

**(Re .Katie Hopkins, Sun Newspaper Columnist, David Dinsmore, Sun Newspaper Editor and; Ashley Tabor, Founder and Executive President Global Radio)**

21st April 2015

The Metropolitan Police Commissioner  
Sir Bernard Hogan-Howe  
New Scotland Yard  
London SW1

Dear Commissioner,

Further to the original complaint by the Society of Black Lawyers (SBL) I now set out the further matters of law and fact to support our complaint. As you may be aware the SBL has campaigned over the years for diversity and social justice in many fields from the unlawful "Sus" laws in the 1970's to the anti-apartheid movement in the 1980's and the recent campaign against racism and anti-Semitism within European football. Personally, as the former Chair of the London MPS Hate Crime Forum I am aware that there is a significant history of the MPS proactively challenging hate crime in London.

In response to the remarks made by Sun Newspaper Columnist, Katie Hopkins, inciting racial hatred, the SBL strongly urge the MPS to investigate the offence of incitement to racial hatred under the Public Order Act 1986 and and to see whether any other criminal offence is made out.

#### The Factual Basis for Incitement to Racial Hatred

On April 17, 2015, Hopkins made the following dehumanizing 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."

"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."

Holmes further added: "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 LBC's Sunday show Holmes offered the following advice "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 see "dead bodies floating", migrant boats being set alight or met with "gunships" only serve to legitimise violence against migrants. Hopkins' description of migrants as "cockroaches" is the continuation of a well-established practice of demonising foreigners in order to legitimise violence against them. Further evidence of the ingredients of the offence may be seen from the Rwandese Community Organisation complaint you have now received.

The term "cockroaches" was employed to encourage the killing of the Tutsi and the Hutu moderates<sup>1</sup>. In the environment that led to creation of the Third Reich in Germany, Polish people were seen as "an East European species of cockroach", whilst the Jewish population were labeled rats.

These accounts illustrate that incitement committed in public, such as that which took place in Nazi Germany and Rwanda is primarily dangerous because it leads to the creation of an atmosphere of hatred and xenophobia and entails the exertion of influence on people's minds.

### The Aggravating Features

It is submitted that the following factors features aggravate the offence and support the evidence necessary to investigate and prosecute for incitement:

1. The significant national and international circulation of these comments made in the public domain by the UK's largest tabloid newspaper also published online, repeated without apology on LBC radio;
2. The ongoing tragedy of African migrants drowning in the Mediterranean in appalling circumstances together with clear evidence of their abusive treatment by human traffickers at the material time these comments were being made;
3. The wide spread evidence of racial attacks on African migrants and asylum seekers generally to be seen in the crime statistics at a national and local level in the UK;
4. The repetition of the abusive comments on LBC Radio by the same journalist and the failure by either the Sun newspaper and LBC Radio to take any disciplinary action against the journalist or Editors concerned;

---

<sup>1</sup> "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.

5. The failure of either the Sun newspaper or LBC Radio to provide any balance to the journalists comments and the failure after the event to offer any form of apology to those offended;
6. The Petition calling for the dismissal of the journalist signed by over 200,000 members of the public;
7. The letter by the Rwandese Community Association providing clear evidence of the offence caused and the racial hatred likely to be incited. .

### International Law

Article 10 of the European Convention on Human Rights [ECHR] allows freedom of expression save in certain limited circumstances. These circumstances include the offences contained within Part III of the Public Order Act 1986 (ss 18-23).

Additionally, Article 17 of the Convention states: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention." Relevant case law includes *Glimmerveen and Hagenbeek v Netherlands 18 DR [1987]* and *Kuhnen v Germany 56 DR [1988]*.

In Rutaganda and, later, in Musema, the International Criminal Tribunal for Rwanda (ICTR) held that "incitement to commit an offence, under Article 6(1), involves instigating another, directly and publicly, to commit an offence"<sup>2</sup>.

The ICTR has addressed and defined the elements of the crime of direct and public incitement to genocide in a number of decisions. In the Akayesu Trial Judgment, the ICTR emphasized the inchoate nature of the crime by declaring that

"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"<sup>3</sup>.

Xenophobic discourse in the British media and anti-migrant comments by mainstream media establishments are contributing to a climate of xenophobia in Britain. The Sun Newspaper is not at liberty to use it's tabloid as a platform to disseminate and channel hateful speech. Domestic and international standards of law prohibit such acts. Global Radio's LBC was also used a vehicle to spread disturbingly dangerous, hate inciting comments.

---

<sup>2</sup> Prosecutor v. Rutaganda, Case No. ICTR-96-3, Judgement and Sentence (Trial Chamber), 6 December 1999, para. 38; Prosecutor v. Musema, Case No. ICTR-96-13-A, Judgement (Appeals Chamber), 27 January 2000, para. 120.

<sup>3</sup> Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgement (Trial Chamber), 2 September 1998, para. 562.

## The Media Code of Conduct

The Independent Press Standards Organisation (IPSO), Editors' Code of Practice states that all members of the press have a duty to maintain the highest professional standards and specify in pertinent part;

### Clause 1 Accuracy

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 Discrimination

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.

Over 200,000 signatures appear on a petition to in opposition to Hopkins' remarks, calling for her removal as a columnist at the Sun Newspaper. Hopkins' comments, text and audio are widely available. The seriousness of her comments is unquestionable, which is why SBL call for accountability and justice.

## The Domestic Law

### **Part III Public Order Act 1986 - Incitement to Racial Hatred**

S 19 (1) A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if-

- (a) He intends thereby to stir up racial hatred, or
- (b) Having regard to all the circumstances racial hatred is likely to be stirred up thereby

The key evidential question is whether there is a reasonable prospect of a conviction.

For an offence to be committed under any of these sections of the Public Order Act 1986, there has to be one of the acts described therein: it has to be "threatening, abusive or insulting", and it has to be intended to or likely in all the circumstances to stir up racial hatred.

The words "threatening, abusive or insulting" are to be given their ordinary meaning. The case of **Brutus v Cozens** (1973) A.C. 854 held that this was not a question of law but of fact. In **Bryan v Robinson** (1960) 1 W.L.R. 506, D.C. it was said that words or

behaviour might be annoying without being insulting. In this context however a victim centred approach is essential if the Statute is to have any meaning. SBL contends that in everyday life it is “abusive” or “insulting” to describe someone as a “cockroach” in the circumstances where the ethnicity of the migrants was clear taken together with the other comments about deterring migrants from embarking for Europe.

CPS guidance states that *“Racial hatred is defined in Section 17 of the Act. The prosecution must prove that hatred was intended to be stirred up or that it was likely to be stirred up. 'Likely' does not mean that racial hatred was simply possible. We therefore have to examine the context of any behaviour very carefully, in particular the likely audience, as this will be highly relevant.”* In this case racial hatred was “actually” stirred up as can be seen from the online response at the time this commentary and then the Sunday broadcast was made by the Sun journalist.

In any event it is submitted that it is the state of mind of the victim that is crucial, rather than the statistical risk of violence actually occurring within a short space of time: **DPP v Ramos (2000) Crim. L.R. 768 DC**. Although referring to s 4 POA 1986 the definition of “likely” must be the same for s 19 POA. The Police must in order to judge this element adequately or at all be directed by the CPS to canvass the opinion of the victims who were targeted by the Sun journalist. This evidence already exists in the complaint from the Rwandese Community Organisation.

**In R v Rogers (2007) 2 W.L.R. 280**, the defendant was involved in an altercation with three young Spanish women during the course of which he called them “bloody foreigners” and told them to “go back to your own country”. The House of Lords, in upholding the defendant's conviction, held that the definition of a racial group clearly went beyond groups defined by their colour, race, or ethnic origin. It encompassed both nationality (including citizenship) and national origins. The statute intended a broad non-technical approach. Furthermore the victim might be presumed by the offender to be a member of the hated group, even if s/he was not. Also, the fact that the offender's hostility was based on other factors as well as racism or xenophobia was irrelevant.

It is trite law that the risk of commission of a criminal act of this nature is not essential to prove the commission of an offence of stirring up hatred on the grounds of race.

The CPS commentary continues to say that, *“When people hate others because of race, such hatred may become manifest in the commission of crimes motivated by hate, or in abuse, discrimination or prejudice. Such reactions will vary from person to person, but all hatred has a detrimental effect on both individual victims and society, and this is a relevant factor to take into account when considering whether a prosecution is appropriate.”* SBL submits that the publication of online comments and phonecalls into LBC radio supporting the racist nature of the Sun journalists comments is clearly part of the evidence that we have already submitted and therefore can be relied on to bolster this allegation of the hatred that has actually been incited or likely to be.

The CPS guidelines themselves say that,

*“It is essential in a free, democratic and tolerant society that people are able robustly to exchange views, even when these may cause offence. However, we have to balance the rights of the individual to freedom of expression against the duty of the state to act proportionately in the interests of public safety, to prevent disorder and crime, and to protect the rights of others.*

*All such allegations are by their very nature highly sensitive. For that reason, and to ensure a consistent approach, any allegation under this legislation, must be referred to the Counter Terrorism Division in CPS Headquarters. Referral means the submission of a report which is sufficient to enable the Counter Terrorism Division and the Area to have an informed discussion about where the responsibility for the case should lie.*

*When an Area becomes aware of such a case, it should be referred to the Counter Terrorism Division within seven days. If it is decided that the case should be prosecuted as an offence of incitement to racial hatred, the Counter Terrorism Division will take over the conduct of the case from the Area. If the Counter Terrorism Division considers that it is **clearly** a case where incitement to racial hatred does not apply, the case should be returned to the Area within seven days of that decision being made.*

*If the Counter Terrorism Division decides to deal with a case, the file is held there and dealt with there. Thereafter, cases can only proceed with the consent of the Attorney General.*

*The law only covers acts that are intended, or are likely, to stir up racial hatred. Whilst the definition of what constitutes "race" or "racial" is wide, it is clear that it does not cover "religious" hatred”*

### Impact of racist and religious crimes on individuals and communities

The CPS stated in its most recent policy statement on race hate crime that

*“We have published our policy statement and guidance because we want victims and their families, as well as the general public, to be confident that the CPS understands the serious nature of this type of crime and the real and lasting effects it has on individuals, communities and the whole of society. By letting people know what they can expect from us when we prosecute racist or religious crime, we aim to improve confidence in the criminal justice system.*

*Publishing a policy statement and guidance also helps to raise awareness of the relevant issues for prosecutors to assist them when making decisions about prosecuting racist or religious crime.*

*We have consulted people from black and minority ethnic communities and faith communities and taken their comments into account in writing our policy and guidance. By doing this, we have gained a better understanding of the things that are important to them and what we need to know about.*

*Racist and religious crime is particularly hurtful to victims as they are being targeted solely because of their personal identity, their actual or perceived racial or ethnic origin or their actual or perceived belief or faith. Black and minority ethnic victims can also be targeted because they belong to other minority groups and may experience multiple discrimination.*

*These crimes can happen randomly, for example, at nightclubs, at takeaways or restaurants, on public transport, at football matches, or on shopping trips, or can be a part of a campaign of continued harassment and victimisation by, for example neighbours, extremist groups, customers or even family members. Crimes can sometimes be a combination of these things - harassment by neighbours or attacks by organised gangs on a person and their home or random attacks in public places. Activity by extremist groups in an area may also manifest itself on the terraces at football matches.*

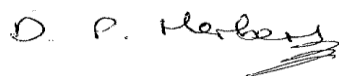
*The impact on victims is different for each individual, but there are common problems that are experienced by victims of racist or religiously aggravated crime. They can feel extremely isolated or fearful of going out or even staying at home. They may become withdrawn, and suspicious of organisations or strangers. Their mental and physical health may suffer in a variety of ways. For young people in particular, the impact can be damaging to their self-esteem or identity and, without support, a form of self-hatred of their racial or religious identity may result.*

*The confusion, fear and lack of safety felt by individuals have a ripple effect in the wider community of their racial or religious group. Communities can feel victimised and vulnerable to further attack”*

## Conclusion

The SBL contend that the initiation of an investigation by the MPS, the arrest and interviewing of the perpetrators, leading to a prosecution would send a clear message to all those involved either in committing or in aiding and abetting of the aforementioned crimes of incitement to racial hatred. Such individuals must be made accountable for their actions. This could help end the continuing breaches of domestic and international law and end the impunity that has underpinned the ever increasing crime of incitement of racial hatred. The broadcast media does not stand above the law. Freedom of expression is not an absolute right but must be commensurate with the rights and freedoms of others. The Sun journalist, her Editor, and the owner and Editor of the LBC Radio have a duty to act in accordance with the law of the United Kingdom and the international framework of justice and human rights.

Yours Sincerely,



D Peter Herbert O.B.E., Chair, Society of Black Lawyers