

M E M O R A N D U M

REGARDING

THE UNDESIRABLE PUBLICATIONS BILL
(A.B. 5/62)

F O R

SUBMISSION TO THE SELECT COMMITTEE OF PARLIAMENT

B Y

A DELEGATION REPRESENTING

THE BLACK SASH

February 22nd, 1962.

The Black Sash is an organisation of women pledged to uphold the principles of political morality and Parliamentary democracy within the Republic of South Africa, and to work for the observance of civil rights and liberties.

We believe that without unfettered exchange of ideas, and full and free examination and criticism of public measures, occasions and policies, these rights and liberties will be in grave danger. That is why we are concerned about the Undesirable Publications Bill and have given our attention to those of its provisions that constitute such danger.

While we acknowledge that part of the objections to the previous Bill have been removed by the granting of appeal to the Provincial Division of the Supreme Court of South Africa, we nevertheless believe that if this Bill becomes law, it will gravely endanger the freedom of thought and expression which are the life-blood of a nation and we are therefore opposed to it.

Sufficient legislation already exists to deal with pornographic and subversive works. What has been added in this Bill constitutes a grave threat to freedom.

1. The definition in the Bill of what is "undesirable" is both too wide and diffuse, and at the same time too general to act as a safeguard against personal prejudice in the minds of the authorities concerned. For example, what is "undesirable for the general welfare of the State" depends upon the political viewpoint held. In view of the generality of its terms, this Clause could result in curbing normal political opposition. This seems to us to be the only possible reason for its inclusion.

In section 2 (2) what is morally "undesirable" is bracketed with what is politically offensive, while Section 3 elaborates what is meant

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by morally undesirable. These definitions are excessive and impertinent as instructions to a Court of Law.

In addition, Clause 3 (i) (b) is, in our opinion, entirely impossible to apply objectively. What is "outrageous" or "disgustful to persons who are likely to read or see it" may cover virtually any publication or work of art at all, depending on the background, intelligence, education and personal preference and prejudice of the reader or viewer, or the class of readers or viewers, as much as on its own content.

Moreover, Clause 2 (2) (c) defines as objectionable what "brings any section of the inhabitants of the Republic into ridicule or contempt." This will endanger that legitimate and most necessary form of social criticism expressed through comedy and satire. Such criticism is not only a legitimate function of the artist, but has been the basis of many of the great reform movements. How could Voltaire, Balzac, Dickens, Shakespeare, Samuel Butler, Bernard Shaw, Charlie Chaplin have written if subject to this clause, since all of them "ridiculed" sections of the inhabitants of their country". Comedy and satire have since primitive times served the civilising purpose of showing abuses and absurdities in the light of reasonable proportion and as we have sought to show above much of the world's great literature and art would have been impossible had this Law operated.

2. Since the "undesirability" of publications is, according to the provisions of this Bill, to be tried by the Courts, the constitution and function of the Board of Censors is, in our opinion, not only redundant, but a source of intimidation. With this Board lies a preliminary judgement and there is no guarantee that it will not reflect the opinions and wishes of whatever party happens to be in office.

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It may discriminate in favour of what is pleasing to Government policies and against what is not; and although in the latter case its judgement may be reversed or upset by the Courts, the fear of its disfavour will be bound to act as a deterrent to fruitful composition and faithful reporting of unwelcome facts.

3. According to Section 5 (1) (a) of the Bill, the Board shall have power at the request of any person and on payment of the prescribed fee by that person, to examine any publication or object and to state whether in the opinion of the Board it is undesirable or not.

While we recognise that it is the duty of citizens to help to prevent serious crime, we believe that where the terms of an Act are as wide, uncertain and debatable as those of this Bill are, this permission may well lead to a great deal of spiteful accusation, petty persecution or witch-hunts similar to those initiated in the United States of America by Senator McCarthy.

4. Finally, in Section 1 (iv) (b) "publications or object" includes any "writing". This means that manuscripts sent through the post may be opened and subjected to censorship. Such pre-publication censorship constitutes one of the gravest threats not only to freedom of thought and expression, but to the creative life of the community.

The harm that can be done to writers and artists and their works by what has been called "the pre-natal assassination of ideas" through fear of censorship, has been clearly shown in Russia and in Germany, where in the 1930's there was rigid censorship and not one significant work of art was produced. Both the creative artist and the ordinary citizen would suffer from this Bill. The former through being denied

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the right of unfettered expression, the latter through being denied the most fundamental and vital sources of civilisation and education.

In our view, no nation can achieve mental maturity if there is such a law, for it would usurp the function normally played by public opinion.