utter outrage and consternation, the predicament of these migrants has been subject to some of the most vile, racist, offensive, and barbaric comments from the Sun Newspaper Columnist, Katie Hopkins.

Having carefully analysed the reprehensible comments made by Katie Hopkins, it is our firm belief that they offend a litany of international conventions and were made with the sole aim to incite racial hatred and persecution and vilify migrants. In this vein, the SBL strongly urges the Office of the Prosecutor to immediately invoke its powers under Article 15 of the Rome Statute and initiate an urgent investigation on the "*basis of information on crimes within the jurisdiction of the Court*" as per Article 15(1).

On April 17, 2015, Hopkins made the following dehumanising comments:

“Rescue boats? I’d use gunships to stop migrants...No, I don’t care. Show me pictures of coffins, show me bodies floating in water, play violins and show me skinny people looking sad; I still don’t care. Because in the next minute you’ll show me pictures of aggressive young men at Calais, spreading like norovirus on a cruise ship...These two populations are the same. The migrants harassing Brit truckers at the port are the same as the vagrants making the perilous trip across the Med.”

Hopkins further added:

“What we need are gunships sending these boats back to their own country. You want to make a better life for yourself? Then you had better get creative in Northern Africa.”

“Make no mistake, these migrants are like cockroaches. They might look a bit ‘Bob Geldorf’s Ethiopia circa 1984’, but they are built to survive a nuclear bomb. They are survivors.”

On April 19th 2015 Katie Hopkins made the following statement as the host of Global Radio’s LBC Sunday Show broadcast on 97.3FM:

“I would make a huge bonfire of all the boats they have in order that we put a stop to this ridiculous situation that we find ourselves in”.

SBL submits that Hopkins’ call to use “gunships” to stop migrants, see “*dead bodies floating*”, “*migrant boats being set alight*” or “*pictures of coffins*” is a deliberate and carefully conceived narrative designed to incite racial hatred, scare the British public into believing that all the migrants are heading for the UK and justify the unleashing of violence against them. Her deplorable and inexcusable description of migrants as “*cockroaches*” is the continuation of the same well-established practice of inciting racial hatred and demonising and legitimising violence against migrants.

The grave concern being expressed by the SBL has not been done so in isolation. The term “cockroaches” was employed to encourage the killing of Tutsi and Hutu moderates in Rwanda during the 1994 genocide¹, whilst the Polish were referred to as the “*East European species of cockroaches*” by the Third Reich in Germany, who also went on to describe the Jewish population as rats. These accounts illustrate that incitement committed in public such as that which took place in Nazi Germany and Rwanda are extremely dangerous,

¹ “They kept saying Tutsis were cockroaches. Because they had given up on them we started working and killed them”. F. Keane, “*Deliver us from evil*”, *Independent Magazine*, 3 April 2004, p. 16.

as the consequences are the creation of an atmosphere of hatred and xenophobia which influences the minds of ordinary people and can rapidly descend into a violent uprising.

Referring to the inciting comments that led to the genocide in Rwanda may be seen as extreme, however, the jurisprudence of the International Criminal Tribunal for Rwanda (“ICTR”) has demonstrated in the seminal cases of the *Prosecutor v Rutaganda*² and *Prosecutor v Musema*³, that “incitement to commit an offence, under Article 6(1) of the Statute of the ICTR involves instigating another directly and publicly to commit an offence”. The ICTR has also addressed and defined the elements of the crime of *direct and public incitement* to genocide in a litany of decisions. In the *Prosecutor v Akayesu*⁴ the ICTR went as far as emphasising the inchoate nature of the crime of genocide by declaring thus:

*“Genocide clearly falls within the category of crimes so serious that **direct and public incitement** to commit such a crime must be punished as such, even where such incitement failed to produce the result expected by the perpetrator”⁵.*

The Appeals Chamber for the ICTR in the *Prosecutor v. Nahimana, Barayagwiza, & Ngeze*⁶ also referred to as the Media Case trial,⁷ on careful consideration, upheld the convictions and substantial sentence of three media leaders for crimes of speech committed through radio broadcasts and Newspaper publications in the run up to the 1994 genocide in Rwanda. In fact, the Newspaper in question, namely the Kangura, was found to have published ethnic hatred and threats that “had the effect of poison”⁸ and led to the spread of fear mongering and hate propaganda⁹ which paved the way for the resultant genocide in Rwanda.

There is little doubt that the xenophobic discourse in the British media coupled with the anti-migrant rhetoric regularly spewed by mainstream media commentators and establishments is clearly contributing to a dangerous and unwelcome climate of hate. To obviate this continued xenophobic assault against migrants, The Sun Newspaper, having taken the provocative and irresponsible step to publishing the xenophobic statements in question ought to be the subject of a prosecution and warned to desist from using the platform it has to disseminate hate speech and incite hatred against migrants as both domestic and international law prohibits such actions. Global Radio’s LBC should also receive a similar warning as it was used as a vehicle to spread the disturbingly dangerous, hateful and inciting comments.

² Prosecutor v. Rutaganda, Case No. ICTR-96-3, Judgment and Sentence (Trial Chamber), 6 December 1999.

³ Prosecutor v. Musema, Case No. ICTR-96-13-A, Judgment (Appeals Chamber), 27 January 2000, para. 120.

⁴ Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Trial Chamber), 2 September 1998, para. 562

⁵ *Supra*

⁶ See *Prosecutor v. Nahimana, Barayagwiza, & Ngeze* Case No. ICTR-99-52-A.

⁷ Prosecutor v. Nahimana, Barayagwiza, & Ngeze *op cit*.

⁸ See Para 243 of Trial Judgment in *Prosecutor v. Nahimana, Barayagwiza, & Ngeze* Case No. ICTR-99-52-T.

⁹ *Supra*

The intention of those responsible is an important consideration. It is our view that both the journalist concerned, her Editor, David Dinsmore and the owner of the Sun, Rupert Murdoch would have known all too well the historical significance of those words. The owner of Global radio can be imputed to have had the same knowledge of the implications of such a broadcast being made. The aggravating evidential features that we rely upon are as follows:

1. There was no apology from either news outlet to those who were insulted, and humiliated by these abusive comments;
2. Neither media outlet has taken any disciplinary action against the journalist or Editors concerned;
3. The comments of incitement were made as men, women and children were dying in their hundreds in the Mediterranean or being subjected to violence, intimidation and threats to their life in Libya;
4. Many of the migrants were undoubtedly fleeing persecution and oppression in either the Middle East or sub-Saharan Africa and would qualify for international protection under the 1951 Geneva Convention;
5. The comments are the latest example in a long line of racist and xenophobic abuse targeted at migrants by British tabloid newspapers, especially the Sun and Daily Mail in the last ten years;
6. The Sun newspaper and its online presence has sales of over 4 million copies per day with LBC now broadcasting as a national radio station so taken together they have an impact arguably far greater than RTLM radio or the Kangura publication did in Rwanda in 1994;
7. The expert opinion of the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein who said the column recalled Europe's darkest days of fascist hate speech and should be subject to prosecution.

In light of the above, the SBL respectfully requests that the Office of the Prosecutor investigate whether Katie Hopkins, Rupert Murdoch and David Dinsmore of the The Sun Newspaper, as well as Ashley Tabor, the founder and owner of Global Radio are individually or collectively liable for committing violations under the Rome Statute and other applicable laws *as per* Article 21 (1) (b).

We have taken the liberty to enumerate some of the international conventions that we believe can be relied upon to expose the violations committed by Katie Hopkins, The Sun Newspaper and Global Radio.

International Conventions.

I. Universal Declaration of Human Rights (UDHR) 1948.

Article 7 of the UDHR states that: “All are equal before the law and are entitled without any discrimination to equal protection of the law. *All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*”

II. The European Convention of Human Rights (“ECHR”) 1950.

Article 10 (2) (Freedom of Expression) states that:

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Article 14 of the convention states that: *“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or status.”* This was also replicated in part in:

Article 1 of Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms of the ECHR which states thus:

1. *“The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*
2. *“No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1”.*

III. United Nations International Covenant on Civil and Political Rights 1966 (“ICCPR”).

Article 20(2) of ICCPR states that:

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

IV. International Convention on the Elimination of All Forms of Racial Discrimination 1965.

Article 4 of the states that:

“States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination”.

We also recommend that the following principles of international law recommended to member states on hate speech should be considered alongside the international legal conventions set out above.

I. Recommendation No. R (97) 20 Of The Committee Of Ministers To Member States On "Hate Speech".

Principle 2:

“The governments of the member states should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others.

To this end, governments of member states should examine ways and means to:

- stimulate and co-ordinate research on the effectiveness of existing legislation and legal practice;*
- review the existing legal framework in order to ensure that it applies in an adequate manner to the various new media and communications services and networks;*
- develop a co-ordinated prosecution policy based on national guidelines respecting the principles set out in this recommendation;*
- add community service orders to the range of possible penal sanctions;*
- enhance the possibilities to combat hate speech through civil law, for example by allowing interested non-governmental organisations to bring civil law actions, providing for compensation for victims of hate speech and providing for the possibility of court orders allowing victims a right of reply or ordering retraction;*
- provide the public and media professionals with information on legal provisions which apply to hate speech”.*

Principle 3:

“The governments of the member states should ensure that in the legal framework referred to in Principle 2, interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria. Moreover, in accordance with the fundamental requirement of the rule of law, any limitation of, or interference with, freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others”.

Principle 4:

“National law and practice should allow the courts to bear in mind that specific instances of hate speech may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein”.

Principle 5:

“National law and practice should allow the competent prosecution authorities to give special attention, as far as their discretion permits, to

cases involving hate speech. In this regard, these authorities should, in particular, give careful consideration to the suspect's right to freedom of expression given that the imposition of criminal sanctions generally constitutes a serious interference with that freedom. The competent courts should, when imposing criminal sanctions on persons convicted of hate speech offences, ensure strict respect for the principle of proportionality".

Principle 6:

"National law and practice in the area of hate speech should take due account of the role of the media in communicating information and ideas which expose, analyse and explain specific instances of hate speech and the underlying phenomenon in general as well as the right of the public to receive such information and ideas. To this end, national law and practice should distinguish clearly between the responsibility of the author of expressions of hate speech, on the one hand, and any responsibility of the media and media professionals contributing to their dissemination as part of their mission to communicate information and ideas on matters of public interest on the other hand".

Principle 7:

"In furtherance of Principle 6, national law and practice should take account of the fact that:

- reporting on racism, xenophobia, anti-Semitism or other forms of intolerance is fully protected by Article 10, paragraph 1, of the European Convention on Human Rights and may only be interfered with under the conditions set out in paragraph 2 of that provision;*
- the standards applied by national authorities for assessing the necessity of restricting freedom of expression must be in conformity with the principles embodied in Article 10, as established in the case law of the Convention's organs, having regard, inter alia, to the manner, content, context and purpose of the reporting;*
- respect for journalistic freedoms also implies that it is not for the courts or the public authorities to impose their views on the media as to the types of reporting techniques to be adopted by journalists.*

The Committee of Ministers' Declaration on freedom of political debate in the media, adopted in February 2004, holds that defamation or insult by the media should not lead to prosecution, "unless the seriousness of the violation of the rights or reputation of others makes it a strictly necessary and proportionate penalty, especially where other fundamental rights have been seriously violated through defamatory or insulting statements in the media, such as hate speech".

It is worthy to note that the Committee of Ministers, in **Recommendation No.**

R (1997) 20, provided the following working definition for hate speech disseminated through the media. They declared thus:

*“The term ‘hate speech’ shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.”*¹⁰

The European Court of Human Rights also referred to “all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance)” in its *Gunduz v. Turkey* judgment of 4 December 2003, paragraph 40 as offending the provisions of Article 10 of the ECHR. It is worth noting that the ECHR have strongly indicated that:

*“no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.”*¹¹

Crimes Against Humanity.

The Rome Statute equally posits that “*crimes against humanity*” means any of the acts mentioned in Article 7 if committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Article 7 (h) states that:

“Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3 or other grounds that are universally recognised as impermissible under international law in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.”

It is the SBL’s position that the offensive and incendiary comments made by Katie Hopkins fall squarely into the definition proffered in Article 7 of the ECHR.

Aiding and Abetting Rome Statute Violations.

¹⁰ Recommendation No. R 1997 (20)

¹¹ *Timishev v. Russia* ECHR 13 December 2005, para 58.

The SBL submits that for there to be true justice and accountability, the ICC investigation should be extended to The Sun Newspaper and Global Radio who at the very least have aided and abetted the commission of hate crimes against African, Arab and Asian migrants.

An individual can be convicted of a crime against humanity in the International Criminal Court if he or she "aids, abets or otherwise assists" in the commission or attempted commission of the crime, "including providing the means for its commission" as *per* Article 25. By the use of the mainstream media and a combined reach of over a million readers and listeners, The Sun Newspaper and Global Radio have expressly aided and abetted the commission of hate crimes by publishing and broadcasting Katie Hopkins' statements of incitement to racial hatred.

Further Criminal Liability.

The SBL further submits that as the United Kingdom is a party to the Rome Statute, the Office of the Prosecutor has the inherent territorial jurisdiction to open an investigation under Article 15. We hereby respectfully request that an immediate investigation is initiated as we have demonstrated through international conventions and relevant case law that any person or institution that *incites* or engages in acts of encouraging or contributing to the commission of crimes that fall within ICC's jurisdiction is liable to prosecution. Moreover, the "gravity of the crime[s] and the interests of the victims" warrant an investigation, and there can be no doubt that such an investigation would serve the interests of justice in line with Article 53(1)(c)).

Aside from the legal machinery, the Independent Press Standards Organisation (IPSO) that regulates editorial content and enforces standards agreed by editors of newspapers, magazines and publishers of electronic media in the United Kingdom states that all members of the press have a duty to maintain the highest professional standards.

Clause 1 (i-ii) that deals with "Accuracy" stipulates that:

- i. The Press must take care not to publish inaccurate, misleading or distorted information, including pictures.
- ii. A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and - where appropriate - an apology published. In cases involving the Regulator, prominence should be agreed with the Regulator in advance.

Clause 12 that deals with "Discrimination" also states that:

- i. The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.

- ii. Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

The gravity as well as the depth of the affront caused by Hopkins' statements led to a petition against her which has collected over 200,000 signatures to date. The strongly worded petition is calling for her removal as a columnist with the Sun Newspaper. Hopkins' statements and comments in text and audio are still widely available on the internet.

In light of the above, we most humbly wish to reiterate that the initiation of an investigation will send a strong and clear message to those involved in either committing or aiding and abetting the aforementioned crimes as they will be held liable for their actions and we hope that sanctions will follow.

It is our view that these measures will help to end the continuing breaches of international law as well as the reckless impunity that underpins the media frenzy which often results in the incitement of racial hatred and subsequent loss of life.

Yours sincerely,

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