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SOUTH AFRICAN INSTITUTE OF RACE RELATIONS (INC.)
SUID-AFRIKAANSE INSTITUUT VIR RASSEVERHOUDINGS (INGELYF)
P.O. Box 97 JOHANNESBURG Posbus 97

PUBLICATIONS AND ENTERTAINMENTS BILL

The South African Institute of Race Relations was founded 32 years ago with the object of trying to find a modus vivendi between the various racial groups in South Africa. It believes that only by the freest discussion, writing, and contact between groups will it be possible to make those racial adjustments which are essential for the future welfare and happiness of all our people. It therefore views with great disquiet the proposals made in the draft Bill.

The Institute is primarily concerned with "race" relations in South Africa but it would point out that race relations are human relations, or group relations, and that existence of groups of different colour tends to obscure the basic problems and relationships which are also to be found between groups even in homogeneous societies. The adjustment of human relations in any democratic society calls for the fullest expression of opinion and thought. The Institute, therefore, is concerned lest the fact that South Africa is multi-racial and that there is "race conflict" will lead a White government to further forms of control which will be deleterious to "race" or human relations. The Institute is itself inter-racially composed and it encourages the fullest participation by members of all groups in its work and thinking. In view of the limitations placed on Non-Whites already, the Institute is all the more concerned that no further restrictions be placed on them by means of the proposed Bill.

The Institute would therefore direct the attention of the Select Committee to those aspects of the Bill which would appear to limit the right to freedom of writing and expression. In doing so the Institute is not unconcerned with those aspects of the Bill which deal with the importation and publication of literature which offends against decency. The Institute deplores the existence of obscene material published merely to titillate the senses and to make profit out of the pornographic. At the same time it is concerned that genuine works of art, literature, and science be not prohibited and would draw the attention of the committee to the judgments made, for example, in the United States on "Ulysses" by James Joyce, on "Lady Chatterley's Lover" by D.H. Lawrence and in Britain recently also on the latter. The Institute would endorse such judgments.

The Institute is not convinced that the evils which the Bill is expected to counter can be effectively dealt with by means of negative prohibition, and would suggest that a variety of social conditions conduce to receptivity of obscene and salacious literature, and it suggests that the positive cultivation of stable family life, and of healthy leisure time activity, of creative school, community, and national activities would be a greater defence against depravity and corruption than the censorship envisaged in the Bill.

The Institute is completely opposed to the establishment of the Publications Board and the Appeal Board as laid out in the Bill. To place in the hands of a body of individuals the power to decide what is "undesirable" in terms of the definitions given in the Bill, and to exclude appeal to the courts of law is to create an unhealthy and dangerous dictatorship. No matter how these boards are composed and no matter how they are appointed, their establishment is a quite

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unnecessary violation of the rule of law. The Institute is particularly disturbed with the wide powers given to the Board, e.g. a publication may be considered undesirable if it "is otherwise on any ground objectionable" to quote sub-section (d) of the definition of "undesirable". The Institute is entirely opposed to this wide and undefined discretion given to the Board, the more so that courts of law are excluded from passing any judgment on the decisions of the Publications Board and the Appeal Board.

While the Institute is aware that there has been a great increase in the use of administrative law particularly in countries which have accepted social welfare programmes, it is not of the opinion that the control of publications should pass to a bureaucratic body without any appeal to the normal processes of law. It is particularly important in South Africa, where four-fifths of the population have no real freedom of political expression and where the adjustment between races is in a very fluid state, that the fullest freedom to write and to publish be conserved. Unlike our highest courts of law, the Boards suggested will not be independent, nor will they have any tradition of independence, and the possibility that such bodies be used politically or in support of particular policies is a major danger.

While the Institute has taken exception to many of the legislative measures which curb normally accepted freedoms, it would suggest that the range of existing legislation is more than sufficient to meet situations envisaged under this Bill and that with few exceptions such measures do not exclude freedom of access to the courts.

The Institute would also suggest that a system of censorship previous to publication is not only inimical to spontaneous freedom of expression but is also administratively impossible. It is difficult to conceive of creative writers feeling free to write creatively if they know that their work must be submitted, not to the general public, but to a board appointed by the then operating Minister of the Interior. The Institute can think of no greater inhibition of freedom of expression than this. The Institute would suggest that the onus should lie on publishers to publish responsibly and that books, periodicals, etc. be submitted to the board subsequent to publication. Should the Board then consider that the publication is objectionable it could then institute proceedings before the courts of law. Parties to the case would then be able to call on expert opinion, and the public would be reassured that an independent court of justice would make judgment.

The Institute also finds it difficult to visualise how the submission of publications previous to publication will operate. It is of the opinion that this would entail an enormous load of work not only because of the amount of material published, but also because of the range and nature of the publications which would have to be submitted in terms of the wide definition given to the term undesirable and objectionable. Neither does tha Institute believe that such pre-censorship would prevent the type of publication which aims at offending religious susceptibilities or at inculcating prejudice in the relations between groups in South Africa.

The Institute would therefore suggest that, if there is any validity in these latter opinions, it is undesirable to pass a law which makes provision for pre-publication censorship if that law cannot be carried out. Should the law be passed in its present form, the only alternative would appear to be to permit such a wide range of exemptions from the pre-publication clause that it would render it substantially inoperative.

With regard / ....

With regard to those aims of the draft Bill which affect the relationship of groups in South Africa, the Institute would reiterate that it is better that the widest freedom be given to writing and discussion. Human and group relations in South Africa are in a very unstable transition stage and it does not lie within the wisdom of a group of appointed persons to make judgments as to what is objectionable and what is not. It is only by the hard give and take of open debate that solutions to human problems will be found and not by the bureaucratic decision of the suggested Publications or Appeal Boards.

The Institute would therefore suggest for the consideration of the Select Committee:

a. that the existing jurisdiction of the courts of law be maintained;

b. that the clause relating to the pre-publication submission of written material be eliminated;

c. that the onus be placed on publishers to publish in terms of a law clearly defined;

d. that, while offence to religion or racial or other group feeling is to be deprecated, it is better for South Africa to allow the full expression of attitude and opinion than to attempt to control and occlude such experience by a pre-publication censorship with no appeal to the normal accepted processes of the courts of law and to public judgment.