

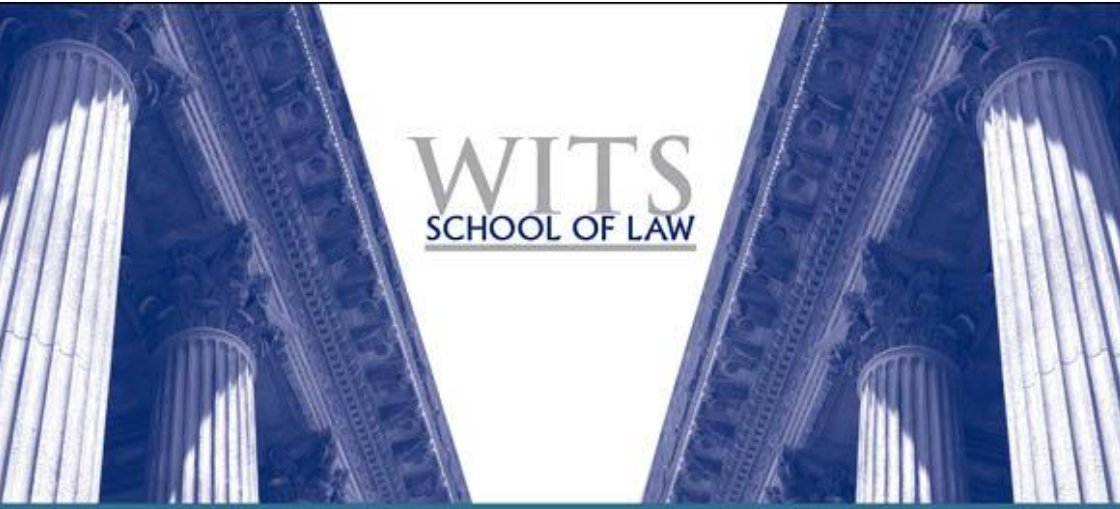
https://dspace.org/

A guide to political censorship in South Africa

Silver, Louise

1984-04-01
Centre for Applied Legal Studies
https://hdl.handle.net/10539/11806

Downloaded from a DSpace repository. https://dspace.org/



Working Paper Number 6

A GUIDE TO POLITICAL CENSHORSHIP IN SOUTH AFRICA

by

Louise Silver

The Paper was originally published by the
Centre for Applied Legal Studies as Occasional Paper No. 6
(April 1984)

CALS
Centre for Applied Legal Studies

UNIVERSITY OF THE WITWATERSRAND
JOHANNESBURG

[TS LAW LIBRARY
)K MASTER 1990
A00838

) 1984

ISBN 0 85494 818 X

101829639

BD021075

WITS LAW LIBRARY
BOOK COPY 1990
Z01588

Printed by the Central Print Unit
University of the Witwatersrand
1 Jan Smuts Avenue, Johannesburg

Published by the Centre for Applied Legal Studies,
University of the Witwatersrand, Johannesburg

THE UNIVERSITY OF THE WITWATERSRAND
The Library

CONTENTS

		Page
	Table of Supreme Court cases	(i)
	Table of Publications Appeal Board decisions	(iii)
1.	Introduction	1
2.	The value of precedent under the Publications Act 42 of 1974	3
3.	The basic philosophy of the Publications Appeal Board toward freedom of speech as it relates to political expression	17
3.1	Freedom of speech and the 'absolute necessity' test	17
3.2	Freedom of speech includes the right to political comment	19
3.3	The Publications Appeal Board relies upon Supreme Court in support of political criticism	20
3.4	Summary of bounds of permissible political criticism	22
4.	Limitations upon freedom of speech in terms of the Publications Act 42 of 1974	34
4.1	Section 47(2)(c) to (e) of the Publications Act 42 of 1974	34
4.2	The interpretation of the Act by the Publications Appeal Board	35
4.2.1	'or any part' (s 47(2)): contextual approach	35

4.2.2 'section' of the inhabitants' (s 47(2)(c) and (d) 37

(a) Police 40
(b) Politicians 41
(c) Religious groups 41
(d) Germans and Nazis 42

4.2.3 'Ridicule and contempt' (s 47(2)(c)) 44

4.3 Section 47(2)(d) and (e) 53

4.3.1 A real violation of interests 55

(i) Section 47(2)(d) 55
(ii) Section 47(2)(e) 57

4.3.2 The effect of the work upon the likely readership 63

(i) Section 47(2)(d) 64
(ii) Section 47(2)(e) 65

4.3.3 Effect on pro-revolutionary 68

4.3.4 Effect of communist works 69

4.3.5 Effect to be determined on 'probabilities' 72

4.3.6 Probable real effect and 'clear and present danger' test 74

4.3.7 Summary of s 47(2)(d) and (e) 78

4.4 Section 9 of the Publications Act 42 of 1974 80

4.4.1 Provisions of section 9 80

4.4.2 Section 9(1) 82

4.4.3 Section 9(2) 83

4.4.4 Section 9(3) 84

4.4.5 Section 9(4) 87

5. Positive or 'mitigating' factors 89

5.1 The likely reader or viewer 90

5.2 Literary value 95

5.3 Research and academic value 99

5.4 Historical or 'period' value 102

5.5 Satire 104

5.6 Distribution limited 105

5.7 Price of publication 108

5.8 Previous publication of matter in newspapers 108

5.9 The need for informed public 109

5.10 Blacks'problems should be understood by whites 110

5.11 Tolerance towards black writings 112

6. Negative or 'aggravating' factors 113

6.1 Nature of work 113

(i) Pamphlets 113

(ii) T-Shirts 114
(iii) Calendars 115
(iv) Pictorial representations 115
(v) Records 116

6.2 Propaganda 117

6.3 Sympathy with banned organisations 118

6.4 Cumulative effect of a work 118

6.5 Possible prescription of a work in school 119

7. General considerations 120

7.1 Truth is not a requirement 120

7.2 Biased or one-sided presentation 120

7.2.1 One-sidedness and communism 124

7.2.2 One-sidedness as a negative factor 126

7.3 Duplication of part of a publication 126

7.4 Publisher of a work 127

7.5 Political slogans 129

7.6 Overseas image of Republic 130

7.7 Conditional approval of a work 130

8. The treatment of specific subjects in works 132

8.1 General considerations 132

8.2 Criticism of the Government 132

8.3 The police 139

8.4 The South African Defence Force 151

8.5 Criticism of specific statutes 156

8.5.1 Detention without trial and banning under the security laws 157

8.5.2 Resettlement and group areas 159

8.5.3 Sex across the colour line and miscegenation 163

8.6 Communism 172

8.6.1 General considerations 172

8.6.2 The attitude of the Publications Appeal Board towards communism 173

8.6.3 Pro-communistic works 175

8.6.4 Works about communism 177

8.6.5 Writings of communists 181

8.6.6 Constitution of the USSR 188

8.6.7 Popular works on communism 190

8.7 Blacks 195

8.7.1 General introduction 195

8.7.2 Protest literature 199

8.7.3 Political slogans 207

8.7.4 Commemorative events in freedom struggle 209

8.7.5 Freedom Charter 213

8.8 Sabotage and revolution 219

8.8.1 Banned organisations: ANC, PAC and others 224

8.9 War in South West Africa/Namibia 229

8.10 Labour, boycotts and strikes 232

8.11 Sport 240

Supreme Court Cases cited

Abrams v United States 250 US 616 at 630 77

Buren Uitgewers (Edms) Bpk v Raad van Beheer oor Publikasies 1975(1) SA 379(C) at 423 45

Channing v SA Financial Gazette 1966(3) SA 470(W) at 473 36

Conroy v Nicol and Another 1951(1) SA 653(A) at 663 . 37

Dorfman v Afrikaanse Pers Publikasies (Edms) Bpk 1966(1) PH J 9 66

Du Plessis v Minister of Justice 1950(3) SA 579 at 528 137

Human and Rousseau Uitgewers (Edms) Bpk v Snyman NO 1978(3) SA 836(T) 91

Kol Ha'am Co Ltd v Minister of the Interior H P 73/53 75

Pienaar and Another v Argus Printing and Publishing Company 1965(4) SA 310(W) 318 (C) 21

Pillay v Publications Control Board 1971 (4) SA 208 (D) 165

Publications Control Board v Republican Publications (Pty) Ltd 1972(1) SA 288 (A) at 290 35

Publications Control Board v William Heinemann 1965(4) SA 137 (A) 60 ..... 18, 36

R v Brown 1929 CPD 221 at 223 197

R v Nkatlo 1950(1) SA 23(C) at 33 197

R v Sutherland and others 1950(4) SA 66 (T) at 75 F-G 197

S v Buthelezi and others (Durban case no CC 165/82 unreported) 33

S v Cooper and others 1976(2) SA 875 (T) at 878 B ... 27

S v Essack 1974(1) SA 1 (A) at 21-22 26

S v Evans 1982(4) SA 346 (C) at 351 22

S v ffrench-Beytagh 1972(3) SA 430 (A) 20, 26

S v Looij 1975 (4) SA 703 (RAD) 135

S v McBride 1979(4) SA 313 (W) at 317 H 92

S v Manong 1979(4) SA 429 (O) at 435-6 27

S v Nokwe and others 1962 (3) SA 71(T) at 75 214

S v Tanteli 1975(2) SA 772 (T) at 774 45

S v Turrell 1973(1) SA 248 (C) at 256 21

Whitney v California 274 US 375 76

Schenck v United States 249 US 47 74

Decisions of the Publications Appeal Board

APS Bulletin (1/81) 128, 212, 224

Academy Rewards (67/81) 41, 47, 104, 133, 165

Die Afrikaner (42/80) 19, 64, 137,

Al Zahf Al Akhdar (55/81) 54, 72, 109, 224

Alle Menn(115+116/80) 82, 87

Anti-SAIC News (38/83) 8, 21, 29, 62, 65, 76, 133, 213

Apartheid the Real Hurdle (209/82) 241

Apartheid's Army in Namibia (160/82) 231

Articles of Faith (15/83) 46, 99

Banning and Detention without Trial (53/80) 106, 108

Benoni Student Movement (159/81) 96, 174, 209

Britannia Hospital (113/82) 164

Burger's Daughter (64/79) 19

Campus Action for Democracy (133/82) 65, 120

Chiang and Mao (27/81) 71, 124, 191

A Chip of Glass Ruby (28/83) 64, 159

Church and Industry (140/80) 114, 120

The Classic (37/83) 96,198, 202, 226

The Constitution of the USSR (39/83) 188

Country Lovers and City Lovers (68+69/80) 168

The Covenant (89/80) 122, 130

Cuba (2/80) 124, 193

Death of a Princess (50/80) 41

Detention Without Trial (53/80) 157

Diakonia News (117/81) 229

Divide the Night (60/81) 75, 127, 148

Droë Wit Seisoen (81-82/7?) 145, 150

Ecunews (12/83) 123, 161

Elegy for a Revolutionary (205/82) 69, 98, 220

Exposing Total Strategy (30/80) 106, 136, 233

Fire Flames (2/81) 98, 119, 203

Flash Flash (23/83) 107, 127, 173

Football in South Africa (78/80) 121, 135, 137, 240

Forced Landing (45/80) 58, 73, 111, 199

$48,000 Reward (202/82) 50

The General Strike: Trade Councils in Action (4/80) 238

Gerugte van Reën (67-68/78) 112

Giftschlange Völker Vampir (3/80) 38

Gold Star Publications (127/80) 87

The Grass is Singing (103/81) 49, 68, 72

Grassroots (79/81) 61, 65, 73, 121, 156, 235

Grassroots (14-15/82) 115, 129, 208, 210

Grassroots (84-85/83) 31, 78, 227

Great Books of the Western World (147/81) 130, 182

Great Political Thinkers (121/80) 62, 101, 110, 126, 179

Halt All Apartheid Tours
(36/83) 114, 242

Heartland (43/82) annexure 3, 18, 22 55, 57, 76, 89, 91, 126, 127, 181

He's my Brother (70/77) 92

It's a Boy (159/82) 38, 39, 44, 49, 56, 135, 166

An Introduction to the
Writings of Ngugi (43/81) 93, 101, 109, 175

Izwe Lase Township (144/82) 20, 59, 118, 206, 207

J R News (123/80) 136, 212

Karl Marx, Frederick Engels -
Collected Works v 16 2/4/4(82) 85

Kennis van die Aand (131/81) 35, 46

The Land Shall be Shared Among
Those who Work It 2/4/4(83) 215

Learn and Teach (41/82) 57, 232

Looking on Darkness (64/80) 146

Mad Max (47/80) 140

Marx without Myth (6/80) 177

Mao for Beginners (7/81) 71, 109, 125, 192

Milcom (104/79) 151

Modern Political Ideologies (79/80) 100 , 178

1900 (31/81) 62, 71, 193

The Promised Land (187/82) 59, 118, 123, 162

Quodlibet (7/79) 129

Race Relations News (60/80) 106, 134, 211

Radical Geography (91/82) 175

A Ride on the Whirlwind (114/81) 68, 97, 147, 201

The Road is Much Longer (184/82) 116

SASPU National (161/82) 98, 107, 115, 206

SASPU National (105/83) 36, 67, 77, 83

Second Class Taxi (97/82) 103, 105, 147, 149

A Separate Development (104/80) 48, 105, 129, 147

Seven Beauties (93/77) 42

Seven Beauties (122/81) 43

Shalom and Combat (1/80) 228

Social Review (127/81) 60, 121, 129

South Africa in the 1980's (32/81) 61, 118, 138, 234

Staffrider (70/80) 95, 108, 111, 201

Staffrider (122/80) 57, 95, 108, 200

J Stalin Works (16/81) 184

J Stalin Works (83/80) 70, 184

Store up the Anger (101/80) 40, 47, 59, 98, 143, 157

The Story of Cyna (87/81) 78, 232

The Structure of Marx's World View (58/80) 70, 100, 179

The Struggle for the Land (178/82) 17, 60

Ten Days that Shook the World (28/82) 70, 72, 100, 103, 131, 186

Terrorism: an Executives Guide to Survival (125/80) 219

The Tough Ones (4/82) 140

This We Can Do for Justice and for Peace (155/81) 122, 159

Transvaal Episode (49/82) 54, 97, 102, 110, 221

Varsity (192/82) 113, 152

Varsity (73-77/80) 208, 211

Varsity (61/83) 155

The Wanderers (103/83) 204

We Shall Sing for the Fatherland (53/81) 117, 222

Why I Say No to Collaboration with SADF (206/82) 154

Work in Progress (54/82) 20, 73, 118

Work in Progress (10+11/82) 4

Work in Progress (118+120/80) 7

Work in Progress (204/82) 9, 13, 28, 126, 152, 230

§1 INTRODUCTION

A Guide to Political Censorship in South Africa consists largely of excerpts from decisions of the Publications Appeal Board that deal specifically with political censorship under the Publications Act of 1974. These excerpts have been carefully selected and edited in an attempt to provide a comprehensive picture of political censorship in South Africa. Editorial comment has beeen kept to a minimum as this work seeks to reflect the reasoning and jurisprudence of the Publications Appeal Board. The booklet also aims to help persons with a wider interest in censorship to follow the reasoning of the Board in respect of specific political issues.

The cases included all deal with matter falling within the ambit of s 47(2)(c),(d) and (e) of the Publications Act and focus on the post - 1980 period. From April 1975 to April 1980 Mr J H Snyman, a retired judge, was the Chairman of the Publications Appeal Board. In April 1980 he was replaced as Chairman by Professor J C W van Rooyen under whose Chairmanship the Board has adopted a more reasonable approach towards censorship. A number of factors in combination have contributed to this development. First, the Supreme Court decision in Human & Rosseau Uitgewers (Edms) Bpk v Snyman N O 1978 (3) SA 836 (T) led to an amendment to the Publications Act in 1979, which authorized the Appeal Board to consult with a Committee of Experts on the literary or artistic aspects of a work. Secondly, the Human & Rosseau case resulted in the Publications Appeal Board adopting the probable reader of a work as a criterion against which to judge the undesirability of a work. Thirdly, the Board under Professor van Rooyen has

pursued a more realistic and fair interpretation and application of the concepts contained in s 47(2) of the Act. The undesirability of a work is now tested against the tolerance level of the likely or probable reader and not against its acceptability by the average member of the South African community. The likely readership of a work is currently seen to be limited by its literary or artistic merit, whereas under the Snyman Board, an objective measurement of undesirability of a work was evaluated without reference to its literary value. Another new development is that the present Board relies more heavily on judgments of the Supreme Court. In this way decisions of the Board are more integrated with the general body of South African law. However, while political censorship is more reasonably and liberally applied than previously, it is clear that traditional attitudes of the ruling white minority still permeate the censorship fabric. This traditional conservatism is particularly apparent in respect of works dealing with communism and the African National Congress.

The present study is of necessity selective. The reader wishing to obtain a fuller picture of the work of the Publications Appeal Board should consult Publications Appeal Board: A Digest of Decisions (published by the Centre for Applied Legal Studies and edited by L Silver).

§2. THE VALUE OF PRECEDENT UNDER THE PUBLICATIONS ACT 42 OF 1974

There is no express provision in the Publications Act 42 of 1974 that decisions of the Publications Appeal Board shall be binding upon the ad hoc committees of the first instance. However, the Publications Appeal Board has decided on a number of occasions that a system of binding precedent is essential to the smooth working of a system of publications control.

In the annexure to Heartland (43/82) the Publications Appeal Board stated:

> 'The Publications Appeal Board has often indicated that it is its task to build up a system of precedents. That is the only way in which publications committees can function within a uniform system and in which consistency can be promoted. This system is then provided for, by implication, by the Publications Act in so far as it has been laid down that a decision of the Appeal Board has to be forwarded to the chairman of a committee concerned and may also be forwarded to other chairmen by the Directorate. Precedents exist only with regard to interpretations of the words contained in the Act. Thus, a certain meaning is given to the word "offensive", for example, and a publications committee is committed to the explanation of the word that the Appeal Board, in accordance with Supreme Court decisions and general principles of law, gives. For this reason the Appeal Board also refers to Supreme Court decisions. If, therefore, it should appear that a publications committee has not applied the guidelines provided by the Appeal Board and that that has led to a wrong decision, the Directorate is obliged to appeal. Those who control publications in South Africa can exercise their authority only in terms of the powers granted them by the Publications Act. These powers are coupled to legal concepts. In principle, therefore, there

are no precedents as to facts. It is self-evident, however, that the application of legal principles in the light of kindred facts will have persuasive force in any decision. Here regard should be had to the time when an earlier decision was reached. Regard should always be had to the circumstances prevailing when decisions were or are come to.

When anything unreasonable results from an application of an Act, the Act has failed in its purpose. A reasonable demarcation of interests should constantly be the basis of publications control in South Africa. If the application of a rule of law leads to unfairness or unreasonableness it does not succeed in its purpose. In so far as the Publications Act has, within the framework of certain legal concepts, entrusted the putting to effect of the Act to those who control publications, fairness and reasonableness are what they should always strive for and are the spirit in which they should act'.

The Board dealt with the matter of precedent in Work in Progress (10 + 11/82) and decided that the committees are bound by the Board's interpretation of the Publications Act, including the interpretation and application of concepts relating to undesirability in s 47(2). Where the committee, in the opinion of the Publications Appeal Board, misinterprets the Act, the Board will suspend the committee decision before it finally decides the matter on appeal. These issues are illustrated in the following excerpts from Work in Progress (10 + 11/82):

'In his grounds of appeal the appellant submitted that the publications committee had failed to follow the guidelines laid down by the Appeal Board for determining whether a political publication is undesirable in terms of s 47(2)(e) and had further misdirected itself when it

had applied the guidelines laid down by the Appeal Board. To this the publications committee replied as follows:

> "The committee is under no obligation to accept or follow the guidelines which the Appeal Board may offer where it feels that the Board is out of touch with the situation which is involved. Section 37A expressly prohibits exercise of any form of outside pressure on the Committee."

This reply is clearly wrong in law. Findings as to facts, although having persuasive value, do not create precedents - not even within the structure of the courts. The provisions of the law itself cannot, however, be departed from even if the Appeal Board or a committee is of the opinion that the law is "out of touch with the situation". If this is so the Legislature would have to amend the law, and this cannot be done by those who merely apply the law. A court of law, a quasi-administrative body such as the Appeal Board, and an administrative body such as a publications committee derives its powers from the law. Within a hierarchical structure such as exists between the Appeal Board and a publications committee, the latter is of necessity bound by the interpretation that the higher body gives to the law under which they both function, until such time as the Appeal Board's interpretation is set aside by the Supreme Court. As a result of its position and constitution - with lawyers as Chairman and Vice-Chairman - the Appeal Board is the body which interprets the Publications Act, and committees are bound to follow that interpretation. In the present matter the interpretation has been set out in [Lenin Collected Works] case 16/81 and s 36(8) of the Act requires the Directorate to submit this decision to the chairman of the publications committee who examined the publication and may, if he deems it necessary, furnish the chairmen of other committees also with copies of such a report. If regard is had to the fact that the Directorate may appeal to the

Publications Appeal Board against decisions of publications committees, it is clear that the Act, in this manner, binds committees to the interpretation of the law by the Appeal Board. The Directorate acts as the monitor of the committees' decisions and the Act requires the Directorate to keep the committees informed of the decisions of the Appeal Board. The fact that s 37A prohibits anyone to influence a Committee has no bearing on the precedent system which the Act prescribes in s 36(8). If that were the case, lower courts (who may also not be influenced) would not be bound by precedents created by the Supreme Court!

In the result the position is that if a committee does not apply the Publications Act as interpreted by the Appeal Board, the Directorate would be obliged to appeal and, if itself believes that the Appeal Board has misinterpreted the Publications Act, it could request the Appeal Board to reserve a question of law to the Supreme Court.

When an appeal is lodged and it appears to the Chairman of the Appeal Board that a committee has failed to apply the provisions of the Act as interpreted by the Appeal Board, he would fail in his duty if he were not immediately to suspend the decision of the committee until such time as the Appeal Board has determined the appeal. If, for example, it appears that a committee were to take cognizance of the status of a writer, or his previous writings or if it were to apply the "calculation" test, this would justify an appeal by the Directorate and suspension of that decision by the Chairman of the Appeal Board as soon as an appeal is lodged...'.

Where, the reasons for the decisions of the committees or of the Directorate's grounds of appeal appear to the appellant to be based upon erroneous facts, this does not constitute evidence of irregularity or mala fides on the part of these

bodies. This issue was dealt with by Professor JCW van Rooyen in the decision regarding Work in Progress (118 + 120/80):

'In both its representations and its grounds of appeal the distributor made a number of allegations against the Directorate of Publications and the publications committee: the first in regard to the Directorate's appeal, the second in regard to the publications committee's finding of undesirability of vol 15. In limine I asked Mr Moss whether he intended leading evidence in connection with the accusations of mala fides, arbitrariness, bias, incompetency and prejudice. His answer was that the only evidence which he could adduce was certain erroneous facts on which the Directorate based its appeal and the committee based its finding of undesirability.

In view of the Board's not having heard argument in this connection it would be uncalled for to decide that evidence in regard to mala fides, etc. would never be relevant in an appeal before this Board. It may for example be that sufficient evidence of irregularities or mala fides of a publications committee could be led and that it would in fact amount to a mala fide action by the Appeal Board to proceed with a case in which sufficient evidence of an irregularity or mala fides is present. Suffice it to say that in the absence of evidence the present reasons given by the publications committee and the Directorate could not in themselves form a basis for these accusations. I have, therefore, come to the conclusion that the accusations are entirely irrelevant to the present case and are uncalled for. I cannot allow this tribunal to become a forum for unsubstantiated and prima facie defamatory accusations as are present in the representations and grounds of appeal. As has been pointed out by the Appellate Division in May v Udwin 1981 (1) SA 1(A), the protection of qualified privilege will only be

afforded to Counsel, and this includes appellants etc, if the defamatory words are relevant to the case and founded on some reasonable cause'.

While the intention of the Publications Appeal Board is to achieve consistency in order that a uniform system of censorship may emerge in practice, it is clear that this is not happening - at any rate in so far as political works considered at committee level are concerned. This has been acknowledged by the Publications Appeal Board on several occasions. And in Anti-SAIC News (38/83) it stated:

'This Board has often indicated its intention to build up a system of precedents. This is regarded as the only way in which publications committees can function within a uniform system and in which consistency can be promoted. If regard is had to the comparable decisions in Die Afrikaner (42/80), APS Bulletin (1/81) Race Relations News (60/80), Social Review (127/81), Banning and Detention without Due Process of Law (53/80) and Iswe Laze Township (144/82) it is clear that the present publication should not have been found to be undesirable'.

A comparison of the reasons of the publications committee with the decision of the Publications Appeal Board concerning the publication Work in Progress no 24 of October 1982 illustrates the divergent approach and attitude of the two bodies. The committee banned the work under s 47(2)(e) and wished to impose a possession prohibition upon the work under s 9(3). The Appeal Board did not confirm this possession prohibition and in fact on appeal found the work not undesirable under s 47(2)(e).

Republiek van Suid-Afrika

Republic of South Africa

Direktoraat van Publikasies
Directorate of Publications

legramadres FILCEN
legraphic address

Privaatsak/Private Bag X9069

1 No 45-6518

KAAPSTAD/CAPE TOWN 8000

1982 -11- 24

Verw Ref No P 82/10/173

Mr G Moss
P O Box 93174
YEOVILLE
2143

Dear Mr Moss

PUBLICATIONS ACT, 1974 : PUBLICATION :
WORK IN PROGRESS - NO 24, OCTOBER 1982

In reply to your letter of 11 November 1982, I have to inform you that the committee's reasons for declaring that the above-mentioned publication is undesirable within the meaning of section 47(2) of the above mentioned Act and that, subject to confirmation by the Publications Appeal Board under section 9(5), possession thereof shall be prohibited under section 9(3) of the said Act, are attached.

Yours faithfully

DIRECTOR OF PUBLICATIONS
S. F. DU TOIT

REASONS OF THE COMMITTEE:

The purport of the article "The Namibian Dispute" (pp 28 to 39) is such that it contains elements that may prejudice the safety of the State. Although, as far as could be determined, SWAPO is not a prohibited organisation, this organisation is inextricably linked or coupled with terrorism and even communism. (See, e g, the official SWAPO publications "SWAPO of Namibia: The Constitution and Political Programme", pp 38 et seq, and "Namibia Today", vol 6, no 1: 82, pp 21 et seq). In this article SWAPO is presented as an indulgent and even accommodating organisation. (See, e g, p 32). The whole tenor of the article is one of sympathy for this organisation, its aims and objectives and it leaves the impression on the reader (as a result of the one-sidedness of the facts presented) that there is in fact nothing "wrong" with this organisation, but that it only has the best interests of all the inhabitants of this territory at heart. The real culprit in Namibia is in fact the South African Government who, for all sorts of sinister and ulterior motives, does not want to pull out of Namibia.

On the other hand the presence and conduct of the SADF is presented as being totally unjustified and unjustifiable. The reader is left with the impression that the SADF is guilty of misconduct that cannot possibly be ethically, morally or legally justified. (See, e g, p 34 and especially p 35 under the heading "SADF Atrocities".) The impression is created that the SADF is murdering

innocent civilians in the most coldblooded fashion imaginable. Apart from this, members of the SADF are guilty of rape, violating corpses, torturing of innocent civilians, etc. All this is taking place while the SADF is engaged in an unjust and unjustifiable war against SWAPO "guerillas".

The safety of the State is prejudiced through arousing the reader's sympathy for an organisation which, according to its own constitution and political programme, is socialist and even communist orientated and which proclaims directly that it is out to get political power by means of armed force and violence. The arousal of such sympathies may (and on a balance of probabilities, will) result in more active and real support for this organisation and others of a like nature, e g the ANC and PAC.

By casting suspicion on the SADF by way of all sorts of unsubstantiated accusation of brutal and even barbaric conduct, the safety of the State is similarly prejudiced. This type of rather emotional accusations will, on a balance of probabilities, have the effect that more and more persons (liable to do military service) will come to the fore with "conscientious objections" against the SADF's "unjust war" and immoral and unethical conduct in the field. By casting suspicion on the SADF in this manner, one of the most important pillars of the safety of the State is assailed. The SADF, in contrast to the South African Police, does not stand in the arena of South African politics. There is little or no (political) connection between the SADF's conduct and the conduct of persons or organisations opposed to the present political dispensation in South Africa. The SADF has as its primary task the defence of the territorial integrity of the country. Utterances which, on a balance of probabilities, will have the result that the SADF becomes morally and ethically "unacceptable" to those on whom it must rely for its manpower, are therefore prejudicial to the safety of

the State. When the SADF is run down in this manner, South Africa is rendered more vulnerable to the onslaughts of pro-communist organisations like the ANC, etc.

Judged on the nature and contents of the publication, two deductions regarding the probable readership of the publication can be made. In the first place this publication is meant for the intellectually more sophisticated person. The language used, the assumption of a more than pure basic knowledge of South African and global politics, etc, confirms this deduction. Secondly the deduction can clearly be made that the probable reader will, apart from a very active interest in South African politics, be strongly pro-socialist and anti-capitalist in orientation. This is borne out by the pro-socialist and strongly anti-capitalist pronouncements found throughout the publication and also the fact that a major part of the publication is devoted to trade unionism in general and strikes in particular. (One can only conjecture about what the precise aims of the publishers are and what they want to achieve with the "information" relating to strikes and political trials set out on pp 49 to 56). In short, on a balance of probabilities, it would appear that the probable readership of this publication will consist of persons connected with trade unionism (in its more political sense) in South Africa.

Seen in the light of the cumulative effect of all the "messages" contained in this publication on the probable readership thereof, it is apparent that this publication is radically prejudicial to the safety of the State. Therefore its possession should be prohibited.

IN THE PUBLICATIONS APPEAL BOARD

Date of examination : 1982-03-08 Case No : 204/82

G MOSS Appellant

v

THE COMMITTEE OF PUBLICATIONS Respondent

In regard to the publication WORK IN PROGRESS NO 24

Appeal Board : Prof J C W van Rooyen (Chairman)
Mr J J H Malherbe
Mr D F Abernethy
Mr C D Fuchs
Gen G Joubert
Prof N J G Sabbagha

For the appellant : N R L Haysom, Johannesburg

For the respondent : J Wagener of the Office of the State Attorney, Pretoria

---

O P S O M M I N G

Intellektuele tipe publikasie nie ongewens nie. Sekere probleme egter uitgewys.

D E C I S I O N

J C W van Rooyen : The publication Work in Progress, Volume 24 (1982) was found to be undesirable by a Publications Committee within the meaning of section 47(2)(e) of the Publications Act 1974 as amended. The publisher appealed to the Publications Appeal Board against this decision.

In cases 10, 11, 54 and 65/82 the Board dealt with previous issues of this publication. What was said there about applicable criteria need not be repeated here. The Publications Committee, in the main, based its finding of undesirability on an article under the heading "The Namibian Dispute". The article clearly sides with Swapo and quotes from certain newspapers and from the Catholic Bishop Conference report, which was also reported in a newspaper to the effect that certain atrocities were committed by South African troops in Northern Namibia. Appellant contended that these accusations were nothing new and handed in certain newspaper articles concerning court cases in this regard. It is not the task of the Appeal Board to ascertain whether these allegations are true or not. In the present matter it is clear, however, that the article does not attempt to give a balanced view of the role of the South African army in Namibia but strives to bring certain facts or allegations to the reader's notice. This is not done in a propagandistic or inciting manner, and in the light of the intellectual readership of this publication the reading of this matter would not contribute to the strengthening of or engendering of emotions which would be prejudicial to the safety of the State, the general welfare, or peace and good order. The type of reader who would read this publication would be politically inclined and not limit his reading to this article. Although one-sided, the publication is not an emotive pamphlet directed at the man in the street or in the townships. Its style and format requires a determined reader. The articles, although left of centre, are open to further debate. If the present publication is judged in the light of the guidelines set out in previous decisions of the Appeal Board, it is also clear that it is not undesirable. The Board has repeatedly laid down :

(a) that criticism of the status quo is permissible (Voice 26/78; Benoni Students Movement 159/81; Looking on Darkness 64/80);

(b) that criticism may be one-sided, as in most critical reviews (Saspu National 79/81, 89/81; Social Review 127/81);

(c) that such criticism may be in intemperate terms (Dry White Season 81/79);

(d) that criticism from a socialist perspective is not undesirable (Social Review 127/81) nor is that which calls for a new constitutional order by way of peaceful change (Social Review 127/81);

(e) that it may not amount to a direct or indirect call to acts such as terrorism, public violence, subversion, sabotage, and extra-constitutional change; and

(f) that it is not the task of the Appeal Board to find a publication "desirable" and that its task is therefore not an educational one (Heartland 43/82).

In regard to the question whether these aspects mentioned in the Namibia article would not contribute to a disruption of the war effort, the Board has come to the conclusion that if this were to have been published in a pamphlet with a wide mass circulation, it would probably have been undesirable. The intellectual readership of the present publication, however, renders this aspect negative.

Generally it must be observed, although this is not relevant in the present matter, that the publisher seems to have paid heed to the previous decisions of the Appeal Board and that if the present issue is compared to nos. 18, 19 and 21, which were found to

be undesirable, the present publication seems quite moderate. The publishers must, however, be warned to steer a course clear of revolutionary language (which is also present in the present publication but not to the same extent as in Work in Progress No 21). In regard to the summary of labour disputes and security trials an attempt must be made to give a more objective review of the facts. In their present form they are regarded as a negative factor.

The appeal accordingly succeeds, and the decision of the Publications Committee that the publication is undesirable is set aside.

This decision was reached by way of a majority of votes, Gen. Joubert being in the minority and basing his decision on the reasons of the Publications Committee.

J. C. W. van Rooyen

J C W van Rooyen
CHAIRMAN : PUBLICATIONS APPEAL BOARD

§3. THE BASIC PHILOSOPHY OF THE PUBLICATIONS APPEAL BOARD TOWARD FREEDOM OF SPEECH AS IT RELATES TO POLITICAL EXPRESSION

The Publications Appeal Board has given support to the right of freedom of expression in general and to the freedom of political criticism in particular. Neither freedom of expression in general nor in its application to a particular aspect of politics in South Africa, however, is an absolute, unfettered right. Ultimately this freedom is limited by the relevant sections of the Publications Act and by the elucidation of these sections in the decisions of the Publications Appeal Board. In The Struggle for the Land (178/82) the Board stated:

> 'In South Africa, as in most of the Western World, freedom of speech is one of the corner stones of our society, and it is not necessary to refer to the many occasions on which it has been emphasised, both by the Supreme Court and by this Board that it should not be curtailed unless there is a clear necessity to do so. The stifling of another man's point of view, of criticism and of grievances, is apt, in the long run, to cause more problems than it solves'.

§3.1 FREEDOM OF SPEECH AND THE 'ABSOLUTE NECESSITY TEST'

General freedom of speech should be curbed only where it is absolutely necessary to do so.

The Publications Appeal Board relies upon the dictum of

Rumpff CJ in Publications Control Board v William Heinemann 1965 (4) SA 137 (A) at 60 for its authority (quoted inter alia in Kennis van die Aand (131/81) and Buddy, Buddy (148/81))

> 'The freedom of speech - which includes the freedom to print - is a facet of civilisation which always presents two well-known inherent traits. The one consists of the constant desire by some to abuse it. The other is the inclination of those who want to protect it to repress more than is necessary. The latter is also fraught with danger. It is based on intolerance and is a symptom of the primitive urge in mankind to prohibit that with which one does not agree. When a court of law is called upon to decide whether liberty should be repressed - in this case the freedom to publish a story - it should be anxious to steer a course as close to the preservation of liberty as possible. It should do so because freedom of speech is a hard-won and precious asset, yet easily lost. And in its approach to the law, including any statute by which the court may be bound, it should assume that Parliament itself a product of political liberty, in every case intends liberty to be repressed only to such extent as it in clear terms declares, and, if it gives a discretion to a court of law, only to such extent as is absolutely necessary' (Emphasis added by Publications Appeal Board).

The application of the 'absolute necessity' test to the Publications Act is succinctly summarised in Heartland (43/82) annexure p 26 - 27 (see also Kennis van die Aand (131/81).

> '"Absolute necessity"
>
> In the application of publications control regard should always be had to what was said by Chief Justice Rumpff in the Heinemann case, namely, that matter should be prohibited only when it is "absolutely necessary" to do so. What does this mean? Is this an additional yardstick? No, it is merely related to the presumption in the interpretation of a statute that the legislator does not wish to encroach upon freedoms more than is absolutely necessary. This then has been expressed in the limited interpretation given to words in s 47(2): "offensive", "revolting", and not merely "annoying", etc. It means moreover that one should move from a "yes" to a "no". A

film does not have to prove itself: it is the undesirability that has to prove itself. The question to be answered therefore is not whether a book, etc is necessary but whether prohibiting it is necessary (essential). In the inquiry, functionality is naturally a consideration, but absence of functionality is not necessarily equivalent to undesirability'.

§ 3.2 FREEDOM OF SPEECH INCLUDES THE RIGHT TO POLITICAL COMMENT

The Appeal Board extends this freedom of speech to the sphere of political comment. This is illustrated by the following dicta of the Publications Appeal Board.

> Volgens die Appèlraad '[is] politieke kritiek teen die regering van die dag 'n basiese kenmerk van 'n demokrasie. Die gebruik van sterk en emosionele taal teen die regering van die dag gaan dikwels gepaard met sodanige kritiek' (Die Afrikaner (42/80)).

> With regard to the evaluation of a political novel, the Appeal Board stated that 'the adjudicator must bear in mind that strong and derogatory language is a typical feature of the South African political scene. Political criticism is often one-sided and would not, probably, in most cases, fall within the bounds of good taste or accord with the opinion of a substantial number of South Africans. However, this is not enough to find a book undesirable' (Burger's Daughter (64/79)).

The Board has reiterated the above quotation in numerous of its decisions including Forced Landing (45/80), and Campus Action for Democracy (133/82). The following dicta also illustrate the Board's general philosophy:

'Volume 20 is one-sided in its approach in as far as it continuously sides with the so-called oppressed and in its reports of labour unrest and State security trials, as also anti-capitalistic. All these factors must be regarded as aggravating circumstances. The Board has, however, come to the conclusion that in the light of its sophisticated readership and the basic principle that publications which form an outlet for grievances and political criticism must not be prohibited, this publication is not undesirable. It, however, moves on the verge of undesirability. It does not, however, contain a direct or indirect call to action such as was present in vol 19, which was found to be undesirable' (Work in Progress (54/82)).

'...it must be borne in mind that strong and derogatory language is part of the South African political scene, and that it is also necessary that there should be a free flow of information in regard to grievances. On the other hand sympathy with banned organisations or communism, for example, would be a negative aspect' (Izwe Lase Township (144/82)).

§ 3.3 THE PUBLICATIONS APPEAL BOARD RELIES UPON SUPREME COURT AUTHORITY IN SUPPORT OF POLITICAL CRITICISM.

The Publications Appeal Board has relied on Supreme Court cases to support its view that political criticism is permitted however strong and intemperate it may be. This tendency is illustrated, inter alia, by Die Afrikaner (42/80) and Anti-SAIC News (38/83).

In Die Afrikaner the Board relied on the following dictum of Ogilvie Thompson CJ in S v ffrench-Beytagh 1972 (3) SA 430 (A):

'It is important to bear in mind throughout the present inquiry that not only is the appellant not on trial for his political views, but also that the mere expression, even in somewhat intemperate terms, of views opposed to the provisions of certain existing legislation or to the policies of the Government relating to separate development is not necessarily to be equated with the crime of participation in terroristic activities created by the Act'.

It also cited with approval the following passage from Pienaar and Another v Argus Printing and Publishing Company Ltd 1965 (4) SA 310 (W) at 318(C).

'The courts must not avoid the reality that in South Africa political matters are usually discussed in forthright terms. Strong epithets are used and accusations come readily to the tongue. I think, too, that the public and readers of newspapers that debate political matters, are aware of this. How soon the audiences of political speakers would dwindle if the speakers were to use the tones, terms and expressions that one could expect from a lecturer at a meeting of the ladies' agricultural union on the subject of pruning roses!'.

In Anti-SAIC News (38/83) the Board stated:

'The publication serves an important purpose in the political sphere. It is common cause that the proposals by the President's Council with regard to the new constitutional dispensation enunciated by the government is of utmost political importance. Therefore, there should be an open discussion of the matter, and it would be contrary to the tenets of democracy to limit this discussion to Parliament - subject, of course, to the limits mentioned in s 47(2)(e). In S v Turrell 1973(1) SA 248(C) at 256, Van Zijl J stated:

"Freedom of speech and freedom of assembly are part of the democratic right of every citizen of the Republic and Parliament guards these rights jealously, for they are part of the very foundation upon which Parliament itself rests."

More recently in S v Evans 1982(4) SA 346(C), at 351, Berman AJ stated that:

> "It is a truism that freedom of expression is a fundamental requirement of an open and civilized society. The right to give free expression to one's sentiments and beliefs is one which should, and must, be jealously guarded and protected and one which the Courts should be quick to preserve."'

Other cases often cited by the Board in this connection are: S v Looij 1975 (4) SA 703 (RAD) at 710D; S v Russel 1980 (2) SA 457 (C) at 463-4; Buren Uitgewers (Edms) Bpk v Raad van Beheer oor Publikasies 1975 (1) SA 379 (C) at 423; S v Gibson 1979 (4) SA 115 (N); S v Evans 1982 (4) SA 346 (C).

§ 3.4 SUMMARY OF BOUNDS OF PERMISSIBLE POLITICAL CRITICISM

The Publications Appeal Board occasionally issues summarised guidelines to be applied by the various publications control bodies and to be used as a source of general information. Such summaries have been included, inter alia, in the following decisions: Heartland (43/82) (in a 26 page annexure), Work in Progress (204/82), Anti-SAIC News (38/83) and Grassroots (84-85/83).

In Heartland (43/82) the annexure was published in Afrikaans but was translated by Prof NJG Sabbagha, a member of the Publications Appeal Board, and is issued separately. It reads as follows:

'SECTION 47(2)(c)

Ridiculing or bringing any section of the population into contempt

i The question to be asked here is whether any section of the population, as defined above, is involved; for example, blacks, Afrikaners, English-speaking South Africans, Jews, etc.

ii "Ridiculing" and "bringing into contempt" have a narrow meaning. Ordinary scorn or political criticism is not sufficient for a finding of undesirability.22)

iii The test of a reasonable person who takes the feelings of the relevant section of the population into account is applicable here. The usual mitigating and aggravating circumstances also apply here.

SECTION 47(2)(d)

National relationships

i The first question to be asked is whether sections of the population are involved here.

ii The next question is whether the publication (etc) will, in terms of probability, have the real effect of harming relations or of contributing to the harming of relations. Will it, therefore, drive sections of the population further apart or cause further confrontation?

iii It should here be borne in mind that biting and emotional language is a typical feature of South African political life and that sufficient latitude must be allowed for political debate, criticism, and pleas for change.23)

22) Die Stem 71/77; Seven Beauties 122/81; the Buren Case 1975 (1) SA 379 (K) p 423.

23) Die Afrikaner 51/80; An Empty Table 62/81; Staffrider 70/80 and 122/80; The Grass is Singing 103/81; Forced Landing 45/80; We shall Sing for the Fatherland and Other Plays 53/81; An Introduction to the Writings of Ngugi 43/81; This we can do for Justice and for Peace 155/81; Fire Flames 2/80.

SECTION 47(2)(e)

State security, general welfare or peace and good order

The question here is whether the relevant material, judged in terms of probability, will contribute to the impairing of any of the interests mentioned above.

Here too sufficient latitude must be allowed for political criticism, and once again it should be borne in mind that acrimonious language is a typical feature of the South African political scene. Criticism of government policy for instance, is not undesirable. What is undesirable must go further than that. Within the framework of what is noted under s 47(2)(d) above, protest literature 24) is permissible if it does not have the effect mentioned there. In this connection the probable reader, viewer, or listener is an important consideration. The more popular the material is the more likely it is to be undesirable. Pamphlets and gramophone records are of special concern here. On the other hand, complicated political text-books - even though they may include matter that is otherwise undesirable - are not likely to be so readily undesirable.25) The interests of research carry considerable weight here.

This matter was summed up in Appeal 16/81 [J Stalin Collected Works], as follows:

"Section 47(2)(e) of the Publications Act lays down that if any publication or part of it is harmful to the security of the state, general welfare, of peace and good order it should be regarded as undesirable for purposes of the Act.

24) See note 23.

25) Great Political Thinkers 121/80; The Structure of Marx's World View 58/80; Modern Political Ideologies 79/80; Marx without Myth 6/80.

To sum up previous cases, the following guidelines can be indicated here:*

1. The motives and, consequently, the status and record of the writer, producer, or distributor may not be taken into account. It is the contents of the book or film that have to be adjudicated in terms of s 47(2) Act 42 of 1974. In an enquiry in terms of s 47(2) the contents of other publications in the same series may also not be taken into account. In an inquiry under s 9(1) that, to be sure, is relevant.

2. The effect that the book or film will have on the probable reader or viewer is conclusive. The effect is determined in terms of probability. The medium (eg a complicated academic work or a popular direct medium) is of importance here. The question whether the matter, if the specific juncture of time is taken into consideration, will inflame feelings is also important. Mere intent is not sufficient. It is the real effect that counts. In this regard there is much to be learnt from the "clear and present danger" tenet set out by the United States Supreme Court (see, amongst others, Kamp 1980 Communications and the Law vol 2 and no 3 p 20 et seq; Van der Vyver Die Juridiese Leerstuk van Menseregte (Thesis, UP 1973) p 796 et seq; and the Israeli approach in "Kol Ha'Am" Company Ltd v Minister of the Interior H.C. 73/53).

3. Not only works whose effect may result in the total elimination of the state, etc are undesirable. A contribution to that is sufficient to make a work undesirable.

These guidelines are contained in Afrikaans in J Stalin Works (16/81)

4. It is the book that has to be judged, not the reader or the writer. The issue, therefore, is not whether the reader can duplicate parts of it or is going to read parts of it to audiences. The duplicated part is another publication that has to be adjudicated anew by a publications committee. The criminal relevance of such duplication or reading is not of concern here. The person responsible should be charged with his actions under s 8(1)(a) Act 42 of 1974 or under the Internal Security Act, for example. What an adjudicator by virtue of the Publications Act has to determine is whether the relevant book, in its present form, will contribute to influencing the emotions of a probable reader so much that the interests embodied in s 47(2)(e) will be affected (wholly or partly). The following comments by Ogilvie Thompson CJ in S v ffrench-Beytagh 1972 (3) SA 430 (A) are relevant here:

> "It is, however, to be observed that the words of the statute are not 'could have had' but 'likely to have had'. Accordingly, mere possibilities or remote contingencies are not, in my view, embraced by the section. In the present context the expression 'likely to have had', in my opinion, connotes probability: the concept perhaps emerges more clearly from the Afrikaans text 'waarskynlik kon gehad het'. Consequently, for the section to apply, it must be shown either that the 'act' proved to have been committed or attempted, etc, in fact had one of the results listed (a) to (l) in the section or that it probably would have had one of those results (cf R v Nkomo, 1964 (4) SA 452 (S R, A D) at p 245). The court must, on the evidence before it, assess what the probabilities were of the proved 'act' producing the particular notional 'result' contended for."

So too is the comment of Muller JA in S v Essack 1974 (1) SA 1 pp 21-22:

> "If, as I have found, the accused's evidence as to the background of and the circumstances under which, and the object with which, he handed the copies of No. 1 Inkululeko to Chetty and Naidoo, cannot be rejected, then the mere physical act of handing over these documents to the persons concerned (to whom the accused conveyed the reason for so doing) cannot, in

my view, in the particular circumstances, be regarded as likely, in the sense aforestated, to have had the result specified in sub-para (i) of the sub-section. Chetty and Naidoo are educated persons, and both are opposed to communism and to violence. Although they both dislike the policy of "apartheid", I do not think that crude propaganda, such as is contained in No. 1 Inkululeko, was likely to have caused, encouraged or furthered feelings of hostility on their part. Indeed counsel for the State did not even ask them in the course of their testimony whether the pamphlet did or was likely to have had any such effect on them."

And so too is the comment of Flemming J in S v Manong 1979(4) SA 429 (O) pp 435-436.

"Alhoewel die Wetgewer se benamingskeuse verwys na 'terrorisme' is die Wet essensieel gerig teen enige optrede waardeur miskenning (waarby dwarsboming ingeslote is) van die ordenende gesag van die Staat veroorsaak word en 'n inkorting van die bestaan van daardie toestand in die gemeenskap wat die gevolgtrekking sou regverdig dat "wet en orde" heers en gehandhaaf word. Vir die doeleindes van die beslissing van hierdie saak is dit nie nodig om te vra na moontlike verfyning or wysiging aan die omskrywing van "wet en orde" waarop besluit is in S v Cooper and Others 1976 (2) SA 875 (T) te 878 B nie, nl:

"The law-abiding state of society, that is to say, the absence of riot, turbulence and violent crime and the prevalence of constituted authority".

Die navraag of die beskuldigde se optrede enige van die gevolge waarna art 2(2) verwys 'waarskynlik kon gehad het' moet nie afhang van abstrakte potensiële moontlikhede aan die hand van gepostuleerde feite nie maar volgens al die omstandighede wat ter agtergrond van die beskuldigde se optrede dien met inbegrip van die identiteit van die ontvanger van die kommunikasie en die waarskynlike reaksie van daardie ontvanger. Kyk S v Essack and Another 1974 (1) SA 1(A) veral te 22; S v Hosey 1974 (1) SA 667 (A) veral te 680. Met hierdie benadering tot die bepalings van die Wet, moet dan eerstens bepaal word tot welke mate die beskuldigde se optrede wel binne die bestek van art 2(2) van die Wet op Terrorisme 1967 val."

If the effect of the relevant publication on the sophisticated communist, as a member of the probable sophisticated group of readers, is therefore quite negative, the publication cannot be found undesirable, even if the reader uses it for purposes of incitement. A

parallel is to be found in the effect that the quoting of a sex episode from a not undesirable book may have: it is irrelevant in an adjudication of the book. It would indeed be relevant in an examination of the quotation as the basis of a criminal charge of public indecency.

5. The mere fact that matter found previously undesirable for example, the Freedom Charter, appears in a publication does not necessarily make that publication undesirable. Every publication must be judged on its own merits.

6. The mere fact that a publication is pro-communistic and is in reality protest literature does not necessarily make it undesirable. It all depends on whether it, judged in terms of probability, will induce the probable reader to harm or will contribute to his harming the interests embodied in s 47(2)(e).

7. Who the probable reader will be must be determined. The possible reader is irrelevant. A publication of a popular kind, eg a pamphlet, a poster, or a gramophone record - with a large group of likely readers, viewers, or listeners - will be the more readily undesirable. Scientific or classic works will usually have a limited likely readership. The influence of such works is more limited because those who read them cannot be incited quite so easily or are aware that the works are outdated or only of historical interest. Secret security information, effective methods of warfare, terrorism and sabotage, however, must constantly be judged strictly.

If a work has research value yet is undesirable for general distribution, a possession prohibition should not be imposed too readily. "Classic" communistic works, for instance, fall into this category'.

In Work in Progress (204/82) the Board issued the following directive on permissible criticism. It stated:

'(a) that criticism of the status quo is permissible (Voice (26/78); Benoni Students Movement (159/81); Looking on Darkness (64/80);

(b) that criticism may be one-sided, as in most critical reviews (SASPU National (79/81), (89/81); Social Review (127/81);

(c) that such criticism may be in intemperate terms (Dry White Season (81/79));

(d) that criticism from a socialist perspective is not undesirable (Social Review (127/81)) nor is that which calls for a new constitutional order by way of peaceful change (Social Review (127/81);

(e) that it may not amount to a direct or indirect call to acts such as terrorism, public violence, subversion, sabotage, and extra-constitutional change; and

(f) that it is not the task of the Appeal Board to find a publication "desirable" and that its task is therefore not an educational one (Heartland (43/82))'.

The guidelines of the Board are also contained in Anti-SAIC News (38/83):

'The following guidelines have been laid down by the Publications Appeal Board in regard to similar publications:

1. The fact that the publication contains "nothing that has not appeared in the press on numerous occasions in the past" is an important consideration in determining whether or not a publication would have an undesirable effect - Banning and Detention Without Due Process of Law (53/80).

2. Sufficient latitude must be allowed for political criticism, and it should be borne in mind that acrimonious language is a typical feature of the South African political scene. Criticism of government policy, for instance, is not undesirable. What is undesirable must go further than that - Heartland (43/82).

3. It is "not undesirable to criticise racism. One is also fully entitled to propagate all peaceful and constitutional means for the removal of what one considers to be racism" -Shalom and Combat (1/80).

4. Furthermore, a publication which "generally casts suspicion on the programme of the government to better the black man's position" is not undesirable - Exposing Total Strategy (30/80).

5. Political criticism and the use of strong and emotional language is one of the hallmarks of democracy. Newspaper readers and those who attend political gatherings are so familiar with that that they have built up a degree of immunity against sharp and condemnatory language - Die Afrikaner (42/80).

6. The effect that a book will have on the probable reader or viewer is, if not conclusive, of cardinal importance. The effect is determined in terms of likelihood. Mere intent is not sufficient. It is the real effect that counts. Because the likely reader of the Anti-SAIC News is most probably a supporter of the TASC and, as such, will be generally acquainted with the organization's point of view and will probably be aware of the general issues raised at the congress, it is improbable that he would be encouraged to participate in or contribute towards acts aimed at overthrowing the government in an extra-constitutional manner. The bulletin "does not move beyond the range of sharp and blunt criticism of the status quo into the area of revolutionary exhortation" - Campus Action for Democracy (133/82).

The most recent guidelines of the Board are contained in Grassroots (84-85/83):

'Without attempting to give a full survey of previous guidelines in this respect, the following aspects are of importance when a newspaper such as the present one is to be judged:

(a) The mere fact that anti-government emotions are evoked is not sufficient for a finding of undesirability;

(b) mere sympathy with socialism, communism and prohibited organizations is not sufficient;

(c) the status and motive of the publisher or distributor are irrelevant;

(d) one-sidedness as such is not sufficient;

(e) mere reference to or sympathy with the Freedom Charter is not sufficient;

(f) the clenched fist sign is not undesirable as such because it has lost its inciting effect;

(g) one of the bases of the freedom of speech is the idea that it is a mechanism which acts as a safety valve;

(h) the Coloureds and Indians and urban blacks have few political forums, and therefore it is of the utmost importance that they should have a means of communication;

(i) mere criticism of the military or the police is insufficient. Even if the criticism is false or one-sided it is not undesirable as such. There are other criminal sanctions within this field.

(j) An adjudicator must be careful not to base his finding of undesirability simply on the accumulative effect of the contents of a publication. This must be regarded as a last and final resort and only when it is absolutely necessary. A reference to the cumulative test and an applicaton of this test has little or no guiding effect for publications, and while the Publications Appeal Board must give full reasons for its decisions, a mere statement that the cumulative effect of the contents of a publication has caused it to be undesirable is useless within the framework of the Publications Act. An important aspect of this kind of control is that publications are published and that they are usually found to be undesirable only afterwards. The Board's decisions must have a guiding effect so that publishers can steer a course clear of a finding of undesirability. If this does not happen and a publication persists in its undesirable practices, then a s 9(1) prohibition could very well follow.

(k) the mere use of revolutionary words such as "suffer", "oppressed", "struggle" are aggravating but not undesirable per se. The excessive use of these words, however, under certain circumstances could lead to a finding of undesirability.

(l) The mere reference to or even the quoting of listed persons is not undesirable. To quote a listed person is, of course, a contravention of the Internal Security Act 1982. That Act, however, has its own sphere of application.

(m) The mere idea of an "alternative press", which is often mentioned by newspapers such as the present one, is quite legitimate.

(n) The mere call for a boycott or a strike - even an unlawful strike - is not undesirable.

(o) The mere fact that people are organized to petition for the freeing of a person like Mr Nelson Mandela is not undesirable.

(p) The plea that political objections to military service should be allowed for by Parliament is not undesirable as such.

(q) Mere speculation of fantasy about a future black government which may takeover by means of violence is not undesirable as such.

(r) The mere advertising of a book which has been found to be undesirable is not sufficient for a finding of undesirability.

(s) The mere reporting of illegal acts, such as riots, is not undesirable as such even if the reporting is one-sided. The one-sidedness could, however be an aggravating circumstance.

(t) The mere call for one man one vote within a unitary state is not undesirable.

(u) The fact that material is familiar as a result of earlier press or radio coverage is an extenuating circumstance.

(v) The expression of grievances is of utmost importance. This has been recognised in the Supreme Court in S v Buthelezi and Others (Durban case no CC 165/82 13 September unreported), when the following was said:

> "That the black people of this country have real and legitimate grievances is widely acknowledged today. So is the danger that their grievances may sometimes be expressed in a violent way. Leading South Africans of all communities and shades of opinion, South Africans holding responsible office, have said as much time and again."'

§4. LIMITATIONS UPON FREEDOM OF SPEECH IN TERMS OF THE PUBLICATIONS ACT 42 of 1974

The Publications Appeal Board, while supporting freedom of speech and its application to political comment and criticism, is bound by the provisions of the Publications Act 42 of 1974. Political matter falls within the ambit of paras (c) to (e) of section 47(2) of the definition of 'undesirability'. (Paras (a) and (b) of this section respectively proscribe matter with undesirable moral and religious content).

§4.1 SECTION 47(2)(c) TO (e) OF THE PUBLICATIONS ACT 42 OF 1974

'(2) for the purposes of this Act any publication or object, film, public entertainment or intended public entertainment shall be deemed to be undesirable if it or any part of it-

(c) brings any section of the inhabitants of the Republic into ridicule or contempt;

(d) is harmful to the relations between any sections of the inhabitants of the Republic;

(e) is prejudicial to the safety of the State, the general welfare or the peace and good order'.

§4.2 THE INTERPRETATION OF THE ACT BY THE PUBLICATIONS APPEAL BOARD

The Publications Appeal Board has sought to minimise the impact of the Act by giving it an interpretation that advances freedom of expression. This is illustrated by the following interpretations placed upon the Act.

§4.2.1 'OR ANY PART' (s 47(2): A Contextual Approach

The Board has placed a restrictive interpretation on the provision in s 47(2) that provides that a work may be found to be undesirable on the basis of the inclusion of an offending part. The Board supports the 'contextual' as opposed to the 'isolated passage' approach to undesirable matter. Hence the two quotations below:

Kennis van die Aand (131/81)

'Die isolasie-metode van beoordeling mag nie toegepas word nie. So sê Ogilvie-Thompson HR in Publications Control Board v Republican Publications (Pty) Ltd 1972 (1) SA 288 (A) op 290

> "The words 'or any part of it' occurring in the opening sentence of s 5(2) (die huidige art 47(2)) make it plain that for the above-cited provisions to apply it is not essential that the whole of the 'publication or object' should be 'indecent or obscene': the part may vitiate the whole. For instance, the inclusion in an otherwise entirely unobjectionable book of a single outrageously lewd picture will ordinarily suffice to render the book itself, 'indecent or obscene' within the meaning of the Act. Where, however, the enquiry revolves around the written word, it is, in my judgment inappropriate

and incorrect to have regard solely to a particular challenged passage - that is to apply the so-called criterion of the isolated passage - without any reference whatever to the context in which that passage appears. General principles of construction call, in my opinion, for a contextual approach in any such enquiry. To interpret the words, 'or any part of it' occuring in the opening sentence of s 5(2) as importing the isolated passage criterion, would, in my opinion, be to confer upon appellant Board powers even more far-reaching than those which Parliament manifestly intended the Board to have"...

Sien ook die volgende stelling van Rumpff AR (soos hy destyds was) in Publications Control Board v William Heinemann Ltd and Others 1965 (4) SA 13 A):

"As to the general finding of the Board, I have no doubt that the book as a whole cannot possibly be said to have the tendency to deprave or corrupt, to be offensive to public morals, to be outrageous or disgusting or that it as a whole deals in an improper manner with the subject mentioned in sub-para (iv) of the Board's reasons stated above. Any such view would in my opinion be wholly untenable. If parts of the book are looked at...To evaluate them correctly for purposes of considering whether the book should be banned, it is necessary to look at these passages in the light of what was intended to be conveyed by the book as a whole".

Daar moet dus na die boek as geheel gekyk word, en 'n deel moet altyd in die lig van hierdie geheel beoordeel word. Die benadering wat die Appèlraad dan ook hier volg is om die dele in die lig van die geheel te beoordeel en dan tot 'n bevinding van ongewenstheid grond van die dele te kom indien dit blyk dat die de ie geheel besmet'.

SASPU National (105/83):

'When a publication is to be judged it must, furthermore, be borne in mind that it must be judged as a whole and that isolated words or passages should not be read out of context. In this regard, the approach of our courts in defamation cases is particularly instructive. In the case of Channing v SA Financial Gazette 1966 (3) SA 470 (W) at 473, Colman J said:

"A court dealing with a defamation case is not entitled, where the matter complained of is capable of more than one reading, to adopt a defamatory interpretation in preference to a non-defamatory one. If a newspaper is equally capable of both types of interpretation, the plaintiff must fail. That proposition is, in my judgment, a sound one provided that this qualification of clarification is borne in mind; the test is not whether, to the Court itself, after it has had the benefit of a careful analysis of the article, the article seems to bear one meaning rather than another, or seems equally capable of bearing both meanings. The enquiry relates to the manner in which the article would have been understood by those readers of it whose reactions are relevant to the action and are sometimes referred to as the 'ordinary readers'."

In similar vein it was stated in Conroy v Nicol and Another 1951(1) SA 653(A) at 663 that:

"It seems to me unreasonable that, when there are a number of good (non-defamatory) interpretations, the only bad one should be seized upon to give a defamatory sense to a document."

In this respect the Board is of the view that the committee has attributed too detrimental a meaning to phrases which are present in this publication. The phrases are typical political language and have lost their revolutionary meaning. If this were a pamphlet, stricter criteria would, or course, apply. The present publication is, however, too sophisticated and even boring to have an inciting effect. It basically calls for political action, and this political action does not appear to be illegal at all. One cannot read a revolutionary message into words if the words do not bear out such a revolutionary message in clear form'.

§4.2.2 'SECTION OF THE INHABITANTS' (s 47(2)(c) AND (d))

The content of s 47 (c) and (d) in general and the meaning of the term 'section of the inhabitants' has been dealt with as follows by the Publications Appeal Board:

'...Die woorde van die Wet of Publikasies het bepaalde juridiese betekenisse en sedes, die waardigheid van 'n bevolkingsdeel, en bevolkingsverhoudings kan alleen beskerm word vir sover die Wet op Publikasies daaraan beskerming verleen. Uit regspraak wat oor hierdie Wet en sy voorganger gaan, blyk dit dat daar nie absolute beskerming gegee word nie. Binne die heterogene aard van die Suid-Afrikaanse gemeenskap, word daar voldoende beweegruimte vir die beoefening van die verhoogkuns en ook vir politieke kritiek gelaat. Artikel 47(2) is 'n versoeningsmiddel ter oplossing van die probleme wat ontstaan wanneer die betrokke belange in botsing kom. Versoening impliseer 'n uitskakeling van konflik, maar impliseer nie noodwendig absolute tevredenheid aan al die betrokkenes nie. Hiermee saam moet die belangrike woorde van die voormalige Hoofregter in Publications Control Board v William Heinemann Ltd 1965(4) SA 137(A) ook steeds in ag geneem word.... Dit kom naamlik daarop neer dat 'n publikasie en dus ook 'n rolprent of 'n openbare vermaaklikheid alleen verbied moet word indien dit absoluut noodsaaklik is. Absolute noodsaak is vergestalt in die woorde van art 47(2) en gee 'n kragtige leidraad by die uitleg van hierdie woorde en die omvang van die beperking wat die Wet stel. Aan die ander kant moet in ag geneem word dat die Suid-Afrikaanse gemeenskap, vanweë sy heterogene aard en die behoudende lewensbeskouing van 'n aansienlike gedeelte van die bevolking, sensitief is vir kruhede. Deur tradisie het 'n aansienlike gedeelte van die gemeenskap ook bepaalde beskouings oor rassevermenging' (It's a Boy (159/82)).

A 'section of the inhabitants' is not represented by a splinter group of that section the Board decided in Die Giftschlange Völker Vampir (3/80).

'Wat die Appèlraad moet bepaal is of hierdie publikasie of 'n gedeelte daarvan (in verband gelees) die Joodse bevolkingsdeel in Suid-Afrika veragtelik of belaglik maak binne die betekenis van art 47(2)(c) van die Wet. In

Die Stem (71/77) en in Seven Beauties (93/77) is beslis dat die begrippe "belaglik of veragtelik" 'n beperkte betekenis het. Die vraag is of die fiktiewe, normale... mens, van mening sal wees dat hierdie publikasie die Joodse bevolkingsdeel in daardie sin van die woord belaglik of veragtelik maak. By die vel van hierdie oordeel neem hy die waarskynlike leser as 'n faktor in ag en ook wat die houding van die Joodse bevolkingsdeel self sal wees. Dit is algemeen bekend dat die Joodse bevolkingsdeel trots is op sy verlede en dikwels die onderwerp is vir kritiek, gegrond of ongegrond. Dit is nie in die eerste plek die taak van die Appèlraad om na te gaan wat die waarheid is nie.... Waarheid alleen sal in elk geval nie 'n verweer wees nie. Net soos in die lasterreg sal waarheid plus openbare belang teenwoordig moet wees voordat daar miskien van 'n regverdigingsgrond gepraat kan word. Die punt word egter nie hier beslis nie.

'n Tweede vraag is of hier enigsins 'n bevolkingsdeel betrokke is. Aangesien die hele Joodse bevolkingsdeel nie ter sprake kom in die publikasie nie, maar alleen 'n groep uitverkorenes en daar nie via hierdie groep uitverkorenes 'n breëre groep betrek word nie, is die Appèlraad van oordeel dat art 47(2)(c) in elk geval nie toepaslik is nie. Selfs al was 'n bevolkingsdeel hier betrokke is die Appèlraad in elk geval van oordeel dat die stellings wat in hierdie publikasie gemaak word so vergesog is dat dit in elk geval as onsinnig verwerp sal word...'

In It's a Boy (159/82) the Board summarised groups which constituted a 'section of the inhabitants':

'Verder moet dit natuurlik duidelik blyk dat 'n bevolkingsdeel hier betrokke is. Soos beslis is in Total Freedom (72/76) is 'n bevolkingsdeel 'n wesenlike aantal mense wat vanweë 'n inherente eienskap of eienskappe hulself as 'n onderskeibare gemeenskap beskou, as sodanig

deur die gemeenskap aanvaar word en beskermingswaardig binne die opset van die Wet op Publikasies is. In die lig hiervan is al beslis dat daar wit, swart en bruin bevolkingsdele is; ook die Jode is as bevolkingsdeel beskou. Aan die ander kant is weer beslis dat die Wetgewer, die Regering, die Kabinet, die Polisie, psigiaters, die Broederbond en die Rapportryers nie bevolkingsdele is nie. Dit sou ook geld ten aansien van byvoorbeeld oumense en 'n bepaalde segment van 'n bevolkingsdeel waar die segment nie die bevolkingsdeel verteenwoordig nie.

In die lig hiervan is die Raad van oordeel dat daar onvoldoende aanduidings is dat die betrokke gesin die wit bevolkingsdeel verteenwoordig. 'n Laer goedkoop klas word uitgebeeld en hulle word nie as verteenwoordigend van die wit bevolkingsdeel voorgehou nie. Daarvoor is hulle taal te platvloers en blyk hulle herkoms ook duidelik uit die stuk en die proloog'.

(a) Police

In Store Up the Anger (101/80) the Board stated that the police are not a section of the inhabitants within the meaning of s 47(2)(c):

> 'So het die Appêlraad ook al beslis dat die begrip "bevolkingsdeel" 'n veel enger betekenis het en die beoefenaars van 'n bepaalde beroep en verenigings nie daarond[er] ...uisgebring kan word nie. Die vraag sou gevra ...on word of die feit dat die meeste van die polisiemanne Afrikaanse name dra nie beteken dat die Afrikaner hierdeur veragtelik gemaak word nie. Hierop is die antwoord dat die waarskynlike leser van hierdie publikasie nie hierdie polisiemanne sal sien as verteenwoordigers van die Afrikaanse bevolkingsdeel nie. Net so min sal hulle beskou word as verteenwoordigers van die polisie. Dit is inderdaad kriminele gedrag wat hier uitgebeeld word en die karakters verteenwoordig die kriminele element'.

(b) Politicians

'With regard to the derogatory references to politicians, the Board has come to the conclusion that they do not fall within the ambit of its functions. The Publications Act protects the interests of the community as a whole or of sections of the community. Although the community or sections of it can, in some cases, be brought into contempt through individuals, this is not the case in the present matter. It must, however, be pointed out that these references could fall within the area of defamation or criminal defamation...' (Academy Rewards (67/81)).

(c) Religious Groups

The phrase 'a section of the inhabitants' is also mentioned under s 47(2)(b) of the Publications Act, in relation to offensive religious matter. A religious section may be considered as a 'section of the inhabitants' under para (c) and is capable of being brought into 'ridicule or contempt'. Thus in Death of a Princess (50/80) the Appeal Board found:

> 'There is still the finding of the committee that the tenor of the article is calculated to bring the Muslim inhabitants of South Africa into contempt within the meaning of s 47(2)(c). 'That can, of course, only be so if the Islamic religion and thereby its followers in South Africa is brought into contempt. That does not appear to be the case. The following words of Salah Jaheem "The true horror of the film is that it has revealed the rottenness at the centre of the Royal family", shows that in the final analysis it is the Royal family of Saudi Arabia that is under attack, not Islam....In the opinion of the Board non-Muslim readers of the article will, in

general, not see in it any reflection on the Muslim community in South Africa, a community which, it may be said, is a highly respected one...'.

The article was found to be not undesirable.

(d) Germans and Nazis

The phrase 'section of the inhabitants' in paras (c) and (d) has undergone a change in interpretation in relation to Germans and Nazis. In the original decision of Seven Beauties (93/77) the Publications Appeal Board, as then constituted under its previous chairman, Mr J H Snyman, held that a 'section of the inhabitants' was involved in a film portraying Nazis in a critical manner. In the latest resubmission of the film in 1982, the Board under the chairmanship of Professor J C W van Rooyen, decided that a 'section of the inhabitants' was not involved.

Seven Beauties (93/77)

''n Verdere vraag is of die Duitse bevolkingsdeel van die Republiek van Suid-Afrika nie binne die betekenis van art 47(2)(c) belaglik of veragtelik gemaak word nie. Die stadium is bereik waarop die Suid-Afrikaanse gemeenskap siek en sat is vir die beheptheid wat rolprentvervaardigers het met die wandade en beweerde wandade van die Nazis gedurende en voor die Tweede Wêreldoorlog. Gedurende die na-oorlogse jare is hierdie behandeling van hierdie onderwerp telkens onder die neuse van die Suid-Afrikaanse en ander gehore gevryf. Binne die betekenis van die Wet op Pulikasies maak dit glad nie saak of wat daar gebeur het waar was of nie. Die feit bly staan dat hier iets geneem word uit die Duitsers se verlede - en hier word toegegee dat dit noodwendig slegs betrekkeing gehad het op die optrede van Nazis

en dat al die Duitsers nie Nazis was nie - wat daarop bereken is om die Duitsers weer eens te herinner aan die wandade van sommige van hulle volksgenote. Die onderwerp as sodanig kan natuurlik nie ongewens wees nie en die Appèlraad wil nie hiermee te kenne gee dat enige behandeling van hierdie tema noodwendig ongewens sal wees nie. In die onderhawige geval bereik die rolprent egter die toppunt van hierdie tipe behandelings. Elkeen van die Duitsers wat in hierdie rolprent speel, word afgemaak as koelbloedige, sadistiese en byna kranksinnige wesens. Selfs nie die kampkommandant toon veel versagting na Pasqualino se beïnvloeding nie. Daar is nie 'n sprankie menslikheid wat na vore kom nie. Die Appèlraad is van oordeel dat die rolprent inderdaad bereken is om hierdie gebeure onder die Duitsers se neuse te vryf en dat dit dus ook bereken is om die Suid-Afrikaanse Duitsers veragtelik te maak. Die vraag is hier nie net hoe die Duitsers self hieroor dink nie, maar wel hoe die gemiddelde Suide-Afrikaner hierdie berekendheid ten aansien van die Duitse bevolkingsdeel beskou. Die rolprent is gevolglik ook ongewens binne die betekenis van art 47(2)(c)'.

Seven Beauties (122/81)

'In 1981 the film was resubmitted for adjudication and a publications committee found it to be not undesirable subject to excisions and an age restriction of 2-21. The Directorate of Publications appealed to the Publications Appeal Board against this decision....'

The film contains 'a vehement attack on Nazi concentration camps and the officers which manned them. These Nazi officers are not...representative of the German nation, and the film would therefore not bring the German section of the South African population into contempt within the meaning of s 47(2)(c) of the Act'.

The film was found to be not undesirable after the imposition of more excisions than originally suggested and of an age restriction of 2-21.

§4.2.3 'RIDICULE OR CONTEMPT' (s 47(2)(c))

The term 'ridicule and contempt' has a narrow meaning in that in order to fall within this definition, matter must contain a degrading or humiliating treatment of a 'section of the inhabitants'. The concept of 'ridicule and contempt', as it appears in para (c), is applied when one group only is belittled. When, however, two groups are discussed such humiliation and degradation may result in the creation of animosity or hostility between 'sections of the inhabitants' particularly in creating racial hostility between blacks and whites. The work will then fall within the ambit of para (d). The content of this phrase was considered by the Appeal Board in the annexure to Heartland (43/82):

'"Ridiculing" and "bringing into contempt" have a narrow meaning. Ordinary scorn or political criticism is not sufficient for a finding of undesirability'.

In It's a Boy (159/82) the Board stated:

'Die verdere vraag is of die openbare vermaaklikheid 'n bevolkingsdeel, in casu die witmense, belaglik of veragtelik maak. Net soos die begrip "aanstootlik" 'n enger betekenis by paragrawe (a) en (b) het, het die begrippe "belaglik - of veragtelikmaak" ook hier 'n beperkte betekenis. Dit gaan hier om 'n Wet waar bevoegdhede ingeperk word en, net soos in die strafreg, moet so 'n Wet beperkend uitgelê word. Ook hier moet daar

dus net na ernstige inbreuke op die waardigheid van 'n bevolkingsdeel gekyk word. Daar moet steeds 'n degradering, vernedering of smaad teenwoordig wees. So sê Nicholas R in S v Tanteli 1975(2) (SA) 772(T) op 774(E) in verband met crimen iniuria:

> "It must, however, be observed that the word 'insult' does not in this context bear its ordinary meaning, but is used with a narrow meaning of degrading, humiliating or ignominy."

Onderliggend aan hierdie tipe beskerming is die voorkoming van 'n vredesbreuk as gevolg van die degradering. Dit gaan dus oor 'n ernstige inbreuk net soos by crimen injuria en strafwaardige laster. Sien S v Jana 1981(1) SA 671(T) en R v D 1968(2) SA 470 (RAD). In die verband moet ook in ag geneem word dat skerp en selfs venynige politieke kritiek teen 'n bevolkingsdeel nie ongewens is nie. Ook hier moet die riglyn van absolute noodsaak by die uitleg van die woorde in ag geneem word...'.

The Publications Appeal Board has repeatedly invoked the dictum of Steyn J in Buren Uitgewers (Edms) Bpk v Raad van Beheer oor Publikasies 1975 (1) SA 379 (C) at 423 B-G to determine whether a criticism of whites, and especially of Afrikaners, brings a work within the ambit of either para (c) or (d). (The dictum in the Buren case, which dealt with André Brink's Kennis van die Aand is used also as a proposition for permitting biased political criticism.)

In this case Steyn J declared:

> 'Die profiel van die Afrikaner wat dit skets, is nie vleiend nie. Ek dink nie dat enige betekenisvolle aantal volwasse blanke lesers - en meer besonderlik Afrikaner blanke lesers - egter die mening sal huldig dat hierdie boek hulle belaglik or veragtelik maak nie. My eie oordeel is ook - om die strenger toets hierbo geformuleer toe te pas - dat die boek nie die blanke Afrikaner (of die Blanke)

belaglik of veragtelik maak nie. Die klaarblyklike oordrywing sal enigiemand wat die boek lees baie gou laat besef, nie alleen dat hy fiksie beet het nie, maar ook dat hy met 'n geniepsige skrywer wat die roman gebruik om te kwets, te doen het. Na my mening het die Volksraad - wat self 'n produk van politieke vryheid is - nie beoog dat die vryheid van spraak sodanig ingekort moet word dat die sensitiwiteit van die onverdraagsame en die onvolwassenes beskerm moet word nie. Die volwasse Afrikanergemeenskap sou die pogings tot karikaturing wat hier voorkom met gelatenheid verwerp. Om hierdie boek op hierdie grond in die ban te doen sou na my mening van 'n onverdraagsaamheid spreek wat ek nie graag die Wetgewer sou wou toereken nie.

Ek is bewus van die feit dat in ons gemeenskap met sy verskeidenheid van volke, tale en kulture die vryheid van spraak in sekere opsigte ingekort is ten einde wrywing en konflik uit te skakel. Ek is egter nie bereid om te aanvaar dat ons Wetgewer 'n konformerende letterkunde op die Afrikaner sou wou afdwing nie, wat hom, dan net soos Napoleon, in verband met die terugsinking van die Franse letterkunde sou laat verklaar: 'Mense kla dat ons nie letterkunde het nie. Die is die skuld van die Minister van Binnelandse Sake... hy hoort daarvoor te sorg dat ordentlike goed geskryf word' (quoted in Kennis van die Aand (131/81)).

In Articles of Faith (15/83) the Board stated:

'...In Suid-Afrika is daar vandag veel meer perspektief op die rassesituasie en sekere rassebeskouings van die witman word weer onder die vergrootglas geplaas. Al is hierdie beskouings in hierdie werk verskerp, sou dit onredelik wees om hierdie tipe stof uit die hande van die waarskynlike leser te hou. Dis wel waar dat hierdie boek veral die Afrikaner aanval maar die moderne Afrikaner se volwassenheid op politieke vlak, sy bereidheid om na ander standpunte te luister is, ten spyte van skerp politieke verskille, ook goed bekend. Die bekende stelling van Steyn R in Buren Uitgewers v Raad van Beheer oor Publikasies 1975(1) SA 379(K) 423 ten aansien van die boek Kennis van die Aand is ook hier toepaslik'.

Blacks too are a 'section of the inhabitants' and the Publications Appeal Board does not regard derogatory references

to them as necessarily meriting a finding of undesirability under para (c) or para (d). The Board considered the use of the word 'kaffir' and other derogatory references to blacks in Academy Rewards (67/81), Store up the Anger (101/80), A Separate Development (104/80) and The Grass is Singing (103/81):

> The publications committee ordered inter alia that the complete sketch in which Robert Kirby marries a white woman to a black man as well as a sketch in which a salesman sells 'Bonsai Bantus' should be excised as the black community would find the derogatory references to blacks harrowing and abhorrent. 'Bishop Desmond Tutu, a prominent member of the black community, however, testified that in his view, this was not the case. It was in fact a criticism of s 16 of the Immorality Act and certain attitudes that were part of the South African community. He also testified that the use of the word "kaffir" in this entertainment could in no way be regarded as derogatory to blacks and that in context it was a legitimate part of the satire' (Academy Rewards).
>
> Wat die gebruik van die woord 'kaffer' betref is die Appèlraad 'van oordeel dat alhoewel hierdie woord in die gewone sosiale omgang vandag as lasterlik beskou word en in elk geval nie as 'n ordentlike verwysingsvorm na 'n swartman beskou word nie, dit tog binne die raamwerk van hierdie geskrif bydra tot die uitbeelding van bepaalde persoonlikheid. Die Appèlraad is van oordeel dat hierdie aspek in elk geval nie sterk genoeg is om te lei tot 'n verbod op die verspreiding van die boek nie' (Store up the Anger).
>
> 'Such comments, moreover, reflect the wide range of racial and political attitudes to be found in South Africa. In the novel, they are not ascribed only to whites or, more specifically, to Afrikaners. Even if such

comments are taken seriously and are not regarded as being funny or satirical, as they were intended to be, we should bear in mind that political comment is seldom anything but sharp and bitter, and over-sensitivity to such comment is seldom justified.

Just as the satire is directed not at only one or two sections or groups but at various sections or groups of the population, the use of derogatory terms like "kaffir" is not confined to one section specifically. That it is used to emphasise an attitude of the characters of those who use it freely becomes apparent if one notes that other speakers deliberately avoid it by using "native" instead' (A Separate Development).

'In the view of the Appeal Board the central theme of this film is not, as the committee maintains, the racial prejudice and racialistic attitude of the main character, Mary. The film is in the first place concerned with the effect of isolation and alienation on the human psyche. It is a study of the gradual marital disintegration and descent into insanity of a woman who cannot come to terms with Africa, harsh and unyielding, who dislikes rubbing shoulders with the black workers whom she does not understand and whom she treats with misguided harshness, and who is living in poverty with a husband who is a failure as a farmer and a lover. In the development of this theme blacks are on several occasions referred to as "kaffirs" and on one occasion as "lazy black savages". It must be remembered, however, that the action takes place in colonial Rhodesia in the late 1950's (the film is in fact based on a novel, published in 1950, by Doris Lessing, who lived for a time in colonial Rhodesia) and at that time such words were in common usage. The Board accepts the Appellant's contention that these words are used in the film in the same way as the vintage cars, the period clothes and all the other attention to period detail are there.

Although in the present day and age such words fall harshly and unpleasantly on the ears of white and black South Africans, they are necessary, within the context of this film, for proper characterisation. The words are never flung by whites at blacks; they are used by whites talking to other whites in sentences such as "You'll understand we don't like kaffirs murdering white women" or "I don't like your kaffir coming in here while I'm still in bed". The Appeal Board believes that these words are not used with an intensity or frequency which will have the effect of eliciting more than resentment or annoyance among likely viewers. Certainly they will not contribute to black/white polarisation. Living, as we do, in a country where black/white race relations remain a particularly sensitive issue, white South Africans are understandably sensitive about the use of such words: we easily take offence on behalf of others who may take offence. Such a protective response, admirable as it may be, must surely not be pursued to the point where a total ban on these words, irrespective of the context, period or place in which they are used, is expected. This would place an intolerable restriction on authors and film-makers' (The Grass is Singing).

Although individual political leaders are not protected under the Publications Act, a 'section of the inhabitants' may be brought into ridicule or contempt though criticism of individuals (see Academy Rewards (67/81)). Similarly a degrading or humiliating treatment of a political leader can bring a work within the scope of para (d). This is clear from It's a Boy (159/82):

'Theunis cracks the following joke :"Did you hear about Chief Sebe goes into a filling station. He says to the boy, fill her up and pump my lips to two comma three". It was argued that this joke about Chief Sebe is not undesirable as the Ciskeians are no longer a section of the South African community, and the Publications Act also does not protect individuals, even if they are leaders. The majority of the Board, however, felt that the joke transcended both these aspects and moved into the realm of black/white relations. A substantial number of average black likely viewers would regard this as a derogatory reference on a public stage to a feature of many blacks. The black man generally being personified by Chief Sebe. This would contribute to or engender animosity by the black section towards the white section, who in this instance, is represented by Theunis. The minority view was that blacks would tolerate it because they would take it "from whom it comes" (in casu Theunis, who according to the minority, does not, even in this instance, represent the average white). This is the reason why the Board did not excise other derogatory references to blacks, and this is in accord with evidence by a black leader, which was accepted in regard to a previous play of Kirby, Academy Awards (67/81)'.

So, too, an attack on Prime Minister Begin in a propaganda pamphlet $48,000 Reward (202/82), published by a Muslim publisher, was held to engender animosity towards the Jewish section of the South African community and against the Muslim section of the South African community.

'The question which remains is whether the publication is harmful to relations between any sections of the inhabitants of the Republic. It was common cause that the sections to which the publication referred were Muslims and Jews. Both these groups are also sections of the

inhabitants of the Republic of South Africa. The main problem is that there is no direct reference to South African Jews in the publication. It was indeed on this ground that the publications committee found that the publication is not undesirable...

It is not for this Board to go into the merits, truths, or untruths in this publication. It is common knowledge that atrocities did take place in Lebanon, that there was a Commission of Inquiry appointed by the Israeli Government and that its report led to the removal of Mr Sharon from his post as Minister of Defence. Criticism against what had taken place in Lebanon cannot and should not be stifiled, and this is not the problem that the present publication gives rise to.... The question is, however, whether a substantial number of South African Jews identify themselves so much with the Jewish cause that this publication, which emanates from an Islamic organisation in South Africa (which does not, of necessity, represent the views of all Muslims), would engender or contribute substantially towards animosity against Muslims as a section. That strong criticism may be lodged against the action taken in Lebanon and that photographs of what took place may be published appears clearly from the Time magazine.... The present publication is a pamphlet with a large likely readership. It is a direct and straightforward means of communication, which not only criticises the actions of Prime Minister Begin, and Mr Sharon but draws in the Jewish nation as a whole by calling the massacre a repetition of what took place in the history of the Jews. As indicated above, it is unnecessary to decide whether these statements are offensive to the religious convictions or feelings of the Jews. What must and can, however, be deduced from this page is that the attack goes much further than an attack on Prime Minister Begin. If all this were to have been said in a typical debate on this issue, it would have been found to be not undesirable. The same criticism could even have been found

to be not undesirable if it were to have been published in a different kind of publication such as a news magazine or, of course, a more academic publication. The publication, however, is calculated to humiliate not only the leadership of Israel but the Jewish people themselves, wherever they live. The Board is convinced that no South African Jew would condone the atrocities which took place in Lebanon, and this is also borne out by the findings of the Israeli Commission of Inquiry. However, the present manner of sensational, humiliating, and degrading, pamphleteering makes the publication undesirable. A substantial number of South African Jews would, as a result of the manner of publication, experience an emotional reaction, which, on the probabilities, would give rise to deep-seated reactions and feelings, which in turn, would engender or contribute substantially towards animosity against the Muslim section of the community of the Republic. Even if it is accepted that the views could be attributed only to the present publisher, he has drawn in the Muslim community as a whole, whether they share his view or not. The publication also strives to involve the Muslim community as a whole and would, on the probabilities, contribute to animosity or engender animosity towards the Jewish section of the South African community.

The Board is accordingly of the view that the publication is harmful to relations between South African Jews and the South African Muslims and is accordingly undesirable within the meaning of s 47(2)(d) of the Publications Act 1974'.

§4.3 SECTION 47(2) (d) AND (e)

For a work to fall within the ambit of paras (d) and (e) of s 47(2) of the Publications Act, the first issue that the Publications Appeal Board considers is whether there has been a real violation of the interests protected in these paragraphs. Consequently a work must lead to or contribute to a violation of harmonious relations between sections of the inhabitants of the Republic (para (d)) or must lead to or contribute to a violation of the security of the State, the general welfare or the peace and good order (para (e)). The question whether there has been a real violation is decided in the light of the 'probabilities' and the likely readership of the publication. Terms such as 'contribute' 'probable' and 'likely' are not contained in the Publications Act and the Appeal Board relies upon the general case law for the formulation and elucidation of these terms. Furthermore since these terms are applied to both para (d) and (e) they will be discussed only once under para (e) (see §4.3.5).

The Publications Appeal Board supports freedom of speech and in consequence criticism, albeit one-sided, of the government, pleas for change to the status quo or protest against the actions of the government do not necessarily result in a work being found undesirable under paras (d) and (e). It is necessary that there be a real violation of the interests protected under these paragraphs.

The Publications Appeal Board, when it considers the interests that are violated in a political work or the effect

of such a work, frequently tends to blur the distinction between paras (d) and (e). Consequently the contents of these paragraphs are on occasion applied simultaneously. The decision Al Zahf Al Akhdar (55/81) is a good example of this:

> 'It appears that although the publication is anti-Marxist, it nevertheless strongly supports revolutionary socialism. It also reveals a hostile attitude towards South Africa in so far as it supports the enemies who are at war with South Africa. The publications are also strongly in favour of revolution by the masses. Some of them also employ their strong rejection of racism as an instrument to polarise blacks and whites and to foment animosity against white South Africans. The Board is also of the view that the publications are not only calculated to further these interests but would also, judged on the probabilities, contribute to a violation, by the likely readers of the publication, of the interests which are protected in s 47(2)(e) of the Act'.

Tests such as 'contribution' 'probabilities' and 'likely' readership are common to both paras (d) and (e). The interaction of these tests is illustrated, for example, in Transvaal Episode (49/82):

> 'The main issues are whether the book (and, in this respect, especially the presentation of white members of the police force in a contemptible manner and the idolizing of black insurgents) would, on the probabilities, create animosity or contribute to the creating of animosity between blacks and whites or lead to, or contribute to a violation of the interests safeguarded by s 47(2)(e) of the Publications Act, which deals with state security and public order. Both issues must be decided in the light of

the probabilities and the likely readership of the publication. Mere calculation is not sufficient (see Divide the Night (60/81))'.

These paragraphs will, nonetheless, be discussed separately as far as possible since the interests protected in them differ. Elements common to both however will be considered under the discussion of para (e).

§4.3.1 A REAL VIOLATION OF INTERESTS

(i) Paragraph 47(2)(d)

The interests protected in paragraph (d) were succinctly summarised in an annexure to the Heartland decision (43/82).

> '...The next question is whether the publication (etc) will, in terms of probability, have the real effect of harming relations or of contributing to the harming of relations. Will it, therefore, drive sections of the population further apart or cause further confrontation?
>
> It should here be borne in mind that biting and emotional language is a typical feature of South African political life and that sufficient latitude must be allowed for political debate, criticism, and pleas for change. 23)'

23) Die Afrikaner 51/80; An Empty Table 62/81; Staffrider 70/80 and 122/80; The Grass is Singing 103/81; Forced Landing 45/80; We shall Sing for the Fatherland and Other Plays 53/81; An Introduction to the Writings of Ngugi 43/81; This we can do for Justice and for Peace 155/81; Fire Flames 2/80.

That there must be a violation of the interests protected has been decided many times, including in Its A Boy (159/82), Staffrider (122/80) and Learn and Teach (41/82).

'...Al sou egter aanvaar word dat hier 'n bevolkingsdeel aanwesig is, is die Raad van mening dat mens hier bloot te doen het met politieke kritiek teen die vooroordele van daardie bevolkingsdeel en dat dit nie in die eng sin van die woord, soos hierbo omskryf, daardie bevolkingsdeel "belaglik of veragtelik" maak nie. Venyn is nie voldoende nie, en dit strook met wat al dikwels gesê is oor die toelaatbaarheid van politieke kritiek. In S v Looij 1975 (4) SA 703 (RAD) is die beskuldigde byvoorbeeld onskuldig bevind ten spyte van 'n skerp aanval op die (Rhodesiese) regering vanweë optrede teen skiëntologie. Die hof het bevind dat die aanval alleen 'n aanval teen die regering was.... Die bekende stelling van Steyn R in Buren Uitgewers v Raad van Beheer oor Publikasies 1975 (1) SA 379 (K) op 423 is ook hier toepaslik....

Die laaste vraag is of the openbare vermaaklikheid nadelig vir die verhouding tussen die wit en swart bevolkingsdele is. Die stuk handel oor 'n aangeleentheid wat die verhouding tussen wit en swart raak. Net soos paragrawe (c) en (e) gaan para (d) ook oor die voorkoming van 'n vredesbreuk. Die vraag is gevolgik of die stuk vyandigheid of haat tussen die wit en swart bevolkingsdele sal bevorder. Ter versagting moet in ag geneem word dat die waarskynlike gehore van Kirby-stukke reeds bekend is met Kirby se politieke burlesk, die kritiek teen en die polemiek oor die rassevermengingsverbod niks nuuts is nie en dat die stuk niks opruiends bevat nie. Die stuk kies egter kant teen die beskouings van 'n wesentlike aantal wit en swart mense en die vraag is of die burlesk bevolkingsverhoudings, soos hierbo omskryf, sal benadeel. Die Raad is van mening dat alhoewel die burlesk by heelwat

kykers misnoeë tot gevolg sal hê, dit nie so ver gaan dat dit vyandigheid of haat sal bevorder nie. 'n Vredesbreuk word nie bevorder nie. Die Wetgewer kon ook nie beoog het om deur para (d) alle emosies op die verhoudingsvlak te voorkom nie. Daardeur sou die realiteit van daaglikse debat oor rasseverhoudings misken word. Sien Murray R in R v Sutherland and Others 1950(4) SA 66(D) op 75 F-G; en van Zyl R in R v Brown 1929 CPD 221 op 223...'(It's a Boy).

'...section 47(2)(d) protects the interest of peaceful relations between sections of the South African community, the question is whether the likely reader of this publication would react in such a manner as to violate or contribute to a violation of the interests which are protected in [s 47(2)(d)] of the said paragraph. Would the publication have the effect of leading to or contributing to animosity between black and white? Once again the likely readership is of cardinal importance' (Staffrider).

'The issue which the Appeal Board has come to a decision about is whether this publication would contribute to animosity or create animosity between blacks and whites. This has to be judged on the probabilities. The main problem that the publication created for the publications committee was that it is one-sided and that the information which it gives is not always correct' (Learn and Teach).

(ii) Paragraph 47(2)(e)

Heartland annexure (43/82)

'State Security, General Welfare or Peace and Good Order

The question here is whether the relevant material, judged in terms of probability, will contribute to the impairing of any of the interests mentioned above.

Here too sufficient latitude must be allowed for political criticism, and once again it should be borne in mind that acrimonious language is a typical feature of the South African political scene. Criticism of government policy for instance, is not undesirable. What is undesirable must go further than that. Within the framework of what is noted under s 47(2)(d) above, protest literature 24) is permissible if it does not have the effect mentioned there. In this connection the probable reader, viewer, or listener is an important consideration. The more popular the material is the more likely it is to be undesirable. Pamphlets and gramophone records are of special concern here. On the other hand, complicated policial text-books - even though they may include matter that is otherwise undesirable - are not likely to be so readily undesirable.25) The interests of research carry considerable weight here.'

1. The interests protected in para (e) have been discussed inter alia in Forced Landing (45/80):

'Bearing in mind what is said above in connection with strong and derogatory language as a typical feature of the South African political scene, the ultimate question is whether the publication would have the effect of undermining or contributing towards the undermining of the security or good order of the South African State. Before such a finding can be made it must be clear that the publication would, on a balance of probabilities, violate these interests or contribute to their violation. In this regard the probable readership of the publication must also be considered'.

24) See note 23.

25) Great Political Thinkers 121/80; The Structure of Marx's World View 58/80; Modern Political Ideologies 79/80; Marx without Myth 6/80.

2. There must be a violation of the interests protected in para (e) and this requirement has been elaborated upon by the Board as follows:

'Die laaste en belangrikste vraag is of hierdie boek sal nydra tot 'n skending van die Staatsveiligheid, die vrede en goeie orde of die algemene welsyn. Die Appèlraad het al in verskeie beslissings aangedui dat die Wetgewer nie hier blote hipotetiese nadeligheid vir die staatsveiligheid op die oog het nie, maar dat dit hier gaan om 'n werklike aantasting van die belange wat in die betrokke paragraaf beskerm word. So 'n aantasting kan dan of by wyse van 'n totale uitskakeling van die staat of vrede en goeie order neerkom of 'n nydrae daartoe wees. Hierdie besluit moet op waarskynlikhede geneem word. Blote berekening ("calculation") is nog nie voldoende nie. Verder het die Raad in vorige beslissings ook al dikwels daarop gewys dat politieke kritiek en selfs propaganda nog nie per se onqewens is nie. Alles hang daarvan af watter effek dit waarskynlik op die waarskynlike lesers sal hê ' (Store op the Anger (101/80)).

'What is at issue here is whether the publication, in the light of its likely readership, will contribute to a violation of state security and good order and general welfare by contributing to terrorism, sabotage, subversion, public violence, the furthering of communism, or civil disobedience. There must be some direct or indirect call to action which would, on the probabilities, either lead to a total extinction of the said interests or contribute toward this cause' (Izwe Lase Township (144/82)).

'The film is no direct or indirect call to subversion, revolution, sabotage, terrorism, violence, civil disobedience, and the like but aims at revealing what it regards as unjust' (Promised Land (187/82)).

'The issue which must be decided upon in terms of s 47(2)(e) of the Act is whether this publication could contribute to a violation of the interests safequarded by s 47(2)(e) of tne Act. It is a typical feature of political publications that they are negatively selective in their material, are often biased, often lacking in objective discussion, and favour a change in the existing constitutional order. This by itself, however, cannot be regarded as undesirable within the meaning of the Publications Act. Only matter which is prejudicial to the safety of the state is undesirable. This would generally, be constituted by incitement to violence, public disorder, or revolution. Even the use of words which are associated with tne said aspects could be used in a not undesirable manner. In this respect the present publication moves into a more delicate area, but the conclusion of the Board is that it ultimately amounts to a frank discussion of certain aspects, which, according to the view of the writers, create problems within the capitalistic framework. There is no call to subversion and no incitement to violent action. A call for "one man, one vote" is also, not in itself undesirable.

A finding of non-undesirability in the present case is also in accord with previous decisions of the Publications Appeal Board - See Total Strategy (118/80) which was found undesirable, Workers' Progress 15 and 16 (62/80) and (120/80), which were found to be not undesirable, An Empty Table (62/81), which was found to be not undesirable, and the decision in regard to the film, This we can do for Justice and for Peace (135/81) in respect of which no excisions were ordered' (Social Review (127/81)).

'Bearing all the above considerations in mind, the Board does not gain the impression that the effect of this unpretentious publication, which does not contain any suggestion of violent or illegal action, will be to incite the reader to action which could endanger the interests

safeguarded by s 47(2)(e) of the Publications Act. The appeal is accordingly allowed and the finding of the Committee that the publication is undesirable is set aside' (The Struggle for the Land (178/82)).

'To fall within the ambit of the Act, the publication or any part of it must at least contribute to a violation of the interests safeguarded by the said paragraphs' (Grassroots (79/81)).

'In the opinion of the Board, the black South African reader of this booklet will be incited to violence and revolution by being persuaded that no other course is open to him to obtain justice, and by being assured of its inevitable success. If he is a Catholic he will be further encouraged by concluding that his church looks on violence to obtain black majority rule with an apparently benevolent eye. Many white readers will likewise be persuaded that dialogue, consultation, and concessions have no chance of success, thereby increasing the prospect of a hardening of right-wing attitudes and of polarisation and confrontation'.

The publication was found to be undesirable within the meaning of s 47(2)(e) (South Africa in the 1980's (32/81)).

'The issue before the Appeal Board is whether this publication contributes directly or indirectly to a violation of the interests safeguarded by s 47(2)(e) of the Publications Act, which deals with State security, general welfare, and peace and good order. As has been held in many previous decisions by this Board, a direct or indirect call to public violence, an overthrowing of the existing government by extra-constitutional means, terrorism, sabotage, and subversion generally would be prejudicial to the safety of the State. In this connection it is of importance that s 47(2)(e) limits undesirable matter to matter which is prejudicial to the safety of the State, etc. This, in no other words, is the finding for which the adjudicator must strive. To come to this conclusion it

would, logically, not be incorrect for the adjudicator to consider the likely effect that the publication may have. As long as the criterion remains "is", the "likelihood" test seems to be the most practical method of gauging what "is"' (Anti-SAIC News (38/83)).

'Die Appèlraad het oorweging geskenk aan dié deel van die publikasie wat aan kommunisme gewy is, met die uiteensetting wat natuurlik op die Kommunistiese Handves gefundeer is. Dit word sonder meer toegegee dat die volledige aanhaling van die Handves op sigself ernstige oorweging vereis en die byvoeging van Lenin se invloedrykste stukke oor Rewolusie en die opdragte vir die toepassing daarvan. Ook die drie stukke uit Stalin se hoof Rewolusie-geskrif skep verswarende faktore.

Die Appèlraad stem saam met die respondent [die Direktoraat] dat die Handves as sondanig voorskrifte vir rewolusionêre optrede, die noodsaaklikheid van vooraf opgeleide rewolusionêres en die gewelddadige vernietiging van die staat ens bevat. Die trefkrag van die stukke gaan egter in die huidige konteks verlore' (Great Political Thinkers (121/80)).

'Few would quarrel with the fact that the oppression (of the poor) by the rich is unjust, and this may, of course, be portrayed in a film. When the solution to this problem is sought, however, in revolution (and, more so, in communistic revolution) the matter changes. If this aspect of the revolution were given secondary treatment in the film and kept in the background, one could probably have found the film to be not undesirable for general distribution. This, however, is not the case. The struggle of the peasants, their revolution against the landowners, and their absolute joy at the success of their revolution are brought out so strongly in the film that they dominate the second half of the film and ultimately the film as a whole' (1900 (31/81)).

§4.3.2 THE EFFECT OF THE WORK UPON THE LIKELY READERSHIP

The test to be applied in deciding whether or not the interests protected in ss 47(2)(d) and (e) have been violated is for the adjudicator to determine the real effect, based on proabilities, that the work in question would have upon the likely reader or viewer.

The introduction of the concept of the likely reader as the determinant for deciding the undesirability or otherwise of a political work is perhaps one of the most noteworthy departures from the reasoning of the previous Publicatons Appeal Board under the chairmanship of J H Snyman, a retired Supreme Court Judge. During the period (1974-1978) the test that was applied was whether a work would have the effect of turning the average, decent-minded man, who embodied the median opinion of the law abiding citizens in South African society, to revolutionary or lawless conduct. In addition the likely effect of a work upon a substantial number of persons in the South African community was to be determined. Thus, for example, if a work was calculated to have the effect of inciting revolutionaries or potential revolutionaries or of encouraging sympathy for such activities or of serving as propaganda for revolutionary or unlawful organisations then the work would be prejudicial to the interests protected in s 47(2)(e) (The Dawn Comes Twice (144/76)).

The concept of the decent-minded average citizen was first limited in 1979 in a Droë Wit Seisoen (81-82/79) to the reasonable reader and this was in turn further limited from 1980 onwards to the probable reader.

It is necessary to decide who the likely reader of a work would be as this will determine the potential effect of the work. The reasoning of the Publications Appeal Board is that the effect of a work will be greater upon a popular readership or viewership than upon a limited and sophisticated readership. The factors which determine whether a work will have a limited or wide readership are discussed under § 5 and 6 (Positive and Negative Factors). The question as to whether a work will contribute to the violation of or violate harmonious relations between sections of the inhabitants or contribute to or lead to a violation of the security of the state is decided according to the effect of the work upon the likely readership.

(i) Paragraph 47(2)(d)

The effect upon the likely reader that the Publications Appeal Board guards against is the creation of racial animosity or hostility. In A Chip of Glass Ruby (28/83) the Board said:

> 'What the Appeal Board must, however, decide is not whether the appellant is bona fide or whether the published story is undesirable or not, but whether the effect of this film on likely audiences would be to contribute to hate or engender hate against the white section of the population'.

In Die Afrikaner (42/80) the Board discussed the content of para (d) as follows:

> 'Wanneer die publikasie daartoe sal lei dat die wit en swart bevolkingsdele gepolariseer word of indien dit 'n bydrae daartoe sal maak of indien dit konfrontasie sal

veroorsaak of daartoe sal bydra sal dit nadelig vir die bevolkingsverhoudings wees. Wanneer 'n publikasie dus 'n bevolkingsdeel teenoor 'n ander bevolkingsdeel opsweep of haat tussen die bevolkingsdele aanwakker sal dit ongewens binne die betekenis van die paragraaf [47(2)(d)] wees'.

(ii) Paragraph 47(2)(e)

In Grassroots (79/81) the Board stated:

'In this regard it must, of course, be borne in mind that publications of this nature have an emotive content and would generally have some effect on the likely reader. A publication is only undesirable if the effect which it has on the likely reader would make him more prone or inclined to violate the said interests. These interests have to do with political order in the State...'.

Similarly in Campus Action for Democracy (133/82):

'...the ultimate question in connection with s 47(2)(e) is whether the publication will have the probable effect of undermining or contributing towards the undermining of the security or the peace and good order of the South African State. In this regard the likely readership of the publication is of cardinal importance...'

In Anti-SAIC News (38/83) the Board declared:

'In the context of the present appeal, the bulk of the contents of the publication was presented at a congress attended by suporters of the organization. Although this cannot be regarded as the ultimate test because a publication usually reaches many more members of the public than does what is said at a congress, it is of interest that no prejudice to State security was the result of the congress itself. It is also important that the likely reader of this publication, who would generally be a

supporter of the Anti-SAIC Committee, would read this as a political document within the framework of a typical political congress. In this regard the attitudes of our courts to the reasonable reader in defamation cases is instructive. In Dorfman v Afrikaanse Pers Publikasies (Edms) Bpk 1966(1) PH J 9 A Rumpff J A said:

> "Ek dink dit moet aanvaar word dat daardie leser die artikel op 'n gewone en onbevooroordeelde wyse sal lees as 'n nuusberig en hoewel die belanghebbendes die artikel, of dele daarvan, miskien meer as een maal sal lees, moet aangeneem word, dink ek, dat die gemiddelde normale leser die artikel net een maal sal lees. Ek meen ook dat die toepasser van die reg gewaarsku moet wees dat 'n analitiese ondersoek van die artikel, veral 'n oorweging van individuele sinne en paragrawe, die neiging het om die oorspronklike geheelindruk te verwring of te verdryf".

Although this dictum must be read subject to what was said by the same judge of appeal in SAUK v O'Malley 1977(3) SA 394(A), namely, that the reader of a publication, in contrast to one who listens to a radio bulletin, would generally be in a position to re-read a passage, the last part of the dictum is particularly apposite.

In the Dorfman case Holmes J A also said that the court"... must be careful not to attribute to the ordinary reader a tendency towards such intellectual analysis or an ability to recall more than an outline or overall impression of what he or she has just read"....

The effect that a book will have on the probable reader or viewer is, if not conclusive, of cardinal importance. The effect is determined in terms of likelihood. Mere intent is not sufficient. It is the real effect that counts. Because the likely reader of the Anti-SAIC News is most probably a supporter of the TASC and, as such, will be generally acquainted with the organization's point of view and will probably be aware of the general issues raised at the congress, it is improbable

that he would be encouraged to participate in or contribute towards acts aimed at overthrowing the government in an extra-constitutional manner. The bulletin "does not move beyond the range of sharp and blunt criticism of the status quo into the area of revolutionary exhortation" - Campus Action for Democracy (133/82).'

SASPU National (105/83)

'...The above dicta have been adopted by the Publications Appeal Board, subject to the qualification set out in SAUK v O'Malley 1977 3 SA 394(A), namely, that the reader of a publication, in contrast to one who listens to a radio bulletin, would generally be in a position to re-read a passage. Mr Marcus submitted that the ability of a reader to re-read a passage in contra-distinction to the listener of a broadcast should not be construed as meaning that the average reader actually re-reads passages in a newspaper, but that he has the ability to do so. In other words, the submission runs, the normal reader approaches a publication in the manner set out above. It is only if he has difficulty in understanding or if he misses a word that he has the ability to re-read the passage in question. This submission is in accord with the Appeal Board's view...'.

§4.3.3 EFFECT ON PRO-REVOLUTIONARY

The fact that the likely readership of a political work is the general public, does not invariably bring this work within the ambit of para (e). Frequently a further question is posed concerning the effect of the work upon the revolutionary or potential revolutionary. This question is rarely asked, however, in relation to communist works. In A Ride on the Whirlwind (114/81) the Board dealt with the issue as follows:

> 'Although the likely readership of this publication cannot be regarded as sophisticated or intellectual, the likely reader would be the more arduous kind who would be prepared to labour through parts of this book. Parts of it could just as well have been left out. Despite differences of opinion as to literary merit, a finding of undesirability of this book as a result of the torture scene and derogatory references to the administration of justice would be contrary to the finding of the court in Buren Uitgewers v Raad van Beheer oor Publikasies 1975 (1) SA 379 (C), the spirit of the judgment in S v Russel 1980 (2) SA 459 (C), and the decisions of the Publications Appeal Board in regard to Store Up the Anger (101/81), The Covenant (89/90), and Kennis van die Aand (131/81). The likely readership of the present novel would, as has been pointed out above, come close to a popular readership, but on the other hand, revolutionaries and potential revolutionaries find their inspiration in publications of a more direct and inciting nature '.

See also The Grass is Singing (103/81):

> 'This is a film of considerable artistic merit. It tells a story of human relationships in which gloom is the predominant mood. The Appeal Board is of the opinion that

this film is unlikely to draw wide popular interest. The likely viewer will be the mature, serious-minded filmgoer who will see the film in proper perspective. It is conceivable that among some viewers the film may arouse displeasure, even annoyance. The Board is convinced, however, that it lacks the emotive power to influence the revolutionary or potential revolutionary to violate the interests or contribute to the violation of the interests mentioned in s 47(2)(e) of the Act'.

Again, in Elegy for a Revolutionary (205/82), the Board said:

'Moreover there are no formulas for successful subversion in the novel, and revolutionaries are not likely to read a book of this kind to advance their purposes, because in it unsuccessful rather than successful attempts at sabotage are dealt with and because divergent and conflicting views about subversion are expressed. What is most strongly disapproved of even in such acts is the loss of life'.

§4.3.4 EFFECT OF COMMUNIST WORKS

The effect of communist works upon the likely reader

The standards applied by the Publications Appeal Board in judging the effect of a work on communism upon the likely reader are stricter than those applied to other political works. Consequently the literary and academic style of a work on communism are important factors to be considered as they may indicate that the work in question will be read only by readers unlikely to be swayed by the content of the work. The Structure of Marx's World View (58/80), Ten Days that Shook the World (28/82) and J Stalin Works (83/80) are examples of works found to be not undesirable because of their literary and academic merit.

'The mere fact that the publication has communism or a similar ideology as the theme does not in itself make it undesirable... The appellant's submission that the Publications Act and the security laws of the country do not prohibit writings on Marxism as a technique for analyzing society is correct. The prohibition in these statutes extends to Marxism as a programme for revolutionary action. To this the Appeal Board wishes to add that the publication must have persuasive value in so far as its likely readership is concerned'
(The Structure of Marx's World View (58/80)).

'Because of the remoteness of everything in it, which is its most obvious characteristic, the book lacks the impact of actuality and is hardly likely to constitute a danger to state security, general welfare and peace and good order in South Africa. The segment of history dealt with is so far in the past, so localised, and confined to so brief a period that its bearings on or parallels with the political situation in South Africa are difficult to determine. Its being used for purposes of propaganda and incitement seems hardly feasible. Nowhere, for instance, is the word "communist" or "communism" used, the usual word being "socialist" or "socialism"... Descriptions of acts of subversion and violence hardly occur and are essentially documentary, not serving the purpose of inducing or stimulating readers to emulate what was achieved by the Russian revolutionaries of 1917' (Ten Days that Shook the World).

'Die oproep tot bewapening, geweld en rewolusie is of in algemene terme of slegs van toepassing op toestande wat destyds in Rusland geheers het; daar is geen bloudruk vir 'n soortgelyke rewolusie in Suid-Afrika nie. Die bevat ook nie noemenswaardige nuwe slagspreuke of idees wat met vrug deur opruiers gebruik kan word nie. In hierdie verband is dit van belang om te let op wat die publikasiekomitee sê in

sy redes in verband met die boek Modern Political Ideologies naamlik "dat in die RSA subversiewe agitasie en propaganda in die hande van opgeleide en van intellektueel geskoolde mense is, en nie langer uit bloot opruiende cliches bestaan nie." Sulke persone sal nie veel in hierdie boeke vind wat nie reeds tot hulle beskikking is nie' (J Stalin Works).

Conversely easily readable works about communism such as Mao For Beginners (7/81), and Chiang and Mao (27/81) were found to be undesirable because they aimed to convert the likely reader to communism.

'Die Direktoraat voer ook aan dat enige persoon wat nie bekend is met Mao se volle geskiedenis nie - veral die "beginners" vir wie die boek geskryf is - na die lees daarvan sal besluit dat Mao 'n baie heroïse figuur en die redder van China was en dat hy die toegewyde beskermheer van die onderdruktes en werkersklas was' (Mao for Beginners).

'Die indruk wat dit ['n aanhaling], en die boek as geheel skep is een van onoorwinlikheid van die kommunisme. Dit is bereken om jong gemoedere aan te gryp en tot kommunisme oor te haal. Die natuurlike uitbloeisel daarvan is staatsgevaarlike aktiwiteite' (Chiang and Mao).

Furthermore, because of its visual effect upon its likely viewership, the film 1900 was found by the Board to fall into the above category:

'The problem with the present film is that the capitalists, as epitomized by Alfredo's family, are portrayed as the scum of the earth, for whom only money has any meaning, and human life and human suffering mean

nothing. On the other hand the peasants, all members of the Communist Party, are portrayed as the salt of the earth, and are cast in heroic mould. The viewer cannot help developing sympathy for and empathy with the workers in their suffering and strife. The film points to the release from suffering and strife. This will come through the Party. The Communist Party is presented as the embodiment of all that is noble and just' (1900 (31/81)).

§4.3.5 EFFECT DETERMINED ON PROBABILITIES

The Publications Appeal Board has stated that the effect of a work upon the likely readers must be based upon probabilities not possibilities.

The Grass is Singing (103/81):

'A last question the Board has to consider is whether this film, judged on a basis of prababilities, would have the effect of undermining or contributing to the undermining of the security or the good order in the South African state. In this regard the likely viewership must be considered'.

Al Zahf Al Akhdar (55/81):

'...matter may not be found undesirable only as the result of a finding that the publication is calculated to infringe the interests safeguarded by the said paragraph. The calculated action must also, on the probabilities, have a real effect. In this connection the likely readership of the publication is an important consideration'.

Ten Days that Shook the World (28/82):

'The Directorate of Publications appealed against this

decision on the ground that the book gives a sympathetic account of the October Russian revolution and that this would, on the probabilities, lead to sympathy for the cause of communism...[and] that only a few readers would be in a position to distinguish between fiction and fact. Lenin and Trotsky are described as heroes...'.

According to the Publications Appeal Board 'The mere fact that a book is pro-communistic would not in itself lead to a finding of undesirability. It must go further than that. It must, on the probabilities, contribute to subversive activities and the like...'.

Work in Progress (54/82):

'...In this regard it must also be borne in mind that mere calculation is not sufficient. Calculation plus real effect, as judged on the probabilities, is the criterion. On the other hand it must, however, be remembered that a contribution in this direction would be sufficient'.

Forced Landing (45/80)

'The arguments, the protestations have the ring of sincerity and, as has been said above, will be regarded by the reader as a matter of opinion. The insight of the South African reader must not be underestimated: he is daily confronted with political news and political comment from the left and the right and is generally not so easily influenced as is sometimes thought. The Act cannot guard against possibilities and the adjudicators must base their decisions on probabilities'.

Grassroots (79/81)

'Mere calculation, however, does not suffice: calculation plus effect on the likely reader are the true issues. See S v Essack 1974 (1) SA 1 (A) at 21-22 and S v Manong 1979 (4) SA 429 (O) at 435-436'.

The Board has relied on the following Supreme Court dicta in S v Manong SA 429 (0) p. 435; S v ffrench-Beytagh 1972(3) SA 430(A) and S v Essack 1974(1) SA 1 at 22-23 (quoted in §3.4).

§4.3.6 THE PROBABLE REAL EFFECT AND THE 'CLEAR AND PRESENT DANGER' TEST

The Publications Appeal Board has attempted to further restrict the probable real effect that matter will have upon the likely readers by invoking the 'clear and present danger' test enunciated by the American Supreme Court in Schenck v United States 249 U.S. 47:

> '...But the character of every act depends upon the circumstances in which it is done. Aikens v Wisconsin, 195 U.S. 194, 205, 206. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. Gompers v Buck's Stove & Range Co., 221 U.S. 418,439. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree...'

This 'clear and present danger' test has been incorporated into the jurisprudence of the Appeal Board by decisions such as Divide the Night (60/81), the annexure to Heartland (43/82), Anti-SAIC News (38/83), SASPU National (105/83) and Grassroots (84/83).

'In connection with the test [i.e. the presence of calculation plus real effect based on the probabilities] mentioned above the Board wishes to point out that this approach is in accordance with the approach followed in S v Essack 1974 (1) SA 1 (A) on p 21-22, S v Manong 1979 (4) SA 429 (0) and, although recognizing the difficulties inherent in the "clear and present danger" doctrine of the United States Supreme Court, the test is also in general accord with that approach. In this connection, it must, however, be borne in mind that the "clear and present danger" doctrine only has a general bearing on our approach and that also a contribution towards a violation of the interests safeguarded by the said paragraphs would suffice. Furthermore, it was pointed out in Schenk v The United States (1918) 39 S. Cd Rep. 247 that "when a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and then no court could regard them as protected by any consitutional right". The doctrine of the United States Supreme Court is alos applied in Israel. In Kol Ha'am Co Ltd v Minister of the Interior H.P. 73/53 the Supreme Court sitting as High Court of Justice held that

> "in exercising his power of suspension... the guiding principle is that the minister must consider whether it is probable that as a consequence of the publication a danger to the public peace has been disclosed. A mere tendency to endanger the public peace will not suffice to fulfill that requirement. Even if he is satisfied that the public peace is likely to be endangered by the publication, the minister must nevertheless consider whether that danger is so grave as to justify the use of so drastic a power as suspension of a newspaper. Although the court will not interfere with the discretion of the minister when properly exercised, the minister in this case has not considered the probability of the public peace being endangered, but had acted in the belief that a mere tendency in this direction was sufficient"'.

Heartland

'The effect that the book or film will have on the probable reader or viewer is conclusive. The effect is determined in terms of probability. The medium (e g a complicated academic work or a popular direct medium) is of importance here. The question whether the matter, if the specific juncture of time is taken into consideration, will inflame feelings is also important. Mere intent is not sufficient. It is the real effect that counts. In this regard there is much to be learnt from the "clear and present danger" tenet set out by the United States Supreme Court (see, amongst others, Kamp 1980 Communications and the Law vol 2 and no 3 p 20 et seqq.; Van der Vyver Die Juridiese Leerstuk van Menseregte (Thesis, UP 1973) p 796 et seqq; and the Israeli approach in "Kol Ha'Am" Company Ltd v Minister of the Interior H.C. 73/53)'.

Anti-SAIC News

'The Publications Appeal Board has also indicated that although the "clear and present" danger test laid down by the Supreme Court of the United States of America is more lenient than the test in s 47(2)(e) of the Act, guidance should be sought in that doctrine. In discussing the application of the clear and present danger tests in Whitney v California 274 US 375, Mr Justice Brandeis said:

> "No danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so iminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and falacies, to avert the evil by the process of education, the remedy to be applied is more speech, not enforced silence"'

"In its reasons the Committee stated that it is important to note that nowhere in this publication is the use of violence to achieve "ideals" condemned. As has been pointed out in various previous decisions of this Board, it goes beyond the ambit of the Publications Act to require a publisher to evince a clear unequivocal point of view on particular issues. The principles of publications control clearly envisage the right of publishers to produce unpopular material. In this respect, regard can be had to the dictum of Holmes J in Abrams v United States 250 US 616 at 630:

> "When men have realized the time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas - that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground on which their wishes safely can be carried out... Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. That experiment is part of our system and I think that we should be eternally vigilant against attempts to check the expresssion of opinions that we loathe and believe to be fraught with death, unless they so imenently threaten immediate interference with he lawful and pressing purposes of the law that an immediate check is required to save the country... Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweepting command, 'Congress shall make no law...abridging the freedom of speech'".

'Although the provisions of s 47(2)(e) are more stringent than those of the applicable American legislation in this respect, the spirit of the dictum is particularly apposite...'.

Grassroots (84/83)

'Generally, the present state of affairs must always be taken into consideration. If a revolutionary or quasi-revolutionary state of affairs exists, a finding of undesirability would of necessity follow more readily. In this connection it must, however, always be borne in mind that care must be taken not to over-react to opposite points of view and that the very act of over-reacting that leads to a finding of undesirability would, as a result of its illegality, cause as much unhappiness that it could lead to or contribute to subversion or even violence. The greatest care must therefore be taken before a finding of undesirability is decided upon, and this is so even at a time like the present'.

§4.3.7 SUMMARY OF s 47(2)(d) AND (e)

The Story of Cyna (87/81) provides a useful summary of the scope of s 47(2)(d) and (e), the tests that are used and the interaction of paras (d) and (e). In many of the political cases considered by the Board these paragraphs merge as the content of a work may infringe upon the interests protected by both paragraphs.

'...In regard to s 47(2)(d), which protects the interest of peaceful relations between sections of the South African community, the question is whether the likely reader of this publication would react in such a manner as to violate or to contribute to a violation of the interests which are protected in the said paragraph? Would the publication have the effect of leading to or contributing to animosity between black and white? Once again the likely readership is of cardinal importance.

See also the dictum of Herbstein J in R v Nkatlo 1950 (1) SA 23 (C) Murray J in R v Sutherland and Others 1954 (4) SA 66 (T) at 75 F-G

Both of these quotations show that emotive content and effect are typical features of publications which endeavour to further a specific cause. The majority of the Appeal Board is of the opinion that the emotive content and the effect of this publication are not so strong as to endanger the relations between black and white or the safety of the State and the other interests mentioned in s 47(2)(e). To have such an effect there would have to be a more direct call to action. This applies despite the fact that the publication would have a popular readership. The publication would rather lead to reflection than contribute to action. The questions which are asked are not inciting. They are not only dated but are poorly forumulated and too vague to undermine. Although they may be calculated to undermine, this is not sufficient for a finding of undesirability within the meaning of s 47(2)(d) or (e). The calculation, judged on the probabilities, must lead to or contribute to a violation of the said interests. This is in general accord with decisions such as S v Essack 1974 (1) SA 1 at 21-22, S v Manong 1979 (4) SA 429 (0) at 435-436 and the "clear and present danger" doctrine of the American Supreme Court, bearing in mind that Holmes J said in Abrams v United States (1919) 40 SCT Rep 17 that the said danger would more readily be found to exist in a time of war and, it must be added, in times when terrorism and sabotage are prevalent'.

§4.4 SECTION 9 OF THE PUBLICATIONS ACT 42 of 1974

A finding of undesirability under s 47(2) may have the following effects: first, such a work may not be exhibited, sold or hired out; secondly, a further prohibition may be imposed upon a publication under s 9(1), (2), (3) or (4) of the Publications Act; thirdly, s 8 of the Act prohibits the production, distribution, importation or possession of publications found undesirable under s 47(2) and s 9. A prohibition of possession of a publication under s 9(3) must be confirmed by the Publications Appeal Board (s 9(5)). Prohibitions under s 47 and under s 9 are published in separate notices in the Government Gazettes. The publication of a notice in the Government Gazette is 'conclusive proof' of undesirability (s 4(b)). A contraventon of s 8 is a criminal offence the penalties for which are set out in s 43 of the Act.

It has been held in the following Supreme Court cases that the legal intention necessary for a contravention of s 8 is dolus: S v Russel SA 1980 (2) 459 (C) (s 8(1)(a)).

S v Cleminshaw SA 1981 (3) 685 (C) (s 8 (1)(d)).

S v Roodt SA 1983 (3) 382 (T) (s 8 (1)(a)).

S v Potgieter SA 1983 (4) 270 (N) (s 8 (1)(b)).

§4.4.1 PROVISIONS OF SECTION 9

9. Powers of committees relating to publications or objects..

(1)(a) A committee may, if -

(i) any edition of a publication or object which is published periodically in the Republic is in its opinion undesirable; and

(ii) in its opinion, every subsequent edition of that publication or object is likely to be undesirable,

declare every edition of such publication or object to be undesirable.

(b) After a declaration referred to in paragraph (a) has been made known by notice in the Gazette, every subsequent edition of that publication or object shall be deemed to be undesirable until that declaration is withdrawn by a committee and the withdrawal is made known by similar notice.

(2) A committee may, if any edition of any publication or object which is published periodically in the Republic is in terms of a decision of a committee undesirable, prohibit the distribution, except under the authority of a permit issued under section 12(2), of all subsequent editions of that publicaton or object, and may at any time withdraw such prohibition: Provided that if a prohibition was imposed and withdrawn under this sub-section no further prohibition shall be imposed in respect of the distribution of editions of the publication or object in question, unless after such withdrawal a decision has been given by a committee in terms of which an edition of the publication or object is undesirable.

(3) A committee may prohibit the possession by any person of any publication or object which is in terms of a decision of a committee undesirable.

(4) A committee may prohibit the importation, except on the authority of a permit issued under section 12(2), of publications or objects which -

(a) are published by a specific publisher; or
(b) deal with any specific subject,

if that committee is of the opinion that such publications or objects are undesirable or are likely to be undesirable, and may at any time withdraw such prohibition.'

These prohibitions are imposed in cases of radical undesirability only. Of the s 9 prohibitions those dealing with possession (s 9(3)) and the ban on the publication of future editions of periodicals are most frequently imposed.

§4.4.2 SECTION 9 (1)

Alle Menn (115 + 116/80)

'Wanneer geoordeel moet word of uitgawes van 'n bepaalde publikasie in die toekoms waarskynlik ongewens sal wees, soos vereis word deur art 9(1), moet gepoog word om soveel getuienis moontlik in dié verband te vergader. 'n Klaer moet in so 'n geval sorg dat daar voldoende voorbeelde van die betrokke publikasie aan die Direktoraat van Publikasies gestuur word. 'n Publikasiekomitee kan nie bra op grond van twee publikasies wat aan die einde van 1978 verskyn het nou aan die einde van 1980 'n beslissing kragtens art 9(1) maak nie. Hierdie twee publikasies het ook geen vorige voorbeelde in die beslissings van die komitees gedurende die afgelope ses jaar nie. Dit is dus nie moontlik om daaruit vas te stel of die publikasie waarskynlik in die toekoms ongewens sal wees nie. Die Appèlraad weet nie eens of hierdie publikasie op die oomblik nog bestaan nie. Die vraag kan natuurlik gevra word of daar nou nie addisionele getuienis aangevra moet word nie. Aan die ander kant is dit ook nie die plig van die Appèlraad om te gaan soek vir getuienis nie. Die oordeel van die Appèlraad is dus dat alhoewel daar 'n vermoede is dat hierdie publikasie vandag dieselfde redaksionele beleid het en daar vermoedelik ook dalk nog méér naaktheid in voorkom, die waarskynlikhede nie afdoende

bepaal kan word op die getuienis wat voor die Raad is nie. Die Raad is dus van oordeel dat 'n art 9(1)- verbod nie geregverdig is nie. Indien daar verdere getuienis is en veral verdere getuienis van meer resente uitgawes van die publikasie, kan die publikasiekomitee natuurlik weer kragtens art 9(1) so 'n verbod oorweeg'.

§ 4.4.3 SECTION 9(2)

SASPU National (105/83)

'In considering whether a s 9(2) prohibition should be applied to a periodical, one must, at the outset, bear in mind that this is a very strict measure. It introduces pre-censorship into an Act which is otherwise basically opposed to this idea. The measure must, therefore, be resorted to only in a state of emergency. This is a typical measure that is adopted in times when martial law is proclaimed and should, generally, be limited to such a situation. Although there have been various bomb attacks in South Africa and we are at war on the border between Namibia and Angola, the situation is far from that which exists when martial law is proclaimed. It is also of importance to note that the Minister of the Interior, stated categorically, during the 1983 budget debate, that pre-censorship did not apply in South Africa. Although s 9(2) is an exception to this statement, the spirit of that statement is of utmost importance when the applicability of the exceptional measure provided for in s 9(2) is to be judged. The decision of the publications committee is set aside. The same argument is applicable to the March 1983 issue of Wits Student, which was subjected to a similar prohibition. That decision is also set aside. The appeal in regard to the undesirability, as opposed to the applicability of s 9(2), of that publication was withdrawn'.

§ 4.4.4 SECTION 9(3)

Occasionally, when it does not automatically confirm the possession prohibition imposed by a publications committee, the Board publishes, in a series distinct from its appeal decisions, reasons for not confirming the decision of the committee.

IN DIE APPÈLRAAD OOR PUBLIKASIES

Datum van ondersoek : Mei 1982 Saak nr : 2/4/4(82)

Insake die tersydestelling van die besitsverbod op die werk Karl Marx, Frederik Engels - Collected Works Vol 16.

S U M M A R Y

Prohibitation of possession unnecessary where research will be unreasonably hampered by such a prohibition

---

B E S L I S S I N G

J C W van Rooyen : Die bogenoemde publikasie is deur 'n Publikasiekomitee ongewens bevind binne die betekenis van artikel 47(2)(e) van die Wet op Publikasies 1974 soos gewysig. Die Direktoraat van Publikasies het kragtens artikel 9(5) van die Wet die publikasie aan die Appèlraad oor Publikasies voorgelê vir 'n bekragtiging van hierdie besitsverbod.

Alhoewel die Appèlraad van mening is, soos die Publikasiekomitee, dat die vrye beskikbaarstelling en algemene verspreiding van die vermelde publikasie ongewens is, sal die navorsing op hierdie terrein onredelik gestrem word indien 'n besitsverbod ook op die publikasie geplaas word. In die Appèlraad se beslissing met betrekking tot Lenin - Collected Works (16/81) is hierdie saak behandel en is daar ook verwys na die mening van 'n deskundige ad hoc-komitee. Die benadeling van die navorsingsbelang moet steeds opgeweeg word teen die voordele van 'n besitsverbod. Wanneer 'n publikasie ongewens bevind word mag dit nie ingevoer word nie, mag dit nie vir doeleindes van verkoop of verhuur aangehou word nie, mag dit nie verkoop word

nie, mag dit nie verhuur word nie en mag dit verder ook nie op georganiseerde skaal uitgeleen of weggegee word nie. Om nou ook 'n besitsverbod op die publikasie te plaas lyk vir die Appèlraad onnodig. Navorsing oor Kommunisme word gestrem deur so 'n besitsverbod en waar 'n boek, soos die huidige, interessante en noodsaaklike navorsingsmateriaal bevat, sou dit onredelik wees om ook 'n besitsverbod op die boek te plaas.

Die Appèlraad het dus besluit om die besitsverbod tersyde te stel.

J. C. W van Rooyen

J C W van Rooyen
VOORSITTER : APPèLRAAD OOR PUBLIKASIES 24 Mei 1982

§ 4.4.5 SECTION 9(4)

Gold Star Publications (127/80)

'In deciding on the likelihood of the undesirability of publications by this specific publisher the committee and the Appeal Board have to base their decision on probabilities. All relevant factors must be taken into consideration. It must be clear that the publisher concerned still exists and publishes mainly what is undesirable. In some cases this may be deduced from one or two publications, but generally a committee should be careful not to come to such a conclusion on the mere evidence of one or two publications. For s 9(4) to be applicable, the complainant should build up a stronger case than that which would generally be apparent from one or two publications.

In the present appeal the appellant has submitted a number of examples of publications published by the said publishers. In the light of this evidence the Publications Appeal Board has come to the conclusion that the complainants have not built their case strongly enough and that there is insufficient evidence for a finding based on the probability required under s 9(4)'.

Alle Menn (115 +116/80)

'Vir sover dit die art 9(4) verbod betref is die Appèlraad van oordeel dat 'n verbod op die verdere invoer van alle publikasies van die betrokke uitgewer te verreikend en ingrypend is. Ons het nie voldoende getuienis oor die tipe publikasies wat hierdie uitgewer nog uitgee nie. Hierdie betrokke publikasie mag dalk maar 5% uitmaak van die totale tipe uitgewersaak van die uitgewer. Dit sou dus tot administratiewe probleme aanleiding gee indien so 'n algemene verbod opgelê word. Weer eens, indien daar verdere getuienis voor 'n publikasiekomitee sou

kom dat die uitgewer uitsluitlik of hoofsaaklik hierdie tipe publikasies uitgee, sou 'n art 9(4) verbod weer oorweeg kon word. Telkens sal die graad wat die ongewenstheid aanneem 'n belangrike faktor wees wat oorweeg moet word in hierdie gevalle'.

§5. POSITIVE OR 'MITIGATING' FACTORS

Positive or 'mitigating' factors are those factors that serve a positive counter against incitement to violate the interests protected in paras (c), (d) and (e) of the Publications Act. Thus the Publications Appeal Board takes account of the artistic, literary, scholarly or research value of a work as factors that would circumscribe the likely readership of a work and thus limit the likely import of a work. The harmful effect of matter upon the likely readership may also be reduced if a work is a satire, in which case the message is more oblique than it would be, for example, in a propagandistic work. The same principle applies to an historical description, in which potential influence in the contemporary context is tempered by the passage of time. The style of writing is also an important fact in determining the potential effect on the likely readers: if a work is boring, as are many works of propaganda, its likely readers are less likely to be motivated to commit acts of terrorism, subversion or violence than they would be by a work written in direct and compelling language. The counter balancing of interests also occurs where a work is written by a black author as this may promote an understanding on the part of whites of black aspirations, despite the fact that strong and emotive language may have been used by the author.

The approach of the Board generally to positive (mitigating) factors and to negative (aggravating) factors is briefly illustrated in the annexure to Heartland (43/82).

'Mitigating factors

Literary, technical, documentary, professional, scientific, or artistic merits are among these. The audio-visual or auditory is more likely to be undesirable than the written word. Visual presentations in a film, by virtue of its fleeting nature, can sometimes be a mitigating factor.

Mitigating or aggravating factors

These may be the likely readership and the distribution channel. Who the likely readers or viewers may be must be determined from the publication or the film itself. The subjective intention of the distributors must not be taken into account here. The publicity received by any work through publications control or in another way must also not be taken into consideration. The price and number of copies of a publication may provide evidence as to the likely readership. In other words, what has to be determined here is the inherent readership. Likely, too, does not simply mean "possible". The Act cannot be effective if recourse is to be had to possibilities: they could easily become far-fetched'.

§5.1 THE LIKELY READER OR VIEWER

The circumstances which led to the emergence of the 'likely reader', as opposed to the 'average reader', as the barometer to gauge the effect of a work are discussed by L Silver: Publications Appeal Board: A Closer Look at Nudity 1982 (99) SALJ 272 - 283:

> 'When the Publications Act first came into operation, the Appeal Board, in evaluating the undesirability of a work, enquired whether the matter would be tolerated by the South African community, as personified by the 'average,

decent-minded, law abiding, modern and enlightened citizen with Christian principles, not of the libertine or the ultra modern, nor of the prude or the ultra conservative, but that of the man of balance with a tolerant view in regard to the views of others' (He's My Brother (70/77) 2-3). Thus the Board worked with an absolute concept of undesirability, with no allowance being made for the likely reader of the work. As late as 1978 the Snyman Board found that while the Publications and Entertainments Act 26 of 1963 made allowance for the 'likely reader', the present Publications Act of 1974 did not (Joburg, Sis! (3/78)2). The correctness of this view was questioned in Human and Rousseau Uitgewers (Edms) Bpk v Snyman NO 1978 (3) SA 836 (T) where Myburgh J in an obiter dictum stated that '[d]ie Appèlraad regstrydig [opgetree het deur] sy ondersoekingsveld na wat onbetaamlik, onwelvoeglik en vir die openbare sedes aanstootlik is [te] beperk deur te bevind dat die waarskynlike leser as oorweging verbied is' (at 851). The Appeal Board took notice of this decision, indirectly mentioned for the first time in mid-June 1978 in The Human Figure in Motion (21/78)2 and Master Photography (22/78)3. In both these decisions mention was made of a limited readership, while the Capricorn Run (23/78)3 and The Mac Donnell (24/78)3-4 were considered by the Board to be directed at a sophisticated readership. The concept of the 'likely reader' reached its full flower under the acting chairmanship of Professor Van Rooyen, who began by applying this criterion to s 47(2)(a) but has gradually extended this test to a greater or lesser degree to s 47(2)(b) and (e) inclusive...' (1982 (99) SALJ at 279).

The attitude of the Board to the extension of these principles to political works is summarised in the annexure to Heartland (43/82)

'In the field of politics and national relationships biting and derogatory criticism has to be tolerated for the sake

of the preservation of democracy and freedom of speech. The proviso in this respect is that the material should not incite the likely reader (or contribute to inciting him) to confront another section of the population or to create or increase hostility or to perform, for example acts of sabotage, terrorism, public violence, or other subversive acts.'

The extent of the likely readership is determined, inter alia, by the artistic or literary merit of a work, in that a work with such merits is more likely to appeal to a circumscribed readership. A sophisticated likely readership is less likely to be adversely affected by offending matter in a work.

'The Publications Amendment Act 109 of 1978 introduced a major change in the Publications Act 42 of 1974 by the insertion of ss 35A and 35B, which provide for a committee of experts appointed by the Chairman of the Appeal Board from a list of persons designated by the Minister of Internal Affairs on the basis of their educational qualifications and special knowledge of art, language and literature, and their function is to advise the Appeal Board in respect of publications, objects and films. In Magersfontein, O Magerfontein! (7/80) 7-8 the Appeal Board stated that notice had always been taken of the literary and artistic value of a work, and that, following S v McBride 1979 (4) SA 313 (W), it 'will not lightly reject the opinions of specialist witnesses'. In 'n Droë Wit Seisoen (81-81/79)4-5 the Board said that '[a]lhoewel die Appèlraad ook deskundiges op hierdie gebied het, is hy as liggaam meer heterogeen saamegestel. Indien hy egter met 'n letterkundige werk te doen kry, besef hy dat dit 'n besondere kennisveld is en dat die mening van die komitee van letterkundiges swaar weeg'. Thus although the members of both the publications committees and of the Appeal Board are still appointed on the basis of their educational

qualifications and experience, statutory recognition is now given to the special case of matter having literary or artistic value. This contrasts sharply with the philosophy expounded by the Hon J H Snyman to the effect that '[t]he Act is concerned with "publications" and makes no special provision for publications of literary value' (He's My Brother (70/77) 3). The departure from this absolute standard, according to which all work, irrespective of its literary or artistic value, was judged by the same standard, is to be welcomed. For although the Board reserves to itself the overriding decision as to the undesirability or otherwise of a work, the Committee of Experts 'as status liggaam vir die Appèlraad behulpsaam is by die vasstelling van die beskouings van die waarskynlike leser en die korrekte eksegese van die teks' (Magersfontein, O Magerfontein! (7/80) 4)...' (1982 (99) SALJ at 276-7).

Thus the Human and Rousseau case led both to the formulation of the test of the likely reader and to the amendment of the Publications Act, allowing advice on literary or artistic matters to be provided to the Publications Appeal Board.

The Publications Appeal Board may be assisted in its estimation of the artistic or literary merit of a work by a committee of experts who advise upon the literary or artistic merit of a work by virture of their 'educational qualifications and special knowledge of and experience in art, language or literature' (s 35 B(3)). A Committee of Experts may be appointed by the Chairman of the Appeal Board at his own request but must be appointed by him when either the Directorate or a person with a direct financial interest in the work requests it. Such a committee was, for example, appointed to advise in An Introduction to the Writings of Ngugi (43/81).

'The publication...was found undesirable by a publications Committee within the meaning of s 47(2)(e) of the Publications Act 1974, as amended. The Directorate of Publications appealed to the Publications Appeal Board against this decision...based on the fact that... being a scientific work ...it would contribute towards literary knowledge about African writers [and]... that the likely readership of this publication would be limited to students of literature.... As requested by the Directorate the Chairman of the Publications Appeal Board appointed a Committee of Literary Experts to advise the Publications Appeal Board as to the literary qualities and use of the present work'.

A request by a publisher, author or any other person that a Committee of Experts be appointed to gauge, inter alia, the literary, artistic or scientific value of a work should be carefully considered. When the distributor, publisher or author of a work has doubts about the extent of the literary or artistic merit, he should consider carefully whether he wishes the work to be evaluated by a Committee of Experts because if experts find that the work has no such merit the defence of a possible limited readership will be seriously undermined. The work may then be considered to have a general readership and the possibility of an adverse effect increases in direct proportion to the readership or viewership of a work. If an appellant elects not to refer a work to a Committee of Experts the Board itself will still consider the question of literary or artistic merit. In some instances the Board appears to have shown a more enlightened approach than the Committee of Experts. See for example Store up the Anger (101/80), Divide the Night (60/81).

§5.2 LITERARY VALUE

The presence of literary value in a work is a positive factor in that it indicates that the work is likely to appeal to a sophisticated and more limited readership. The absence of such literary value is often considered by the Publications Appeal Board as an indication that the work is propaganda. The following works are illustrative of the approach and attitude of the Publications Appeal Board in regard to the literary value of a work.

Staffrider (70/80)

> 'What is published in Staffrider has been written for the literate by the literate and for the converted by the converted. It should be judged mainly in literary terms as what the Directorate of Publications has called "a publication of prestige quality" and "a medium for established and emergent writers". Even though Staffrider itself may regard literary standards as "elitist", the fact that it includes items of literary merit and validity serves to advance black culture, and that is, indeed, a mitigating and even commendable consideration.'

Staffrider (122/80)

> The Appeal Board quotes with approval the views of the Directorate 'that Staffrider fulfils the need for a publication devoted to the advance of black literature, however uneven the product may at times be. It also favours the growth of black culture and education, in themselves desirable attainments. The Directorate also points out that black literature cannot at all times avoid voicing a protest, justified or not, against allegedly discrimatory actions or conditions. It is common cause

between white and black that unnecessary and unfair discrimination should be progressively eliminated. This cause can only be furthered if blacks are given the opportunity of indicating what they regard as unfair treatment, as is done, on more than once occasion in this Staffrider. Such objections are often clothed in exaggerated and over colourful language which falls strange on Western ears. Exaggerated political invective however, is almost an art formed amongst Third World nations. The Directorate, in our opinion correctly, also points out that Western man, who believes in under-rather than over-statement, is often unnecessarily perturbed at these verbal onslaughts which, through their very exaggeration, lose a measure of their effectiveness'.

The Classic (37/83)

'It is important, nevertheless, to bear in mind that these passages are part of a larger whole and that its effect must be assessed within this context. Possibly through technical inadequacies, some of the passages are unclear, and if they are meant to be calls to action, they are too indirect and vague to serve as exhortations to revolt or formulas for subversion. The whole, that is, the publication itself, is of uneven quality and is not likely to make any marked impact on its readers, who are likely to be of the same sophisticated kind as those of Staffrider, though possibly even more limited in number because of the publication's slighter format and less attractive cover. It is comparison with Staffrider (70/80 and 122/80) in terms of what it aims at, its contents, and its likely readership, that has persuaded the Board that the Classic, vol 1, no 1 is not undesirable within the meaning of s 47(2)(d) and (e) of the Publications Act'.

Benoni Student Movement (159/81)

'The present publication is directed at a wide popular spectrum of readers. The limited readership of Staffrider

could therefore not be regarded as likely in the case of this publication'.

A Ride on the Whirlwind (114/81)

'It is the first novel about these [Soweto 1976] events by a black creative writer. The report of the experts is ambivalent. It clearly does not view the book as "great literature" or as a successful work of art... On the other hand, the experts do not find that it is without literary merit or potential...

The Board's view is that it is best to view the novel as a work with literary pretension - even if it does not succeed as a work of art or great literature. This is regarded as a mitigating factor and helps the Board to determine the likely readership'.

Transvaal Episode (49/82)

Although the likely readership of this publication cannot be regarded as sophisticated or intellectual, the likely reader would be of the more arduous kind. The publication has much more literary merit than A Ride on the Whirlwind (114/81) which was found to be not undesirable. This is borne out by excellent characterisation and, in spite of one-sidedness, there is some balance in this book in so far as weaknesses on both sides are dealt with. Barbarous acts by rioting blacks are described and portrayed as a reality which could very easily result from a black riot as the one described in this novel. It is clear that the ambition of the black leader to succeed, by way of defiance and not by way of violence, is not fulfilled and that therefore not only the white superintendent is unsuccessful, but also this leader'.

Store up the Anger (101/80)

'Alhoewel die onderhawige publikasie nie as literatuur beskerm kan word nie is dit darem ook nie 'n pamflet nie en het dit, soos aangedui, nie 'n leserskring wat as bloot populêr beskou kan word nie'.

Elegy for a Revolutionary (205/82)

'The Board did not find itself in agreement with the Committee's point of view concerning the publication's literary merits or, rather, demerits. Instead, it found the novel to be a sensitive portrayal of the minds and characters of a number of young men and women, involved in subversive activities and, in that respect somewhat reminiscent of Joseph Conrad's The Secret Agent and Under Western Eyes, recognised classics dealing with the theme of underground activities, violence, and even anarchy...'.

Fire Flames (2/81)

'Dit is duidelik dat hoewel die bundel nie sonder letterkundige verdienste is nie, dit van baie ongelyke gehalte is en nie genoegsaam om te vergoed vir die ongewenste aspekte daarvan nie. Wat hierdie ongewensthede betref, is daar nie verskil van mening nie. 'n Goeie vyftiental van die gedigte is opruiend van aard en al wat Blank is word uitegekryt.'

SASPU National (161/82)

According to the Publications Appeal Board '...the present publications committee found that the likely readers would be black workers. The Appeal Board has now come to the conclusion that although the contents of vol 2 (Case 89/81) justified the deduction that black workers would also be within the likely readership, the level of the present publication is more in accord with students as likely readers. Although the content is directed at

problems which workers have, the news itself is directed at a more intellectual readership. There is, of course, little guarantee that black workers will not possibly read the publication, but such readers would also be of a more intellectual kind. The publication is, therefore, not a propaganda medium directed at the masses but a more intellectual and sophisticated publication directed at a more intellectual likely readership, but dealing with the problems closely associated with problems of the black community at large...'.

Articles of Faith (15/83)

Ter aanvang moet gemeld word dat die boek, hoewel nie hoogstaande nie, tog 'n redelike mate van literêre meriete het. Verder is dit vanweë sy omvang (ongeveer 500 bladsye), stadige verteltrant en soms ingewikkelde genealogie, 'n boek wat die meer gesofistikeerde as waarskynlike leser sal hê. Dit spreek verder vanself dat die isolasiemetode van beoordeling nie toegepas mag word by die beoordeling van 'n werk nie. Hier kan juis, toevallig, gesê word dat indien die gevalle van kruhede bymekaar geplaas word en buite konteks gelees word dit maklik die afleiding sou kon regverdig dat hierdie boek inderdaad ongewens is. Word die boek egter gelees soos 'n boek normaalweg gelees word met inagneming van wie die waarskynlike leser is, is dit duidelik dat die skrywer wel daarop uit is om die rassevooroordeel van die Engelsman en veral die Afrikaner uit te beeld deur dit, alhoewel fiktief, geskiedkundig te probeer navors'.

§5.3 RESEARCH AND ACADEMIC VALUE

The research or academic value of a work is also regarded by the Board as a mitigating factor; usually because such a work is limited to a specialised subject and is written in a scholarly style. The following are examples of works that have academic or research value.

Ten Days That Shook the World (28/82)

'As a "classic account" of the Bolshevik revolution - to quote Taylor - Ten Days That Shook the World will be of interest only to the informed and sophisticated reader, who will recognise it as a book-to quote Taylor once again - "founded on a legend-one which has largely triumphed over the facts". As the ad hoc Committee said in its report on Lenin's works, "The Russian Revolution, in fact, was in itself no proletarian socialistic revolution, but actually a successful coup d'etat by the intelligentsia, supported by politically conscious proletarian elements instigated by the events (of the time)". The likely reader, that is, the informed, sophisticated reader should not be deprived of access to one of many accounts of the Russian Revolution, largely that of an eye-witness, whose object it was to record what he had seen and heard and not to pass ideological judgment or to make ideological predictions'.

The Structure of Marx's World View (58/80)

'The value of this work [present publication] is limited to a few specialists who would either be students of communism or revolutionaries who would not be affected by this publication at all. As to the effect of publicatons of this kind see S v Manong 1979 (4) SA 429 (O) at 435, S v Essack and Another 1974 (1) SA 1 (A) especially at 22 and S v Hosey 1974 (1) SA 667 (A) especially at 680'.

The publication was found to be not undesirable in terms of s 47(2)(e) of the Publications Act.

Modern Political Ideologies (79/80)

'In the opinion of the Board this book will be of inestimable value to students of political science. While the Board is in complete agreement with the publications committee as regards the potential danger inherent in the Communist Manifesto as well as several of the other

articles... it believes that this danger has to a large extent been neutralized by the book itself read as whole. It also believes that the advantages to be gained from its unrestricted availability will outweigh the potential danger'.

Great Political Thinkers (121/80)

'Die publikasie bevat omskrywings van alle politieke stelsels tesame met aanverwante aangeleenthede. Daarbenewens word werke aangehaal en na verwys van bekende staatsmanne en filosowe soos Plato, Thomas van Aguinas, Machiavelli, Hobbes, Locke, Rousseau, Bentham, Mill, Keynes, Attlee, Sigmund Freud, Herbert Hoover, Franklin D Roosevelt ens. In hierdie opsig bied die publikasie dus 'n omvangryke volume aanhalings en verwysings wat vir ernstige en gevorderde studente as gesaghebbende bronne in hulle navorsingsprojekte kan dien'.

An Introduction to the Writings of Ngugi (43/81)

'This publication is part of Heinemann's 'African Writers' series, 'which gives students of literature access to and insight into what is being written in English in various parts of the African continent. Killam's work is intended as a supplementary introduction to the novels, short stories, and plays of an eminent African writer and East Africa's best-known writer. Ngugi is to Kenya... what Ezekiel Mphahlele is to Southern Africa...[Furthermore] Killam is a professor of English who, apparently, specializes in African writing...These facts at once establish the likely readership of Killam's Introduction. Its probable readers will be only students of literature, more especially those interested in African literature, and then only those who are especially interested in Ngugi and have some knowledge of him and his writing... The interest in those writings is essentially localized because they are concerned mainly with the blacks of Kenya and their struggle not only for freedom but also to re-discover their African identity...'

Ngugi is a controversial writer, who believed inter alia 'that literature should serve social and political purposes.

For many of his views, as they are expressed in his writings, Ngugi is indebted, as Killam points out (pp 114-115), to related writers: not only to Marx and Frantz Fanon, to whom the Publications Committee has specifically referred, but also to William Blake, Walt Whitman, Emil Zola, and Joseph Conrad, whose writings are not regarded these days as being undesirable in any way. The ideas of these writers, Killam tells us, Ngugi has transmuted into fiction. What is to be decided here is not the undesirability of Ngugi's works in the South African context but the undesirability of a book about them, offered primarily as an aid to literary study. What the Appeal Board said of Great Political Thinkers (121/80) seems to be valid here: the publication, because of its specialised subject, has little propaganda value (if any); the likely reader will be only one who is in search of information (specifically about a writer); the publication, in setting out the views, especially the political views, of that writer, does not aim at propagating revolutionary ideas...'.

§5.4 HISTORICAL OR 'PERIOD' VALUE

A work that was found undesirable at the time of its publication may, on resubmission at a later date, be regarded as a 'period piece' because the reader has a sense of perspective based upon hindsight.

Transvaal Episode (49/82)

'The book is clearly set in the immediate aftermath of the Defiance Campaign of 1952-1953. It should therefore be judged against the background of the early 1950's. Although it is a period piece, it is nevertheless of

relevance to contemporary South Africa. The type of episode it depicts could easily recur in present day South Africa. It illustrates how people could, from both sides, over-react - largely as a result of their failure to understand the dynamics and character of South African society and the cultural background and ideals of other sections of the community. It shows how a trivial incident can escalate into full-scale violence and destruction'.

Second Class Taxi (97/82)

'In regard to the queston of prejudice to the relations between black and white, and the question of prejudice to the safety of the State, and the other interests mentioned in para (e), the Board has come to the conclusion that it probably will not affect these interests. The book is a period piece and relates primarily to the events of the time in which the author actually wrote the book. It is thus of interest and value as a piece of contemporaneous writing. The publication does not pretend to be an exact chronicle of the period. The book is fictional satire or even a "send up" of the then-current attitudes. As a whole the book is a caricature of South Africa in the 1950's as seen by a vagrant black....

On the whole this book is a good example of a case which may have been undesirable when it was written, but with the lapse of time and the perspective one has today, this book has turned into nothing more than a period piece in satirical form, albeit with certain shortcomings - but certainly not a book which could in the least affect race relations or the safety of the State or similar interests protected by s 47(2)(e)'.

Ten Days that Shook the World (28/82)

'Who is to be the probable reader can perhaps be judged from one's own reactions to the book. The Board

found it dull and difficult to come to grips with...What makes the book lack interest for the present day reader or, rather, blunts whatever interest he may have is that everything in it is so remote from our world and our times...The account, we must remember, was written in 1917, when the events dealt with were fresh in the minds of non-Russians, that is, of the English readers, especially in America, for whom the book was intended. The events, confined to Russia and a few months at the end of 1917, are now almost forgotten or, at least, unfamiliar to non-Russians. So too are most of the names of persons and places in the book...'.

§5.5 SATIRE

Academy Rewards (67/81)

'It is not the primary task of the Appeal Board to judge how successfully the satire has been produced. Generally, the dramatic and artistic merits of an entertainment are taken into consideration when it has to be judged whether a reasonable member of the South African community would tolerate certain scenes or words. This is part of the contextual approach and can, therefore, not be ignored. In the present matter, however, the Board found it unnecessary to go into the merits of the entertainment as satire. It is enough to say that it is a satire and that one should expect certain vulgarities and strong criticism in such a work. The present entertainment is also of such a kind that only people who are interested in the kind of satire which has become part of the entertainment offered by Robert Kirby would make up the likely audiences. Although the views of likely audiences and their tolerance are not the criterion, these do function as strong mitigating factors when the degree of tolerance of a reasonable man and the effect that the entertainment would have on race relations are to be judged'.

Second Class Taxi (97/82)

'...Similarly the book as a whole is not written in a bitter or propagandistic fashion. In fact at certain stages it can be regarded as hilarious. The author does not only caricature whites and police but also looks humorously and in an even-handed way at black politics, black attitudes and habits. The book does not propagate violence. Furthermore Staffnurse is not really involved: he is a looker-on, and even when he sees some of the forty-nine African kids shot by the police (p 195) he has nothing in common with them, "a wild intoxicated army, not like the lovable friendly group he'd controlled in Cape Town"'.

A Separate Development (104/80)

'The book is clearly a satire and as such it is directed at various groups and sections in the South African community.

The effect of the satire is actually weakened by the story which, in a sense, loses touch with reality. It is not a coloured or a black who becomes a victim of race laws but a white youth, over-conscious of his dark complexion as of his apparently abnormal breasts. By trying to escape into or, rather, to lose himself in the world of blacks and coloureds, he creates an entirely fanciful or unreal situation for himself. It is this that makes the willing suspension of disbelief, so necessary in all convincing fiction, difficult for the reader and makes the story unfunny and rather silly at times. To read incitement to disorder and subversion into all this is to bring a kind of seriousness into the reading of the novel that the novel itself does not warrant or to ascribe to it an effect that it simply does not achieve'.

§5.6 DISTRIBUTION LIMITED

The limitation of the distribution of the work to a particular group is a mitigating factor

Race Relations News (60/80)

'Die kernvraag bly of die stof in die onderhawige publikasie so opruiend is dat dit tot wanorde sal lei of daartoe sal bydra. Die waarkynlike lesers van hierdie publikasie is lede van die betrokke "Institute of Race Relations". Hulle is volgens appellant se verteenwoordiger lede van die "Liberal Establishment". Sy argument dat hierdie persone geensins deur hierdie publikasie beweeg sal word om die vermelde belange aan te tas nie word ondersteun deur die Appèlraad'.

Banning and Detention without Trial (53/80)

'The pamphlet deplores the "...banning of people without due process of the law"... Under the heading, "week of the innocent from May 26th", it urges all South Africans to unite in a week of solidarity with those who are detained or banned and announces that a group has decided to lead the life of a banned person for a full week as an act of solidarity....

According to a list appearing at the top of the first page of the pamphlet it was intended for distribution to religious leaders, members of Parliament, members of the public etc...'.

Exposing Total Strategy (30/80)

'The appellant has indicated that before the finding of undesirability and the prohibition of possession, the publication was distributed to students at NUSAS affiliated English campuses where critical analyses of Government policy are commonplace. Although it can be accepted that the intention of the publisher was only to distribute this publication on the said campuses, there is no guarantee in the publication itself that it would not have a wider likely readership'.

Flash Flash (23/83)

'Die Raad is dit volkome eens met die siening van die Direktoraat en daar bly nie veel oor om te sê nie. Selfs indien dit aanvaar word dat die blad 'n wye leserskring bestaande hoofsasklik uit linksgesindes in Suid-Afrika sal hê, is dit nie van so 'n aard dat die belange wat deur art 47(2)(e) beskerm word daardeur aangetas sal word nie. Indien hierdie publikasie ongewens bevind moet word, sou min buitelandse nuusblaaie hier toegelaat kan word, want daar is weinig van hulle wat nie in een of ander opsig krities teenoor Suid-Afrika is nie'.

SASPU National (161/82)

'...The main question is whether the publication contains a direct or indirect call which would, on the probabilities, violate or contribute to a violation of the interests safeguarded by s 47(2)(e), which deals with State security, general welfare, and peace and good order. An important aspect is the likely readership of the publication. [The Board dealt with this aspect in relation to two issues of SASPU National, previously considered by the Board.] In Case 89/81 this Board found that although the evidence in regard to the distribution (which indicated that it was distributed on black university campuses) could not entirely be rejected, as it could have a bearing on the likely readership, there was very little in the publication itself which indicated that it would have such a limited likely readership. It was held that although the language is at times on an intellectual level, it is generally directed at workers and not at students. In Case 61/82 the Board, however, found that there was insufficient evidence that the likely readership would consist of workers, black students, and scholars. The Board held that it appeared that the likely readers would in the main be black students. The present publications committee found that

the likely readers would be black workers. The Appeal Board has now come to the conclusion that although the contents of vol 2 (Case 89/81) justified the deduction that black workers would also be within the likely readership, the level of the present publication is more in accord with students as likely readers. Although the content is directed at problems which workers have, the news itself is directed at a more intellectual readership. There is, of course, little guarantee that black workers will not possibly read the publication, but such readers would also be of a more intellectual kind. The publication is, therefore, not a propaganda medium directed at the masses but a more intellectual and sophisticated publication directed at a more intellectual likely readership, but dealing with the problems closely associated with problems of the black community at large'.

§5.7 PRICE

The price of the publication in relation to its likely readership is also regarded as a mitigating factor.

Staffrider (70/80; 122/80)

'The likely readership of the present publication would be the more sophisticated black man and the white man who is interested in reading literary material by blacks. The editorial quality and price of the publication are both indicative of this'.

§5.8 PREVIOUS PUBLICATION OF MATTER IN NEWSPAPERS

Banning and Detention without Trial (53/80)

'The Appeal Board finds itself in entire agreement with the Director of Publications that the pamphlet does not exceed the bounds of permissible political comment. It does not agree with the Publications Committee that it is

calculated to encourage confrontation and violence, even in view of the explosive situation obtaining at the time of its publication. In fact it contains nothing that has not appeared in the press on numerous occasions in the past'.

Al Zahf Al Akhdar (55/81)

'Although it is quite true, as the Publications Committee has pointed out, that the publications do not differ from articles which appear in many European journals and that they maintain a high standard of journalism, the former is not a factor which should influence the judgment under the relevant section, and the latter is, at the most, an alleviating factor'.

§5.9 THE NEED FOR AN INFORMED PUBLIC

Mao for Beginners (7/81)

Die Appèlraad het die saak soos volg gestel: 'Dit is natuurlik noodsaaklik dat Suid-Afrikaaners moet kennis dra van die lewensbeskouing van Mao Tse-Tung - om Suid-Afrikaners af te sluit van hierdie kennis sou onrealisties wees. Wanneer daar dus op wetenskaplike of selfs semi-wetenskaplike wyse 'n oorsig gegee word van sy lewe, sal dit waarskynlik nie ongewens bevind kan word nie. Die probleem met die huidige publikasie is, soos die Direktoraat dan ook aantoon, dat dit op heel populêre wyse geskyf is en dat dit op die ou end tog nie objektief is nie'.

An Introduction to the Writings of Ngugi (43/81)

'...and, above all, it is of cardinal importance, at present, that South Africans should be informed or inform themselves of what blacks are thinking and writing not only in the Republic but throughout the continent of which they are part, as well'.

Great Political Thinkers (121/80)

'Die Appèlraad aanvaar dat dit op die huidige tydstip veral van kardinale belang is dat Suid-Afrikaners ingelig moet wees oor die basiese grondslae van die kommunisme. Dit bring mee dat die waarskynlike voordele en nadele teen mekaar opgeweeg moet word. Die navorsingswaarde oorskadu die uiters geringe moontlikheid van nadeel. Die Appèlraad beoordeel op grond van waarskynlikhede en nie op grond van moontlikhede nie. Sien S v Manong 1979 (4) SA 429 (O)'.

Hierdie publikasie is nie ongewens ingevolge die bepalings van art 47(2) bevind en die verbod ingevolge art 9(3) verval dus ook'.

§5.10 BLACKS' PROBLEMS SHOULD BE UNDERSTOOD BY WHITES

Whites should be given a clear understanding of black aspirations.

Transvaal Episode (49/82)

'...Furthermore, the present publication can be regarded as a study into the effects of a communication gap between black and white. It implicitly draws attention to the absolute necessity of a proper dialogue and a proper consideration of grievances. The reader of this novel would regard it as a period piece and be in a position to compare that situation with the present situation. Although such a riot could still easily flare up as a result of a communication gap, the present forms of dialogue are to a much greater extent geared to deal with grievances and complaints professionally. The book is of importance in so far as it amounts to a warning of the kind of effects which could follow from a communication gap and an improper dealing with grievances. In the light of this conclusion it is clear that this book would not, on the probabilities, contribute to animosity between black and

white or be detrimental to the safety of the State or the peace and good order. Although the publication sides with the inhabitants of the location, this does not suffice for a finding of undesirability. South African readers of this book will be in a position to judge this in relation to the prevailing situation and would not be incited to undermine or be more inclined to undermine the security of the South African State as a result of the reading of this book. The book would lead to reflection and not to a repetition of the violence portrayed'.

Forced Landing (45/80)

'Though there is much in the anthology that is a matter of opinion, there is much that provides the reader with insights into the tribulations, more especially, of urban blacks: the dangers of over-crowded trains, the terrorism that train gangs indulge in, the problems in urban hostels, the alcoholism to which shebeens contribute, and indirectly, commercial exploitation....

Weighing all the positive and negative factors which have been mentioned above against one another, the Board has come to the conclusion that the present publication would not contribute towards the endangering of the safety of the State or create hostility or contribute towards the creation of hostility between blacks and whites. On a balance of probabilities it would rather contribute towards a better understanding of the black man's problems and create new avenues and methods of dialogue in the pursuance of peaceful co-existence'.

Staffrider (70/80)

'The important question about these contributions is whether they are more than reportage...The fact is that the black masses, even the illiterate, have heard at gatherings, like funerals, the things that have been re-uttered here, and finding Staffrider undesirable on such

grounds, would be like locking the stable door after the horse has bolted. Whites are likely to gain more than to lose by being given access to black thinking through this kind of medium'.

§5.11 TOLERANCE TOWARDS BLACK WRITINGS

Tolerance should be displayed toward black writings as blacks do not have representation in Parliament.

Gerugte van Reën (67-68/78)

'Omdat die swartman ook nie in die Parlement sy saak kan stel nie, behoort die verdraagsaamheid ten aansien van sy gedrag en dus ook van sy geskrifte, hoër te wees as wat normaalweg die geval is'.

§6. NEGATIVE OR 'AGGRAVATING' FACTORS

Negative or 'aggravating' factors are essentially the antithesis of the positive or 'mitigating' factors discussed under § 5. The Publications Appeal Board adjudges factors to be negative if such factors are likely to incite the likely readers of a work to violate the interests protected in paras (c), (d), or (e). A work that contains elements of undesirability but that appeals to a limited likely audience is generally found to be not undesirable. Where, however, such a potentially undesirable work appeals to a wide readership as a result of the directness of the medium employed or of the popularity of the style of writing, the presence of these aggravating factors may result in a finding of undesirability.

§6.1 NATURE OF THE WORK

(i) Pamphlets

Varsity (192/82)

'The publication Varsity (Billy Paddock Speaks) which was issued in pamphlet form (in contrast to the normal newspaper form of Varsity).

It was argued by appellant that as this was the statement read by Paddock in court, it was perfectly legal for appellants to publish this statement. What appellant has lost sight of is the fact that it is now published in an altogether different context by way of a pamphlet with a much wider likely readership. It is, furthermore not exempted by the provisions of s 8(2) of the Act, which

states that "the provisions of s 8 shall not apply with reference to the printing or publication of any matter in any separate volume or part of an bona fide series of law reports, which does not form part of any other publication and consists solely of reports of proceedings in courts of law". As this publication does not form part of a bona fide series of law reports and, in any case, does not consist solely of reports of proceedings in courts of law, this exemption is not applicable'.

Church and Industry (140/80)

'It is clear that the present publication amounts to a borderline case - and hence the appeal by the Directorate. If the present material or parts of it were published in pamphlet form, the Appeal Board would have found it undesirable. The nature of the present publication and its more limited likely readership are, however, alleviating factors'.

(ii) T-Shirts

Halt all Apartheid Tours (36/83)

'In the case of Apartheid, a Real Hurdle, the fact that the publication was in pamphlet form was held to be an aggravating factor. A shirt of this nature, carrying its message to everyone with whom the wearer comes into contact, must have even greater effect than a pamphlet.

The fact that white and black cricketers are shown together on the black man's chest does not have any great alleviating effect. The message carried by the shirt remains that of discrimination by whites against blacks, and the blunt, almost brutal way in which it is represented will, in the opinion of the Board, cause or heighten ill-feelings against whites amongst a substantial number of blacks'.

(iii) Calendars

Grassroots (14-15/82)

'...The fact that it is a calendar and would therefore have a wide likely viewership and remain in view for a whole year, is an aggravating circumstance. The calendar, which is illustrated with drawings and photos associated with the so-called freedom struggle, accentuates the important dates in every month. In this manner, 16 June (the Soweto Uprising), 30 March (the banning of the A N C), 26 June (Freedom Charter Day), 18 April (Freedom in Zimbabwe), 9 August (National Womens' Day, commemorating the day when 20 000 women marched to the Union Buildings to protest against pass laws), and other dates associated with community grievances of a more local nature, are specifically noted. Although it is doubtful whether each of these photos would be found to be undesirable, their cumulative effect together with the dates recorded will, judged on the probabilities, incite hatred and make the likely viewers more prone to disrupting public order in the same manner. In the light of the fact that the publication is a calendar, it would also, prima facie, seem to be so undesirable that its possession should also be prohibited'.

(iv) Pictorial Representations

SASPU National (161/82)

'During the hearing the chairman pointed out to the publishers that the poster-like silhouette on the back page is regarded as a particularly aggravating circumstance and that it would be to their advantage not to repeat this kind of propagandistic drawing'.

(v) Records

The Road is Much Longer (184/82)

According to the publications committee

> '...The song "Crossroads" with its theme that the authorities "don't give a damn about families", and that the homes of 20 000 people will be bulldozed builds up a climate against the authorities. The song "Lungile Tabalaza" takes this further and is extrememly dangerous to the State. It contains a serious accusation against the police. It creates the impression of violence and torture where the police force people to speak. This led to the death of Tabalaza, although it is stated in the words of the song that some say it was murder and others that it was suicide. It is, however, a song which definitely cannot be approved. The song "You Only Need Say Nothing" is equally dangerous in that the police are again shown in a very bad light. A climate of grievances and protest is being built up, and especially as the words are accompanied with the beat of African rhythm to enhance the impact of the words, the song can incite people towards insurgency and violence which can be dangerous for the safety of the State. The song "Thabane" contains a reference to Steve Biko and his death "as one of many". On the basis of all this the committee is of the opinion that the record should be banned and that its possession would also be prohibited'.

The Publications Appeal Board held that '...[e]ven if it be accepted in the appellant's favour that the facts on which the songs are based are true and further that he is bona fide in his intention to create compassion for these events, the issue in terms of the Publications Act is whether the present presentation, on a record with a popular likely audience would, on the probabilities, contribute to a violation of the interests safeguarded by s 47(2)(e) ie the safety of the State, the general welfare, and peace and good order. The Board has also considered these songs within the general context of this record and has also taken note of the content and trend of the other songs in deciding whether the record would have a popular audience. The Board has also taken note of the fact that, according to the appellant, his songs have never engendered violence during his many public performances. Ultimately, however, the issue is whether this record, which would be played within a different context, would have the said effect.

The songs generally have a strong rhythm which contributes to their general effect...

In connection with the song "Crossroads", it is clear that it goes further than the mere creation of compassion but would, on the probabilities, contribute so much hatred against the State that it would undermine the State and its authority. It is not the mere fact of criticism against the authorities by the accentuation of the "cutting down" power of the authorities that is undesirable. The song is full of hatred against these authorities and would undermine the security of the State. In the song "You Only Need Say Nothing" a similar effect is reached but only more so. Emotional aspects such as "blood that runs clear and cold", "a bullet in your back" are accentuated...'.

§6.2 PROPAGANDA

We Shall Sing for the Fatherland (53/81)

'Whatever political impact the play may have been intended to have is considerably lessened, inter alia, by the form of the play and by the treatment of the plot....

The one-act form of the play contributes to its ineffectiveness as a medium of propaganda or as "a rallying call", if that is what it was intended to be. There is no room in the play for the clear development of ideas to illustrate a line of thought to be adopted or a course of action to be taken. As the Committee of Experts has rightly remarked, the cause of and the need for the conflict with which the play is concerned hangs vague and academic in the air and is nowhere presented or developed as a dramatic actuality. The play, because of its brevity, is too slight to convey an enduring message to its audiences, certainly not a message undesirable in terms of s 47 (2)(e) of the Publications Act'.

The Promised Land (187/82)

'This is no propaganda film in the ordinary sense of the word but amounts to a plea for action against the resettlement programme by showing certain aspects which are said to be unreasonable'.

§6.3 SYMPATHY WITH BANNED ORGANISATIONS

Izwe Lase Township (144/82)

'...it must be borne in mind that strong and derogatory language is part of the South African political scene, and that it is also necessary that there should be a free flow of information in regard to grievances. On the other hand sympathy with banned organisations or communism, for example, would be a negative aspect'.

§6.4 CUMULATIVE EFFECT OF A WORK

South Africa in the 1980's (32/81)

'It is true that much of what appears in this publication has already appeared in print in South Africa at some or other time but not in such concentrated form as it does here with a resultant greater impact'.

Work in Progress (54/82)

'In regard to vol 21 the Board has come to the conclusion that it is undesirable within the meaning of s 47(2)(e) of the Act. On the negative side there are the mainly one-sided reports on unrest and state security cases and the almost continuous polarisation between worker and employer and black and white. On the positive side there are the facts of the limited likely readership, the inherent difficulty in reading this kind of material, and the fact that people have the right to criticise and bring

grievances to the fore. The aspect which, however, tipped the scales in the present matter was the repetition and frequency of words which carry in themselves the very seeds of insurrection and revolution. The article "Organising Women?" is an excellent example of this. The words "struggle", "oppression", "oppressed", "masses", "exploitation" and "resistance" are so frequent that they taint the whole article with nothing less than a call to overcome the oppression by "struggling" against the "exploitation". The article amounts to an indirect call to organise women into a seditious resisting force which would contribute to public disorder and is accordingly undesirable within the meaning of s 47(2)(e) of the Act. The article indicates that "mass participation" is necessary and calls for mass participation in community organisation, which within the framework of this article could easily lead to a serious infringement of public order in the Republic'.

§6.5 POSSIBLE PRESCRIPTION OF A WORK IN SCHOOLS

In Fire Flames (2/81) the Board held that the fact that a collection of poems might be prescribed in schools was an aggravating factor.

§7. GENERAL CONSIDERATIONS

There are certain factors that might prima facie be considered as negative factors that the Publications Appeal Board views neutrally in gauging the potential undesirability of a work. For example the fact that a political work is biased or is not based upon the truth does not make the work undesirable.

§7.1 TRUTH IS NOT A REQUIREMENT

Church and Industry (140/80)

> 'The Appeal Board has no correcting function (such as the Press Council, for example, has) and therefore even matter which is clearly untrue would not necessarily be undesirable. Everything depends on the manner in which the matter is presented'.
>
> In the result the Appeal Board has come to the conclusion that although this publication is a borderline case the publication does not go far enough to bring it within the ambit of s 47(2)(e)'.

However, in Campus Action for Democracy (133/82) the Board stated:

> "On the negative side it is clear that the publication does contain statements which are not true."

§7.2 BIASED OR ONE-SIDED PRESENTATION

A publication may contain biased and one sided matter: it

is not necessary that it convey a balanced assessment of a situation. One-sidedness may, however, become a negative factor see § 7.2.3

In Grassroots (79/81)

'The Publications Appeal Board reiterated its views relating to the political publications and bias. These views have been stated inter alia in Staffrider (70/80; 122/80), Forced Landing (45/80) and Two Thousand Seasons (24/80): 'When publications of a political of semi-political nature such as the present ones are to be judged, the adjudicator must bear in mind that strong and derogatory language is a typical feature of the South African political scene. Political criticism is often one-sided and, in most cases, would probably not fall within the bounds of good taste or be in accord with the opinion of a substantial number of South Africans. This does not, however, suffice for a finding of undesirability under the Act. To fall within the ambit of the Act, the publication or any part of must at least contribute to a violation of the interests safeguarded by the said paragraphs'.

The Board stated in Football in South Africa (78/80) that:

'...The criticism contained in the pamphlet is one-sided but can be regarded as fair political comment...'.

Social Review (127/81)

'The committee is correct in its deduction in this regard. The issue which must be decided upon in terms of s 47(2)(e) of the Act is whether this publication would contribute to a violation of the interests safeguarded by s 47(2)(e) of the Act. It is a typical feature of political publications that they are negatively selective in their material, are often biased, often lacking in

objective discussion, and favour a change in the existing constitutional order. This by itself, however, cannot be regarded as undesirable within the meaning of the Publications Act. Only matter which is prejudicial to the safety of the state is undesirable'.

This We Can Do for Justice and for Peace (155/81)

'It is not the task of this Board to re-make such a film. Excisions cannot in any way affect the general philosophy, the general tone, and the general message of the film; that is, more especially, cannot minimise either its impact or make its inadequacies more obvious. The truths in the film should be allowed to speak for themselves, as also should the clichés, the striving for emotional effect, and the biases, of which there are many obvious ones... The one-sided presentation and lack of balance is unfortunate, but is likely to be counter-productive.

All the excisions ordered by the publications committee amount to political criticism, which would be regarded as such by likely viewers.

The appeal succeeds and the decision of the publications committee ordering excisions is set aside'.

The Covenant (89/80)

'The Appeal Board agrees with the publications committee that the book is one-sided and that there is a selective misrepresentation of social and political situations. On the other hand the Appeal Board is of the opinion that the very one-sidedness of the book taken together with its length detracts from the work's probable incitement or undermining value. The very one-sidedness, often coupled with naivity in regard to the socio-political life in South Africa, would ultimately be counter-productive rather than inflammatory. The inescapable conclusion is that the book, considered as a whole, amounts

to a beating of old drums with similar and out-dated sounds emanating from them. The book would have no influence on people who are already revolutionaries and would not convert others to this cause'.

Ecunews (12/83)

'The fact that the publication is very one-sided, does not necessarily make it subversive. In the attack on the government's apartheid policy as one of exploitation and suppression responsible for the relocation problems, little account is taken of the larger aspects of relocation, such as the drift to the towns, the resulting unemployment, the increase in crime, and the almost insurmountable resultant problems in regard to housing and health. It could be argued that South Africa, without apartheid, would still have had an acute relocation problem. Ecunews is, however, under no legal obligation to present all sides of a question.

As in the religious writings of a polemical nature, texts in the Bible are often taken out of their original contexts to justify a certain line of argument. Although not always in the best interests of truth, this procedure cannot be regarded as prejudicial to the safety of the State as such'.

The Promised Land (187/82)

'...At the outset, it is clear that in the same manner as other films in which a political cause is championed, the present film is one-sided and rarely refers to the possible betterment of the situation of many blacks as a result of the resettlement programme. In the end a call is made to the conscience of Christians concerning what is termed to be an injustice against these blacks....

The case is often overstated, and nothing positive is said about what is being done for the benefit of the blacks

in the cities and the development of the homelands. It is, however, not the task of the Appeal Board to judge whether the film amounts to a balanced account of the situation. Its function is limited to what has been said above.

...The conclusion that the Board has reached is that the truths in the film should be allowed to speak for themselves, as also should the clichés, the striving for emotional effect, and the biases, of which there are many obvious ones. The one-sided presentation and lack of balance is unfortunate but is generally likely to be counter-productive...'.

§7.2.1 ONE-SIDEDNESS AND COMMUNISM

Cuba (2/80)

'Die basiese tema van die rolprent is die avonture van 'n Britse huursoldaat in diens van die Batista-regering net voor die oorname van Cuba deur Castro se gewapende rebelle. Redelik getrou aan die geskiedenis word die korrupsie van die Batista-bewind uitgebeeld maar ook word in kapitalis uitgemaak as gewetenloos, sedeloos, plesiergierig en 'n volslae uitbuiter van die werkers. Aan die anderkant word die rebelle in 'n gunstige lig gestel. Alhoewel hulle geweld gebruik en dood om hulle doel te bereik word hulle optrede as redelik voorgehou... Die vertoning van die reuse skare wat Castro volg na die val van die Batista-bewind, beoog ook niks anders as om die huidige bewind in Cuba te verheerlik nie'.

Chiang and Mao (27/81)

Die komitee oor publikasies het die publikasie nie-ongewens bevind. Teen hierdie beslissing het die Direktoraat appèl aangeteken, hoofsaaklik op grond daarvan dat die boekie bereken is om die jeug te indoktrineer met 'n verwronge en gevaarlike gunstige beeld van Sjinese kommunisme en Mao-Tse-Tung.

Die meerderheid van hierdie Raad het met die Direktoraat se siening akoord gegaan en bevind dat die publikasie 'n eensydige voorstelling van die geskiedenis gee wat die kommunisme ophemel. Veral is gelet op die volgende uittreksel:

> "We say that the Long March is the first of its kind ever recorded in history...For twelve months we were under daily reconnaissance and bombing from the air by scores of planes. We were encircled, pursued, obstructed and intercepted on the ground by a big force of several hundred thousand men. We encountered untold difficulties and great obstacles on the way, but by keeping our two feet going we swept across a distance of more than 20 000 li (a Chinese mile, 650 metres) through the length and breadth of eleven provinces. Well, has there even been in history a long march like ours? No, never..."'.

Mao for Beginnners (7/81)

'Hiermee word ook nie te kenne gegee dat mens ooit 'n punt sou kon bereik waar enige oorsig van Mao Tse-Tung se lewe uit 'n Suid-Afrikaanse oogpunt gesien heeltemal objektief gegee sou kon word nie. In enige oorsig van sy lewe sou noodwendig van sy Marxisties-Leninistiese stellings weergee moes word en dit sal onder sekere omstandighede wel ongewens wees. Die kern van die vraag draai dus nie om wat hier staan nie, maar hoe dit aangebied word en wanneer dit op so 'n populêre wyse aangebied word tesame met tekeninge en foto's wat ook die aandag van kinders sal trek en hou, word daar beweeg na 'n meer riskante terrein. Mens het nie hier te doen met een of ander oorsig van sy lewe in 'n moderne nuustydskrif soos Time of Newsweek nie, maar wel met 'n publikasie wat te doen het met 'n direkte en eenvoudige kweek van Marxistiese gevoelens'.

§7.2.2 ONE-SIDEDNESS AS A NEGATIVE FACTOR

Although it is not a requirement that a work should give a balanced portrayal of a situation (see § 7.2) this lack of objectivity may be regarded as a negative factor.

Work in Progress (204/82)

'The publishers must, however, be warned to steer a course clear of revolutionary language... In regard to the summary of labour disputes and security trials an attempt must be made to give a more objective review of the facts. In their present form they are regarded as a negative factor'.

§7.3 DUPLICATION OF PART OF A PUBLICATION

The fact that exerpts of the publication may be duplicated at a later stage is not legally relevant in considering the undesirability of a publication.

Great Political Thinkers (121/80)

'Die feit dat dit geleentheid bied vir die fotostatering van dele daarvan, is juridies irrelevant. So 'n stuk is 'n nuwe publikasie en moet as sodanig hanteer word'.

Annexure to Heartland (43/82)

'It is the book that has to be judged, not the reader or the writer. The issue therefore is not whether the reader can duplicate parts of it or is going to read parts of it to audiences. The duplicated part is another publication that has to be adjudicated anew by a

publications committee. The criminal relevance of such duplication or reading is not of concern here. The person responsible should be charged with his actions under s 8(1)(a) Act 42 of 1974 or under the Internal Security Act, for example'.

§7.4 PUBLISHER OF A WORK

The Publications Appeal Board generally regards the identity of the publisher of a work as being a factor irrelevant to the question of undesirability. The publications committees have tended, by contrast, to attribute a particular importance to the status of the publisher concerned. In Divide the Night (60/81) the Board stated:

> 'The status of the publishing house, to which the publications committee referred, is irrelevant in such an inquiry'.

see too, Flash Flash (23/83)

> 'Daar dien op gelet te word dat afgesien daarvan dat die leserskring daardeur bepaal of beïnvloed mag word, die feit dat 'n publikasie deur 'n linksgesinde of self kommunistiese organisasie uitgegee word geensins as rede of selfs bydraende faktor kan dien om dit ongewens te bevind nie. 'n Bevinding kan slegs op die inhoud daarvan bereik word.
>
> Die Appèl slaag, en die bevinding van die komitee dat die publikasie ongewens is word tersyde gestel'.

In the annexure to Heartland (43/82) the Board summed up the position as follows:

'The motives and, consequently, the status and record of the writer, producer, or distributor may not be taken into account. It is the contents of the book or film that have to be adjudicated in terms of s 47(2) Act 42 of 1974. In an enquiry in terms of s 47(2) the contents of other publications in the same series may also not be taken into account. In an inquiry under s 9(1) that, to be sure, is relevant'.

APS Bulletin (1/81)

Die komitee se redes vir 'n bevinding van ongewenstheid sluit in.

> '"(a) Die publikasie is die mondstuk van die ANC, wat 'n verbode organisasie is, en as sodanig deur art 9(4) verbied is".

'Die Direktoraat het in die eerste plek tereg die komitee se stelling dat die publikasie 'n mondstuk van die ANC is, betwis. Die uitgewer is nie die ANC nie, maar APS.

Die publikasie is 'n nuusbulletin wat aan koerante uitgestuur word deur die APS. Die uitgewer die, APS, is die "All Africa Press Service" van Nairobi. Blykbaar is dit 'n gereelde persbulletin wat aan koerante uitgereik word deur 'n interkerklike liggaam. Hierdie vermoede word versterk deur die uitgewer se teleksadres soos deur die woorde "APS Feature" aangedui. Die bewoording "ANC: South Africa" bo regs op bl 1 is slegs in joernalistieke kode-woord vir die artikel.

In die eerste plek moet daarop gewys word dat indien die komitee reg sou wees in sy stelling dat die ANC as uitgewer kragtens art 9(4) verbied is, dit in elk geval nie nodig vir die komitee sou gewees het om oor hierdie publikasie te besluit vir sover dit art 47(2)(e) betref nie. Tweedens is die blote feit dat 'n publikasie deur 'n verbode organisasie uitgegee word nog nie afdoende bewys

dat dit ongewens binne die betekenis van art 47(2)(e) van die Wet is nie. Elke publikasie moet op eie meriete beoordeel word. Die toets is steeds of die pamflet op waarskynlikheidsgrondslag beoordeel, werklik tot die skending van die art 47(2)(e) - belange sal bydra'.

§7.5 POLITICAL SLOGANS

The use of political slogans is permissible.

A Separate Development (104/80)

'To regard the expression "Come the revolution" as a political slogan that has the function of incitement is to be unaware of its general use. It falls in the same category as "When my ship comes home", in that it serves to introduce an over-optimistic or over-idealistic wish, though it carries the kind of irony and sarcasm there is in the proverb "The heavens may fall and we may have lark-pie for supper"'.

Social Review (127/81)

'A call for "One man, one vote" is also, not in itself undesirable'.

Grassroots (14-15/82)

'The clenched fist, shown in some photos, has lost its strength as a means of incitement on its own'.

Quodlibet (7/79)

'The song "The Future Belongs to us", is connected with the general political undertone of the show and suggests the take-over of the country by blacks. However blacks are within their rights to campaign for political advancement and to prophesy that the future belongs to them, so long as it is not done in a manner likely to

arouse feelings of hostility among sections of the community to to undermine the authority of the State. It cannot be said that the song can have such an effect'.

§7.6 OVERSEAS IMAGE OF REPUBLIC

Harm to the image of the Republic abroad is not a ground for a finding of undesirability.

The Covenant (89/80)

'...That the book would be harmful to South Africa when read in other countries is probable. This aspect, however, does not fall within the jurisdiction of the Appeal Board. The book has been printed overseas and is freely distributed there'.

§7.7 CONDITIONAL APPROVAL OF A WORK

It is within the power of the Publications Appeal Board to impose restrictions or conditions upon a work that would otherwise be undesirable.

Great Books of the Western World (147/81)

'The Publications Appeal Board has come to the conclusion that if vol 50 is distributed as part of this set it would reach a limited likely readership. The Manifesto, within this context, forms a minor part of a larger set. Different criteria would apply, however, where this volume is sold on its own or if the Manifesto is published by itself. In regard to the sale and importation of the set the Board has therefore decided that the publication is not undesirable and that it may be imported and sold as part of this set of books. Where, however, this publication, even as part of the set, is kept in a library and could, naturally, be lent out on its own, the

same restrictions would apply to it as would apply to other publications of the same nature. As this set would probably also be bought by libraries, such as municipal libraries, the Board has decided not to prohibit the sale of this set to such libraries. If, however, someone wishes to borrow the book, the necessary permission must be sought from the Directorate of Publications, Private Bag X9069, Cape Town, 8000'.

Ten Days that Shook the World (28/82)

'In the light of the above the Appeal Board's conclusion is that the book is not undesirable. On the other hand notice must be taken of the Directorate's submission that the book is pro-communistic. A wide distribution could, on the probabilities, have exactly the effect which s 47(2)(e) guards against. The South African parliament has taken a strong stand against communism, and some limitation must be placed on the distribution of a book which could, if widely distributed, contribute to that very cause. The Board has therefore come to the conclusion that the publication may be imported and sold to lending libraries who may lend it to any member of the public. In this way the likely readers would not be deprived of access to this account of the Russian revolution. The book's availability would, however, be more limited, and the probability that people could be influenced by the book and especially the appendix, which contains communistic writings, would be limited to a mere possibility'.

§8. THE TREATMENT OF SPECIFIC SUBJECTS IN WORKS

§8.1 GENERAL CONSIDERATIONS

The Publications Appeal Board has stated that groups such as politicians, the police, the Cabinet or the legislature are not to be regarded as a 'section of the inhabitants' within the meaning of this term in paras (c) and (d) of the Act. As the individual member of these groups potentially incorporates the characteristics of the larger group or section a derogatory reference to him may result in a violation of the interests protected in paras (c) and (d). If the interests of one section only are violated the matter falls within the ambit of para (c). If more than one section of the inhabitants is involved para (d) is invoked. (See also § 4.2.2). It however, is unclear from the decisions of the Publications Appeal Board at which point the individual represents the 'section or sections' of the inhabitants.

§8.2 CRITICISM OF THE GOVERNMENT

The Publications Appeal Board, by permitting the use of strong and derogatory language in political matters, allows criticism of the government since this is by definition the core of political activity. The Appeal Board, however, distinguishes between permissible criticism of a particular government and impermissible criticism of the system of government. While this distinction may be clear in countries such as Britain where two parties are often returned to power on an alternating basis while upholding the same system of government, it is very difficult to apply this distinction to

the government of South Africa. Here one party has been in power since 1948 and it appears that the system of government and the policies of that government have merged into one. A further complication is that, because this government is elected by the white people, from the white people and for the white people and because the system of government is aimed primarily at preserving white interests, a black perspective on politics very often moves into an extreme criticism of government policies and consequently of the system of government (See § 8.7).

Academy Rewards (67/81)

> 'It substantially amounts to a political satire. Certain attitudes of white South Africans, and certain laws are satirised, and in the process members of the Government and of the opposition parties become butts of the satire ....
>
> With regard to the derogatory references to politicians, the Board has come to the conclusion that they do not fall within the ambit of its functions. The Publications Act protects the interests of the community as a whole or of sections of the community. Although the community or sections of it can, in some cases, be brought into contempt through individuals, this is not the case in the present matter. It must, however, be pointed out that these references could fall within the area of defamation or criminal defamation ...!'

Criticism, even violent criticism, of the government and of government policy is permissible provided that it does not lead to or contribute to violence (See § 4.3.1). The view of the Publications Appeal Board in this respect is well summarised in Anti-SAIC News (38/83):

'The issue before the Appeal Board is whether this publication contributes directly or indirectly to a violation of the interests safeguarded by s 47(2)(e) of the Publications Act, which deals with State security, general welfare, and peace and good order. As has been held in many previous decisions by this Board, a direct or indirect call to public violence, an overthrowing of the existing government by extra-constitutional means, terrorism, sabotage, and subversion generally would be prejudicial to the safety of the State. In this connection it is of importance that s 47(2)(e) limits undesirable matter to matter which is prejudicial to the safety of the State, etc. This, in no other words, is the finding for which the adjudicator must strive. To come to this conclusion it would, logically, not be incorrect for the adjudicator to consider the likely effect that the publication may have. As long as the criterion remains "is", the "likelihood" test seems to be the most pratical method of guaging what "is"'.

Race Relations News (60/80)

'Die vraag [aangaande ongewensheid binne die betekenis van art 47 (2)(e)] is nie of die inhoud van 'n publikasie stof bevat wat strydig is met die beskouings van die regering van die dag nie, maar wel of die stof van so 'n aard is dat dit sal lei tot, of sal bydra tot, die skending van die vermelde belange. In hierdie verband moet die waarskynlike leserskring van die publikasie ook in ag geneem word. Sien in dié verband S v Manong 1979(4) SA 429 (O) op 435. Sien ook S v Russel 1980(3) SA 460(K)... Wat egter duidelik is uit die vermelde beslissing is dat die vermelding van griewe in die vorm van politieke kritiek teen die regering van die dag besonder ver kan gaan. Word die huidige publikasie met daardie publikasies vergelyk, is dit duidelik dat dit nie ongewens is nie'.

It's a Boy (159/82)

'...In S v Looij 1975(4) SA 703(RAD) is die beskuldigde byvoorbeeld onskuldig bevind ten spyte van 'n skerp aanval op die (Rhodesiese) regering vanweë optrede teen skiëntologie. Die hof het bevind dat die aanval alleen 'n aanval teen die regering was. Dit was geen aanval op die grondslae van die sisteem nie. So sê MacDonald RP:

> "No matter how scurrilous, defamatory or grossly offensive a written or verbal attack on the Government may be, such an attack is not subversive unless it is an attack on the system of Government as distinct from the Government operating for the time being under the system. The right of members of the public to criticise, even in scathing terms, the action of a Government elected for the time being under a democratic constitution is one of the cornerstones of democracy. Subversion is an extremely serious offence. So serious that it is only committed when the statements alleged to be subversive are established beyond reasonable doubt to be made with the intention of undermining not merely the Government for the time being but the system or constitution under which that Government was elected and operates."

Dit geld ook vir politieke kritiek teen 'n bevolkings- deel. Die bekende stelling van Steyn R in Buren Uitgewers v Raad van Beheer oor Publikasies 1975(1) SA 379(K) op 423 is ook hier toepaslik: [Aangehaal in § 4.2.3]'.

Football in South Africa (78/80):

'People and organisations have the right to criticize government policy provided the publication does not cause or contribute towards political violence. As in S v ffrench-Beytagh 1972 (3) SA 430(a) at 439F-G the aims of this particular pamphlet and the flamboyant challenging language employed in it "are not necessarily to be equated with the crime of participation in terroristic activities". The probable reader of the pamphlet is black

and he will find the language and information contained in the pamphlet acceptable when used for political comment'.

J R News (123/80):

'The publication is sympathetic to the black man's political cause. The question is whether it would affect State security as protected in s 47(2)(e) of the Act. This Board has often stated that the mere fact that a publication differs in its political views from that of the government of the day is not enough for a finding of undesirability. The Board has also held that even derogatory political criticism may be published. Strong and derogatory language are well-known features of the South African political scene'.

The Publications Appeal Board has held that criticism of the government falls within the proscription of para (d) if it is calculated to promote racial hostility or animosity.

Exposing Total Strategy (30/80)

'The publication on the whole sets out to expose total strategy [of the Government] and thereby generally casts suspicion on the programme of the Government to better the black man's position. This, in itself, cannot be regarded as undesirable. It has been emphasised by this Board and by the courts that strong and derogatory language its a typical feature of the South African political scene and that this is not undesirable. When, however, the system of government, as distinct from the government operating for the time being under the system, is attacked or undermined a publication is undesirable. Before such a finding can be made it must also be clear that the publication would, on a balance of probabilities, violate the interests, which are protected in s 47(2)(d) and (e) or contribute to the violation thereof...'.

Die Afrikaner (42 + 51/80)

'...Hierdie verskynsel [kritiek teen die regering] is dan ook so bekend dat koerantlesers of die bywoners van politieke vergaderings 'n hoë mate van immuniteit opgebou het teen die skerp en veroordelende taal. Sien R v Sutherland and Others 1950(4) SA 66(T) op 75F-G (aangehaal) asook Du Plessis v Minister of Justice 1950(3) SA 579(W) op 528.

> "Soos ek reeds gesê het, ... die pamflet is 'n aanval op die beleid van die Nasionale Party en Regering. Persone wat die Regering van die land op hulle skouers neem moet kritiek, selfs uiters skerp kritiek, en veroordeling van hulle beleid en wetgewing deur hulle meerderheid bewerkstelling verwag. Algemeen staan dit elkeen vry om sulke kritiek uit te spreek en die bedoeling van die wetgewer kon nooit gewees het om geoorloofde kritiek, en propaganda vir 'n verandering van Regering te verhinder nie. Natuurlik, as van 'n geleentheid misbruik gemaak word om gevoelens tussen die rasse op te sweep, kan die handeling verbied word, en die gevolge van die handeling gekeer word. Alle veroordeling van die Naturellebeleid, die beleid betreffende die Indiërs en die Kleurlinge, en wetgewing of beoogde wetgewing op die gebiede, kan as gevolg hê vyandige gevoelens teen die Regering wat aan bewind is. Dit is egter nog nie te sê dat die bereken is om vyandige gevoelens tussen die Europese seksie aan die een kant en die ander seksies of een van hulle aan die ander kant to verwek nie.Kritiek en veroordeling van die uitgesproke beleid van enige politieke party, of die party wat aan bewind is, of die offisiële opposisie uitmaak, or selfs geen van die twee rolle speel nie, kan dieselfde gevolg he"'.

Football in South Africa (78/80):

'The pamphlet in question... attacks the administration of soccer in the Republic and declares that it can never be nonracial, while apartheid exists. ...The pamphlet states that the Government's case that soccer is now non racial is based on four lies [listed in judgment].

The Board felt that the pamphlet would not in effect bring about or contribute towards a polarization between black and white and thus was not harmful to the relations

between those two sections of the inhabitants of the Republic. The criticism contained in the pamphlet is one-sided but can be regarded as fair political comment. The language is at times extreme but not such as to promote hostility or violence. See R v Sutherland & Others 1950(4) SA 66T at 75 F-G and Die Afrikaner (51/80). Nor does the pamphlet aim at overthrowing the established order in the Republic, as averred by the respondent. The pamphlet cannot be declared undesirable per se because it is known that the nature and activities of SANROC are violently anti-South Africa....'

The call to revolution may be either direct or indirect. Thus the publication South Africa in the 1980's (32/81) was held to constitute an indirect call to revolution as any suggestion of possible peaceful change was systematically demolished.

'The booklet is apparently designed to prepare Roman Catholics and, possibly, Christians in general throughout the world for the inevitability of the overthrow of the South African Government and the establishement of black majority rule by violent means, and to justify such violence. Its introduction contains a veiled threat to foreign powers that have economic ties with South Africa to break those ties while there is still a chance of gaining Black Africa's favour....

The booklet goes on to condemn, in scathing terms, practically every aspect of government policy regarding race relations. As has been said more than once in the past, however, violent criticism of government policy is part of the South African political scene, and only when a publication actually encourages disobedience to the law of the land, violence, or revolution can it be said to be prejudicial to the safety of the State, the general welfare, or the peace and good order.

In his address to the Board, Mr van der Vyver, [applellant's advocate] ... contended that the inevitability of violence suggested in the publication will not incite to violence as many people already accept such inevitability; racial violence is, indeed, already part of the South African scene, albeit sporadic violence. He contended, moreover, that there is no direct incitement to violence in the booklet. This contention is debatable in view of statements such as: "The success of the pressures exerted by the guerilla wars in Mocambique and Zimbabwe have left little doubt as to the advisibility of armed struggle" (p 36) and others appearing in the committee's reasons. But even if it be accepted that there is no direct incitement to violence in the publication just as a geometric theorem is sometimes conclusively proved indirectly, by showing a contrary assumption, to lead to an impossibility, so, in the opinion of the Board, this publication does encourage violence by systematically demolishing any suggestion that South Africa's racial problems can be settled by peaceful means, and by writing off, in advance, any attempt by the government to do so as doomed to failure.

...Many more instances can be quoted, but the general implication is the same: everything done or planned by the government to redress wrongs, to ease tension, and to create a more favourable climate for consultation is condemned as part of a sinister scheme to keep the black majority in perpetual bondage.

In the chapter "Inkatha", its founder, Chief Buthelezi, who is prepared to co-operate with the government to some extent is derided and dismissed as of little consequence, while in the next chapter the ANC is shown as going from strength to strength'.

§8.3 THE POLICE

A portrayal of police violence may be treated under the

provisions of s 47(2)(a), which deals with matter that is 'indecent or obscene or offensive or harmful to public morals,' as the depiction of violence is included under this paragraph. The judgment in Mad Max (47/80) is a good illustration of this:

> 'Aangesien die hele kwessie van geweld iets is wat in toenemende mate die kommer van die Suid-Afrikaanse gemeenskap wek, is dit nodig om te beklemtoon dat sinnelose, volgehoue gewelddadigheid in 'n rolprent aanstootlik vir die openbare sedes is en dat indien bevind word dat 'n rolprent alleen gebruik word as 'n dekmantel om hierdie sinnelose gewelddadigheid te wys, die rolprent afgekeur moet word.'

Matter which depicts violent methods used by the police in combatting crime may however also fall within the ambit of matter prohibited in other paragraphs of s 47(2). The interaction between,for example, paras (a) and (d) is particularly well illustrated in a minority judgment given by J J H Malherbe, vice chairman of the Publications Appeal Board in The Tough Ones (4/82). The Appeal Board in the majority judgment considered this work under s 47 (2) (a) only as follows:

> 'The message which the film purports to put across is that the only way to combat violence effectively is to use violence and other irregular methods against criminals, the protection of the law being too widely in favour of criminals. Inspector Leo Tanzi, of the Italian Police Force, believes that this is the only method to combat crime. On the other hand, his vice-commissioner warns him time and again that these methods are against the law, in the end it is clear that Tanzi's methods are more effeactive than the conventional and regular methods of the vice-commissioner.

The question that the Appeal Board must adjudicate upon is whether the theme - methods used in combatting crime - is dealt with in a not undesirable manner in this film. If the message which the film puts forward - that crime must be countered by irregular and even violent methods - is harmful to public morals it will lead to a finding that the film is undesirable within the meaning of s 47(2)(a) of the Act... the question is whether a substantial number of likely viewers of this film would be more susceptible to the application of violence and/or irregular methods in the countering of crime. The Board has come to the conclusion that although the message which the film puts across is not in accord with our criminal procedure and can be regarded as immoral, it is not put over so strongly that it would have the said detrimental effect. It would rather lead to discussion and reflection on criminal procedure. It is also the right of a film producer to put this message across by way of an audio-visuial medium'.

Two members voted in the minority. One of them, Mr J J H Malherbe, filed a minority report which is published below.

J J H Malherbe:'.... The real problem which the film presents .... is, to my mind, that irregular, illegal and brutal methods employed by the police are portrayed as laudable and desirable .... Inspector Tanzi makes no pretence of following normal methods of detection and interrogation. His modus operandi is to detain a suspect by fair means or foul (for instance by the planting of heroin in Moretta's car) and at the first opportune moment to use his fists with unrestrainded violence and brutality to make his victim talk....

It is inevitable that this film will be compared with Mad Max (47/80) which has a somewnat similar theme, but in that film it is only after he has been driven to

desperation by the wanton killing of his wife and child that the hero takes the law into his own hands and resorts to violence.

The rule that no one should take the law into his own hands is common to all civilised countries and is one of the corner stones of the administration of justice. Should it be abrogated, chaos would result and the administration of justice become impossible. Yet, what this film advocates is that the police, the protectors and upholders of law and order, should themselves be above the law and entitled to use illegal and brutal methods.

No one suggests that, in dealing with dangerous and vicious criminals, the police should use kid glove methods, but the powers of the police are of necessity circumscribed throughout the civilised world, and every time a policeman transgresses the bounds of his powers, a consequent weakening, even though it may be a slight one, of the administration of justice must inevitably result. A very graphic illustration of what could happen has just come, appropriately enough, from Italy itself, where evidence of confessions made by members of the Red Brigade, on trial for their part in the kidnapping of General Dozier, was rejected by the court because it found that the confessions had been extorted from the prisoners by illegal methods. Police tend to neglect other avenues of gathering evidence once a confession has been obtained, and it is not inconceivable that the accused, or some of them, may eventually escape conviction as a direct result of irregular police methods.

The general rule that a person is entitled to express his views by word of mouth, by the printed word, or through the medium of a film, is qualified by the common law, for example, the law of high treason, and various statutes, including the Publications Act. This Board has from time to time expressed the view that any theme is permissible depending on the way in which it is treated. With this view

I agree, if by "theme" is meant "subject matter". Thus a film with vice or satanism as theme need not necessarily be undesirable. But if it can be said that the theme of a film is the proposition that vice or satanism is laudable and desirable, then, to my mind, that film can in no circumstances be otherwise than undesirable within the meaning of s 47(2)(a) of the Publications Act.

From the preceding comments it will be clear that in my opinion, this film, having a theme which is basically immoral and potentially harmful to the administration of justice, is undesirable within the meaning of s 47(2)(a) of the Publications Act.

Another aspect which causes concern and which I regard as at least an aggravating factor is that it is an unfortunate fact that large sections of the non-white population in this country regard the police not as protectors but as oppressors and enemies. While this film is set in Italy and has no racial overtones, non-whites will tend to identify the police in the film with the South African police, and see in it a justification for their attitude. The film consequently, may engender a worsening of the relations between the police and non-whites'.

The police are not considered to be a 'section of the inhabitants' in terms of s 47(2)(c) of the Act and consequently cannot be brought into riducule or contempt. If,however, the police are portrayed as belonging to a particular language group, such as Afrikaners, they may then constitute the Afrikaans section of the inhabitants of the community. The work in which this is portrayed may then be considered for undesirability under paragraph (c), provided that the method of portrayal amounts to 'ridicule or contempt'(See § 4.2.3) This appears from Store up the Anger (101/80):

'Die boek gaan oor ene Sam Bhengu wat deur die veiligheidspolisie doodgemartel word terwyl hy deur hulle aangehou word. Die betrokke polisiemanne word in 'n uiters swak lig gestel en Sam Bhengu is die klaarblyklike held van die verhaal. Die meeste van die polisiemanne is Afrikaners en daar word met hulle gespot....

Wanneer hierdie tipe stof in 'n verhaal ingebou word, gee dit natuurlik aanleiding tot gebelgdheid by baie mense en sal dit ook deur baie as besonder dislojaal beskou word.... [dit] is egter nog nie genoeg om dit ongewens to bevind nie. So het nie een van die regters in Buren Uitgewers (Edms) Bpk en 'n Ander v Raad van Beheer oor Publikasies 1975(1) SA 379(K) bevind dat die boek Kennis van die Aand die staatsveiligheid enigsins aantas nie.... Sien ook S v Russel 1980(2) SA 459(K) waar dit nie lyk asof die hof geneë is om skerp aanvalle op die oproerpolisie as nadelig vir die staatsveiligheid te beskou nie. Daar kan ook nie gesê word dat die polisie kragtens art 47(2)(c) veragtelik of belaglik gemaak kan word aangesien die polisie klaarblyklik nie 'n bevolkingsdeel binne die betekenis van die Wet is nie. So het die Appèlraad ook al dikwels beslis dat die begrip "bevolkingsdeel" 'n veel enger betekenis het en dat die beoefenaars van 'n bepaalde beroep en verenigings nie daaronder tuisgebring kan word nie. Die vraag sou gevra kon word of die feit dat die meeste van die polisiemanne Afrikaanse name dra nie beteken dat die Afrikaner hierdeur veragtelik gemaak word nie. Hierop is die antwoord dat die waarskynlike leser van hierdie publikasie nie hierdie polisiemanne sal sien as verteenwoordigers van die Afrikaanse bevolkingsdeel nie. Net so min sal hulle beskou word as verteenwoordigers van die polisie. Dit is inderdaad kriminele gedrag wat hier uitgebeeld word en die karakters verteenwoordig die kriminele element'.

If a work portrays two sections of the inhabitants and the actions of one of these causes hostility or animosity towards

the other group, such a work is considered under para (d). Thus if the police are whites and their 'victims' are blacks such a work will fall within the ambit of s 47(2)(d) if it creates racial hostility between these two groups. The Publications Appeal Board relies very heavily upon the dictum of Steyn J in Buren Uitgewers (Edms) Beperk v Raad van Beheer oor Publikasies 1975 (1) SA 379(K) at 423 B-G to separate criticism of Afrikaners and whites that is merely unflattering from that which results in their being brought into ridicule or contempt.

If the criticism of the conduct of the police as authorities of the State, results in so much hatred for the police on the part of others that police authority is undermined the work in question will be considered under para (e).

It is usual for works in which the police are criticised to be considered under both paras (d) and (e).

Droë Wit Seisoen (81-82/79):

> 'Skerp en geniepsige kritiek het nog altyd die Suid-Afrikaanse politieke lewe gekenmerk. Die onderhawige publikasie gebruik die aanval op die veiligheidspolisie as 'n middel tot 'n skerp politieke aanval teen aspekte van die veiligheidswetgewing van die Republiek. Die redelike Suid-Afrikaanse leser weet dat politieke kritiek dikwels eensydig, ongegrond en oordrewe is; sal besef dat hy hier met 'n boek te doen het wat in dié gees gelees moet word; sal besef dat, al sou sommige insidente in die boek selfs 'n feitelike basis kon hê, die geïsoleerde geval hier uitgebou is tot 'n ongeregverdigde veralgemening; is bekend met die bevolkingsverhoudings in die Republiek en sal die voorstellings daarvan in die roman daarteen kan opweeg; sal besef dat, alhoewel hy darem nie hier met 'n politieke pamflet te doen het nie, hy tog te doen het met 'n boek

waarin die skrywer, objektief beoordeel, sy hand oorspeel deur blatante eensydigheid en 'n dikwels oppervlakkige karakterisering. Die Appèlraad onderskryf die mening van die Komitee van Deskundiges dat die effekte van die boek so rou is dat dit sy doel verby skiet en dat die boek eerder teen-produktief as ondermynend is'. Sien ook die hooggeregshof beslissing in Buren Uitgewers (Edms) Bpk en 'n Ander v Raad van Beheer oor Publikasies 1975 (1) SA 379 (K) op 423B-G (See § 4.2.3). Sien ook S v Looij 1975 (4) SA 703 (RAD) op 710D (aangehaal) en ook R v Malianga 1963 (4) SA 226 (FC) 229, R v Mugabe 1965 (1) SA 514 (SR AD), R v Ngwenya 1965 (1) SA 243 (SR AD), S v Mutasa 1970 (4) SA 610 (RAD), S v Nathie 1964 (3) 588 (A) 596E, Pienaar and Another v Argus Printing and Publishing Co Ltd 1956 (4) SA 319 (W) op 318C, S v ffrench-Beytagh 1972 (3) SA 430 (A) op 439F-G.'

Looking on Darkness (64/80):

'With regard to the so-called political accusations that have been launched against this novel (see the views of Van Wyk J P in Buren Uitgewers v Raad van Beheer oor Publikasies 1975 (1) SA 379(K) the majority of the Board has come to the conclusion that this book does not fall within the ambit of ss 47(2) (c), (d) and (e)....a work must in fact violate the interests protected by these paragraphs or contribute to such a violation. The fact that accusations are made against the police or the procedure followed in courts does not necessarily bring a work within the ambit of these paragraphs. It is indeed of the utmost importance that matters of a political nature and especially with regard to race relations should be described and criticised openly - and in this regard strong, biased and even derogatory language is a typical feature of the South African political scene. Two other books by Brink, Rumours of Rain (67-68/78) and A Dry White Season (81-82/79) have been found to be not undesirable despite their politically contentious nature. Even should the statements not be true, that would not in itself

suffice for a finding of undesirability (see Store Up the Anger (101/80)). As in the past, the Board can only re-affirm its unconditional approval of the dictum by Steyn J in the said Buren case at 423 B-C'. (See § 4.2.3).

A Separate Development (104/80):

'Although the police are presented in a comically disparaging rather than a ridiculous light, what they inflict on Harry Moto is not nearly as humiliating or brutal as what is inflicted on Bhengu in Store Up the Anger (101/80) and on Magubane in The Covenant (89/80), both of them novels that have not been found undesirable. A Separate Development, being a different type of novel and having a different purpose from these, tries to achieve a different kind of effect in its treatment of the police and the prison scenes. They do not have the same seriousness and are, in fact, almost lighthearted'.

A Ride on the Whirlwind (114/81):

'The main issues are whether the book (and, in this respect, especially the presentation of white members of the Police Force in a contemptible manner and the idolising of black insurgents) would create an animosity between blacks and whites or lead to or contribute to a violation of s 47(2)(e).... Both issues must be decided in the light of the probabilities and the likely readership of the publication. Mere calculation is not sufficient' (See Divide the Night 60/81)).

...Despite differences of opinion as to literary merit, a finding of undesirability of this book as a result of the torture scene and derogatory references to the administration of justice would be contrary to the finding of the court in Buren Uitgewers v Raad van Beheer oor Publikasies 1975(1) SA 379(C), and the spirit of the judgment in S v Russel 1980(2) SA 459 (C), and the decisions of the Publications Appeal Board in regard to

Store up the Anger (101/81), The Covenant (89/90), and Kennis van die Aand (131/81)....

Although it presents a point of view which is contrary to that of many whites and blacks and idolizes revolutionaries, the Board's conclusion is that the book substantially amounts to a historical account of what happened in Soweto in 1976 as seen through the eyes of a black contemporary. The book would be read as such, and the truths in the book should be allowed to speak for themselves, as also should the clichés, the striving for emotional effect, and the biases, of which the more obvious one is the treatment of the police, who are mostly described as inefficient and brutal. This is, however, nothing new in novels of this kind and would, as a result of its one-sidedness, have no inciting effect. It can in fact be regarded as being counter-productive'.

Divide the Night (60/81):

'Many readers would regard this book as an abuse of the novel for propagandistic purposes (see the report of the Committeee of Literary Experts) and would accordingly find it in poor taste or even disgusting. Although there is a new trend in this book in so far as a woman is tortured [by the police] the Board has come to the conclusion that this kind of writing would not create animosity between whites and blacks or undermine public order. By over-emphasizing the torture scene by the explicit references to excretion and sexual stimulation, the book loses much of its otherwise inciting nature. In this respect it becomes counter-productive and would lead to disgust with regard to the description rather than the fictional characters who torture the woman. The South African reader has also become acquainted with this kind of negative writing: although the drum differs from other drums, the sounds are the same and in their similarity they lose their inciting effect. See the report of the Committee of Literary Experts at p 4.

Furthermore, a finding of undesirability of this book as a result of the torture scene and references to the administration of justice would be contrary to the finding of the Court in Buren Uitgewers Edms Bpk en 'n Ander v Raad van Beheer oor Publikasies 1975(1) SAS 379(C), the spirit of the judgment in S v Russell 1980 (2) SA 459(C) and see also Store up the Anger (101/81) and The Covenant (89/80).... The present publication does not incite or attempt to undermine but can be regarded as a sharp attack by way of fiction against the possible abuse of powers. This amounts to political criticism, which the Act does not intend to stifle, even if unwarranted - annoying as this kind of criticism by way of fiction may be to a substantial number of South Africans.

In the result the appeal succeeds and the decision of the publications committtee that the publication is undesirable is set aside'.

Second Class Taxi (97/82)

'...Although the novel is most critical of the police, since the novel was written this has become a common feature in novels about race relations, e g Separate Development (104/80), Divide the Night (60/81), A Ride on the Whirlwind (114/81) and Kennis van die Aand (131/81) which was found to be not undesirable by the Supreme Court on this ground - see Buren Uitgewers (Edms) Beperk en 'n Ander v Raad van Beheer oor Publikasie 1975(1) SA 379(K). The criticism against whites must be read against the background of the important dictum of Steyn R in the Buren case [quoted in Case 131/81.10]....

Derogatory references to the administration of justice and accusations against the procedure followed by the courts is not undesirable (See Elegy for a Revolutionary (205/82) above. The picture appears to change, however, where a work imputes

improper motives to a judicial officer. In such a circumstance it might constitute contempt of court.

Droë Wit Seisoen (81-82/79):

'Die publikasie rig ook 'n skerp aanval teen die regstoepassing deur die howe: valse getuienis word gelewer, getuienis word verbloem of, as gevolg van die veiligheidsituasie, van die landdros wat die geregtelike nadoodse ondersoek doen, weerhou. Nêrens word egter gesê dat 'n landdros of regter bevooroordeeld is nie. Hierdie tipe kritiek is toelaatbaar.'Sien ook S v Gibson 1979 (4) SA 115 (D) op 121G, S v Tromp 1966 (1) SA 646 (N).

'Selfs waar die kritiek gebaseer is op verkeerde feite, word' dit nie as minagting van die hof beskou nie tensy onbehoorlike motiewe aan die regterlike beampte toegedig word. Sien S v Gibson NO and Others 1979 (4) SA 115 (D) op 127F-H en 128A-F; en R v Sachs 1932 TPD 201 op 204.

'Om op te som: nes die polisie is die howe een van die pilare waarop die veiligheid, welsyn en goeie order van die staat rus. Indien dit egter nie eens minagting van die hof is om te beweer dat getuienis voor die hof verbloem of vervals is nie, kan dit kwalik neerkom op 'n aantasting van die veiligheid van die staat, sy welsyn en goeie orde'.

§8.4 THE SOUTH AFRICAN DEFENCE FORCE

The suggestion that alternative means of national service be made available to servicemen, who are conscientious objectors on political grounds, was held by the Publications Appeal Board to fall within the bounds of permissible political criticism. When, however, a work seeks to influence people to evade military service this has been held to be prejudicial to the safety of the State. Moreover statements that relate to Defence Force atrocities, have been held to prejudice the interests protected under para (e).

Milcom (104/79)

> 'Ten spyte van hierdie simpatieke houding, lok die publikasie egter nie persone uit om wederregtelik diensplig te ontduik nie. Die publikasie soek op hierdie stadium steun vir sy poging om die Wetgewer te beweeg om alternatiewe vorme van diensplig in te stel en wel in so 'n mate om ook hierdie gevalle te ondervang. Aangesien art 47(4) van die Wet die Appèlraad verbied om kennis te neem van die bedoeling van die voortbrenger by die beantwoording van die vraag of die publikasie ongewens is. ...Op die ou end kan die publikasie beskou word as politieke kritiek wat nog nie so ernstig is dat dit oorgaan tot 'n aftakeling van die sisteem self nie. Die Weermag is een van die pilare van die S A Staat en 'n aanval daarteen wat van so aard is dat dit die respek en agting van Suid Afrikaners vir die Weermag aftakel sou in 'n ander lig beskou word. Die huidige publikasie is egter in die eerste plek gerig teen die Wetgewer en die regering wat by wyse van sy meerderheidstem die wetgewingsbeleid kan stuur'. Die publikasie is nie ongewens bevind nie.

Allegations of atrocities committed by the SADF are insufficient grounds for a finding of undesirability under s 47(2)(e):

Work in Progress (204/82)

According to the Publications Appeal Board: '...The publications committee, in the main, based its finding of undesirability [of the publication, Work in Progress], on an article under the heading "The Namibian Dispute". The article clearly sides with SWAPO and quotes from certain newspapers and from the Catholic Bishop Conference report, which was also reported in a newspaper to the effect that certain atrocities were committed by South African troops in Northern Namibia. Appellant contended that these accusations were nothing new and handed in certain newspaper articles concerning court cases in this regard. It is not the task of the Appeal Board to ascertain whether these allegations are true or not. In the present matter it is clear, however, that the article does not attempt to give a balanced view of the role of the South African army in Namibia but strives to bring certain facts or allegations to the reader's notice....

In regard to the question whether these aspects mentioned in the Namibia article would not contribute to a disruption of the war effort, the Board has come to the conclusion that if this were to have been published in a pamphlet with a wide mass circulation, it would probably have been undesirable. The intellectual readership of the present publication, however, renders this aspect negative'.

Varsity (192/82)

The Publications Appeal Board stated that '...[t]he pamphlet deals exclusively with Billy Paddock (31) who objected to serving in the South African Defence Force on political grounds. He was sentenced to one year's imprisonment for failing to report for duty after he was called up. On the first page certain questions are put to him on this issue and from this it is clear that his reasons for refusing to do military service are based on

his view that he cannot go into the army "because of its role in defending apartheid and exploitation...On the second page extracts from his statement in Court are reproduced....

As was held by the Appeal Board in Milcom (104/79), the view that conscientious objections to military training should be extended to cases where conscientious objections on political grounds exist is not undesirable as such. This is generally regarded to be a part of political criticism and nothing more. When, however, such a view is propagated and almost campaigned for, the matter changes. Such propagation or campaign undermines the Defence Force by seeking to influence others not to comply with call-up orders. The majority of the Board are of the view that Paddock's statement in court does exactly this. It would contribute to the illegal non-compliance with call-up orders, and this is prejudicial to the general welfare of security in South Africa...Four members further found that the following parts (taken together with the rest of the statement) are prejudicial to the safety of the State in so far as they represent a siding with the enemy and would, on the probablilities, contribute substantially to the creation of distrust in the war effort.

"The war must be conducted with just means

There have been numerous reports in the newspapers of atrocities committed by the SADF personnel. The reports in newspapers as well as in the SACCBC, SACC, BCC tell of killing prisoners of war, torture of local population, detentions and killing for information and raping of women.

The Cassinga massacre of women and children has received wide-scale reporting with evidence beyond doubt that it was the SADF. Torture is used systematically by the police and the army, and villagers have been massacred by the SADF on suspicion of supporting guerillas.

The war must result in a just peace

> Even if the present regime did win the war (which is highly improbable) there would not be a just peace because apartheid and exploitation would prevail. There would be continued white domination, injustice, oppression, detentions without trial, deaths in detention, gross unemployment and removals."

The Board is of the view that the above paragraphs undermine the security of the State and that a finding that it falls within this category is borne out by decisions such as S v Mutasa 1970(4) SA 610 (RAD) at 612F and R v Mugabe 1965(1) SA 514(SRAD) at 515G.'

Why I say No to Collaboration with SADF (206/82)

'It appears from the footnote on p 1 that this pamphlet contains a condensed version of the original, far lengthier statement, presumably made by Paddock to the court before he was sentenced. It bears a close resemblance to the similar pamphlet emanating from the same publishers, Varsity (Billy Paddock Speaks) (192/81), which has already been the subject of an appeal to this Board, an appeal which was dismissed on 28/1/1983. Indeed, the greater part of the present publication is nothing but an abridged version of the previous one.

The question immediately arose why it was necessary to issue this pamphlet, seeing that a similar, more detailed one had already been made available to the students of the University of Cape Town. A fair inference is that this publication is calculated to have a wider readership than the one that preceeded it....

The question now is whether the abridgement and/or the additional material that it contains has rendered the present pamphlet so much less objectionable than the previous one, that it cannot be held to endanger the

interests safeguarded by s 47(2)(e) of the Act. In the opinion of the Board they do not. This pamphlet, like the preceding one, seeks to influence others not to comply with call-up orders, and it is likely to induce some of its readers to evade doing military service. In the minds of others it may cause confusion, lessening their enthusiasm for such service and quite possibly harming discipline in the armed forces. It also seeks to bring the Defence Force into disrepute with the general public, thereby undermining the security of the State .

This publication is undesirable within the meaning of s 47(2)(e) of the Publications Act.'

Criticism of the activities of the South African Defence Force is permitted. When, however, this criticism is coupled with matter that would reduce the inclination of a substantial number of likely readers to undergo military service, the consequent disruption of the war effort is prejudicial to the safety of the State.

Varsity (61/83)

'As its decisions have demonstrated in the past this Board is extremely reluctant to curb debate, criticism, and the airing of grievances. Criticism of the Lesotho raid and of the SADF in general is certainly not undesirable per se, but here it is coupled with thinly veiled sympathy and support for the African National Congress (ANC), a banned organization, which is carrying on a campaign of sabotage and terrorism. The "civil war" referred to in the article would appear to be the struggle between the ANC and the security forces. Seen against the background of the tense, almost explosive, situation obtaining in South Africa at present, and the fact that many if not most of the readers of this publication are liable for service in the armed forces, the article poses a distinct threat to the safety

of the State. At the very least, a substantial number of readers of the article will, as a result be less inclined to undergo national service. This contributes to a disruption of the war effort'.

§8.5 CRITICISM OF SPECIFIC STATUTES

Criticism of individual statutes falls within the bounds of permissible political comment and the criteria that apply to general political comment are equally applicable here.

Paragraph (d) will be invoked if a work leads to the creation of racial hostility, while para (e) will be invoked if matter is prejudicial to the safety of the State or the peace and good order. It is necessary, however, that there be a real violation of these interests and that the test of calculation plus real effect on the likely reader be applied. The mere fact that a publication suggests illegal activity will not suffice for a finding of undesirability.

Grassroots (79/81):

'A publication is only undesirable if the effect which it has on the likely reader would make him more prone or inclined to violate the said interests. These interests have to do with political order in the State, and the mere fact that a publication suggests some illegal activity would not necessarily make it undesirable under this paragraph... In this respect it must, of course, be borne in mind that when a publication suggests illegal activities, it would more readily be found to be undesirable. Mere calculation, however, does not suffice: calculation plus effect on the likely reader are the true issues. See S v Essack 1974(1) SA 1 (A) at 21-22 and S v Manong 1979(4) SA 429(O) at 435-436'.

§8.5.1 DETENTION WITHOUT TRIAL AND BANNING UNDER THE SECURITY LAWS

Store up the Anger (101/80)

'Die hele boek is klaarblyklik daarop gerig om die regering polities gesproke in diskrediet te bring vir 'n maatreël soos artikel 6 van die Wet op Terrorisme, wat aanhouding sonder verhoor magtig. ... Dit is nie hier die plek om 'n saak uit te maak vir of teen aanhouding sonder verhoor nie, maar dit is goed bekend dat hierdie metode van aanhouding nie net in Suid-Afrika gebruik word nie maar ook in ander dele van die wêreld waar, soos Suid-Afrika, daar nood of semi-noodsituasies heers. Omdat dit 'n omstrede maatreël is, moet 'n mens egter nie verbaas wees indien skerp aanvalle daarteen geloods word nie.

Op die ou end is die vraag of hierdie publikasie op waarskynlikheidsgrondslag beoordeel, 'n opruiende of ondermynende effek sal hê of nie. As dit nie sodanige effek het nie, is die Wet eenvoudig nie toepaslik nie - hoe dislojaal, onpatrioties of eensydig die boek ook al deur baie Suid-Afrikaners beskou sal word'.

Die boek is nie-ongewens bevind.

Detention Without Trial (53/80)

'The pamphlet deplores the "continuing administrative punishment of detention and banning of individuals without due process of the law"... Under the heading, "week of the innocent from May 26th", it urges all South Africans to unite in a week of solidarity with those who are detained or banned and announces that a group has decided to lead the life of a banned person for a full week as an act of solidarity....

According to a list appearing at the top of the first page of the pamphlet it was intended inter alia for

distribution to all religious leaders, members of Parliament, ... members of the public...[etc].

The Appeal Board finds itself in entire agreement with the view of the Director of Publications that the pamphlet does not exceed the bounds of permissible political comment. It does not agree with the publications committee that it is calculated to encourage confrontation and violence, even in view of the explosive situation obtaining at the time of its publication. In fact it contains nothing that has not appeared in the press on numerous occasions in the past.

The Board considers that it can do no better than quote the following additional grounds of appeal with which it fully agrees:

"1. Appellant denies that the publication ('the pamphlet') is prejudicial to the interests mentioned in s 47(2)(e) of the Publications Act.

2. The pamphlet uses permissible and legitimate arguments on the politically controversial subject of detentions without trial and other restrictions placed on individuals by existing security legislation.

3. The fact that it is one-sided does not necessarily make it undesirable. One-sided and ex parte statements are common in utterances of persons or groups who appeal to the public on some subject of current interest of a political, social or controversial nature. It is part of the nature of a political pamphlet.

4. The pamphlet is not couched in aggressive, provocative or agitatory language which will lead the reader to break any law.

5. It is more of the nature of a news letter or a circular than a leaflet, and appears to be intended for distribution by mail to persons and bodies indicated at the top of the publication. Most of these groups are unlikely to be persuaded or affected by anything which would be of an agitatory nature.

6. The pamphlet is soberly presented without provocative headlines or illustrations. Appellant fails to see the force of the committee's contention that it would encourage violence. Any confrontation that it may cause will not be of a physical or unlawful nature. Dialectical confrontation is not illegal.

7. There is no appeal or incitement to the reader to break any law or to participate in public demonstrations..."'.

§8.5.2 RESETTLEMENT AND GROUP AREAS

This We Can Do for Justice and for Peace (155/81):

'Mr Dugard submitted that the likely viewer of this film would be the average Christian. Although this is accepted as true, and would probably be the case as long as the appellant should exhibit the film, the film could nevertheless have a wider appeal. On the other hand, it is of a documentary nature and would rather appeal to educated viewers. This is no propaganda film but amounts to a plea for the betterment of the position of resettled blacks and unemployed blacks in the cities and other issues such as problems arising from the Group Areas Act and the problems of conscience which some people have in taking part in the war on the border of South West Africa and Angola. Like most political pleas, this one is, of course also biased in favour of the cause of those who are said to be suffering. The case is often overstated, and nothing positive is said about what is being done for the benefit of the blacks in the cities and the development of the Homelands. It is, however, not the task of the Appeal Board to judge whether the film amounts to a balanced account of the situation. Its fuction is limited to what has been said above'.

Material dealing with the resettlement of blacks and the application of the Group Areas Act, may fall very easily within the ambit of para (d), owing to action taken by the police.

A Chip of Glass Ruby (28/83):

'...In regard to race relations, it has often been held by this Board that it would be unrealistic to expect films, publications, etc not to deal with the subject of

relationships between the different races in South Africa and that strong criticism of the racial policy of the present government is not undesirable as such.

In regard to appellant's submission that although political activity is an integral part of the story the emphasis of the "message" is entirely concerned with the relationship between the husband and the wife and that the joy of reconciliation in the last scene expresses their hope for their future in South African society, the Board is of the view that, although this is the "surface plot", the beauty of the development of the relationship between Bhamgee and his wife is the very instrument which accentuates the political aspect. The film does not reveal anything. Many books and pamphlets are concerned with the very issue of the Group Areas Act, the removal of families as a result of regulations under this Act, and the arrests and detentions which have resulted from the application of this Act. Police raids are also not unknown and have been dealt with critically in many publications. The conclusion of this Board is, however, that this film would contribute to racial disharmony and would either engender hate or strengthen hate against the white section of the population, which is represented by the forces of law and order in this film. It transgresses the bounds of political criticism and moves into the realm of hate. In this connection it must be borne in mind that a film is a direct medium and that its effect is much greater than that of a book. A film is a direct medium which reaches large groups simultaneously. Typical features of the secondary political plot which is regarded as undesirable are an accentuation of the difference in colour between black and white, an accentuation of black solidarity, the cheap whites trading with Bhamgee (in each case apparently trying to get the better of him), the white child on the arm of his nanny, phrases like "many of our brothers and sisters are in jail", "Amandla", the policemen's dialogue "ag hou jou bek man, of ons vat jou ook saam", the hunger strike in prison, the demolishing of houses, the sharp retort by the

prison authorities that no contact with the prisoner is allowed, and the accentuation of the fact that Mrs Bhamgee is really a wonderful woman and that wonderful people are being jailed. Although each of these aspects has been covered in other publications which have been found to be not undesirable, the cumulative effect of the tension built up between the white authorities and the heroes of the story would on the probabilities contribute to a violation of the interests safeguarded by s 47(2)(d) of the Act'.

The provision of para (e) may be invoked if there is a direct call to action.

Ecunews (12/83):

'Although in the article there is talk of action, there is no urgent call to man the barricades and start a revolution. A suggestion is made in passing that Christians from adjacent areas would with their bodies obstruct bulldozers demolishing camps, but a warning is added that such people must be known and respected in the community concerned. Otherwise their action might be rejected even by the community on whose behalf it is undertaken. The report's attitude to violence is ambivalent, but nowhere is direct violent action specifically advocated'.

In the decision South African in the 1980's (32/81) it was held that there was an indirect call to action , as the cumulative effect of the work would be to incite the black South African reader to violence and revolution as this would be the only course open to him to obtain justice. This subject is illustrated by the The Promised Land (187/82):

The Promised Land (187/82)

'The film deals with the South African government's resettlement plan for blacks who are affected by the consolidation of the homelands in so far as the areas in which they have previously lived will be consolidated into homelands or independent black states. At the outset, it is clear that in the same manner as other films in which a political cause is championed, the present film is one-sided and rarely refers to the possible betterment of the situation of many blacks as a result of the resettlement programme. In the end a call is made to the conscience of Christians concerning what is termed to be an injustice against these blacks....

For a full treatment of this subject see the decision regarding a similar film in This We Can Do for Justice and for Peace (155/81)....

...This is no propaganda film in the ordinary sense of the word but amounts to a plea for action against the resettlement programme by showing certain aspects which are said to be unreasonable. The case is often overstated, and nothing positive is said about what is being done for the benefit of the blacks in the cities and the development of the homelands. It is, however, not the task of the Appeal Board to judge whether the film amounts to a balanced account of the situation. Its function is limited to what has been said above.

The film is no direct or indirect call to subversion, revolution, sabotage, terrorism, violence, civil disobedience, and the like but aims at revealing what it regards as unjust....

In regard to the publications which accompany the film, the Board is of the view that the publication The Promised Land Resource Book, is undesirable in so far as it amounts to a plan of action, which, on the probabilities,

could be put to use within the field of subversion. Although much of the action contemplated by the publication would be quite legal, the following rhetorical question would, on the probabilities, contribute to subversion:

> "If you were an unemployed 18 year old youth in a resettlement area and could not get a job even as a contract worker would you try going to town illegally to find work? Take to crime locally? Slip over the border in hopes of joining a 'black army of liberation'? go on hoping, trying and being patient? (Debate these options, letting people take different positions)".

Many would argue that the above references only amount to the iniation of a debate. When this publication is, however, taken together with the film to which it refers, it becomes relevant that the film is a very one-sided portrayal of the problem and that very little positive would follow in such a debate. While the film is not undesirable in itself, the publication which refers to the film is undesirable and may therefore not be distributed or reproduced...'.

The film, including the slides and the tapes was found not undesirable, as was also the Promised Land, which is the text of the cassette. The publication The Promised Land, Resource Book was however found to be undesirable within the meaning of s 47(2)(e).

§8.5.3 SEX ACROSS THE COLOUR LINE AND MISCEGENATION

The Immorality Act poses problems that differ from those encountered in other statutes. First, the statute falls within para (a) as it deals with morally offensive matter. Secondly, the prohibition in the statute proscribes sexual intercourse between people of different racial groups. In the result, when a work deals with the statute it falls within the ambit of para (d) as two racial groups are involved.

Where a work thus deals with a relationship that is prohibited by s 16 of the Immorality Act 23 of 1957 in principle it should be considered under both paras (a) and (d). In practice, however, the extent of the physical intimacy between the participants often falls within limits allowed by para (a) of the Publications Act and if they were members of the same racial group the matter would be acceptable to adults, albeit with some form of restriction. The work in question consequently is judged under para (d) and the test applied is whether the physical contact shown or described would create racial hostility. The Publications Appeal Board regards the existence of the Immorality Act and the Mixed Marriages Act as indications of the extremely delicate nature of race relations in South Africa.

Britannia Hospital (113/82)

'The scene where the black nurse kisses the white male also causes problems. The pulling down of his underpants connected with the scene in which they kiss each other lovingly must in the light of socio-political attitudes in South Africa be regarded as prejudicial to race relations. One realises that this is a delicate subject and that many will be of the opinion that it is not undesirable to show this. On the other hand a substantial number would be perturbed by this to such an extent that it would affect racial relations considerably. While this would usually cause no problems in a novel (see Kennis van die Aand (131/81)), this visual portrayal of a sexual kiss is so unusual that it would shock many and contribute to animosity betweeen the races. It is not the Board's task to inquire into the reasonableness of the attitude, but to gauge contemporary racial attitudes and tolerance. It is only in the very recent past that social contact between

races has to a limited extent become more customary. Although mere kissing would probably not infringe upon the provisions of the Immorality Act 1957 (see R v E and Another 1960(4) SA 445(C)) the public nature of the act in a film exhibition is an aggravating factor. Each case must, of course, be decided on its own merits in the light of the Publicatons Act. The fact that a scene is functional would, of course, be an alleviating though not decisive, factor. In the present case the fact that a relationship exists between them appears sufficiently obvious from another scene'.

Academy Rewards (67/81):

'The publications committee ordered that the complete sketch in which Robert Kirby marries a white woman to a black man as well as a sketch in which a salesman sells "Bonsai Bantus" should be excised. The word "kaffir" is also used in two of the sketches....

With regard to the two sketches referred to, the publications committee based its finding on the fact that the black community would find the derogatory references to blacks harrowing and abhorrent. Bishop Desmond Tutu, a prominent member of the black community, however, testified that in his view, this was not the case. It was in fact a criticism of s 16 of the Immorality Act and certain attitudes that were part of the South African community. He also testified that the use of the word "kaffir" in this entertainment could in no way be regared as derogatory to blacks and that in context it was a legitimate part of the satire. With regard to the question whether the satire against s 16 of the Immorality Act would influence likely viewers to contravene that section, the following dictum in Pillay v Publications Control Board 1971 (4) SA 208 (D) is particularly apposite and shows that the sketches are not harmful to public morals or prejudicial to the relations between blacks and whites:

"If the author of this play brings this law into contempt and creates a state of mind in the audience which may induce some members of the audience not to observe the prohibitions of the Immorality Act, or to be more amenable to possible temptation to commit a contravention thereof, the play will be undesirable ... It undermines respect of this law by holding it up to ridicule. Sexual intercourse between white and coloured persons is represented to the public as normal, natural, satisfying and right. It is not the fact of criticism, but the manner of criticism which is harmful and undesirable".[8]

Its a Boy (159/82)

'Die verdere vraag is of die stuk skadelik vir die openbare sedes is. Soos beslis is in Scope (123/81), in navolging van Hooggeregshofgesag, sal stof skadelik vir die openbare sedes wees indien dit 'n wesenlike aantal waarskynlike kykers meer geneig sal maak om die betrokke sede te oortree. Alhoewel daar aansienlike meningsverskil vandag bestaan oor die vraag of geslagsverkeer oor die kleurskeidslyn onsedelik is, verbied art 16 van die Ontugwet dit en kan vir doeleindes van hierdie uitspraak aanvaar word dat so 'n sede bestaan.Die vraag is egter of die oortreding daarvan deur hierdie stuk bevorder sal word? In Pillay v Publications Control Board 1972(4) SA 208(D) is beslis dat 'n outeur die reg het om art 16 van die Ontugwet te kritiseer.

In hierdie geval is 'n openbare vermaaklikheid wel ongewens bevind. Daarteenoor is 'n foto van 'n wit meisie saam met 'n swartman in Republican Publications v Publications Control Board 1972(3) SA 562(D) op 572, nie ongewens bevind nie.

Alhoewel daar sydelings met die Ontugwet gespot word, is die fokus van die stuk gerig op die skynheiligheid van die rassevooroordele van die pa en sy twee vriende, wat hier as verteenwoordigers van 'n bepaalde laere klas beskou kan word. Die Raad is van mening dat die situasie wat hier uitgebeeld word so uniek is dat dit niemand meer geneig sal maak om art 16 van die Ontugwet te oortree nie. Die stuk

propageer nie sodanige oortreding nie. Dit spot wel met die vooroordele van die pa in die verband, maar die onhoudbaarheid van die situasie, klaarblyklike praktiese probleme en aanpassingsprobleme kom ook sterk na vore .... [D]ie realiteit van die situasie [is] tog van so 'n aard dat dit vir geen normale waarskynlike kyker normaal en natuurlik, bevredigend en reg sal voorkom nie. Die komiese beklemtoon hier die onhoudbaarheid van die situasie. Die vader aanvaar in elk geval nie die Swartman nie en Angelina, die huisbediende, veroordeel die verhouding ook.

The kiss and attempted kiss between Juliana and Pepsi within the context of this play pose a problem within the framework of s 47(2). The kissing has to do with her wanting to thank him for a birthday gift. At this stage it is clear that they are in love and that the kiss is more than a platonic kiss, but on the other hand not a sexual kiss. It could be described as an affectionate kiss between a black man and a white woman who are emotionally and physically attracted to each other. Social contact between the races has only in the very recent past become more common. The recent history of mixed contact sport, athletics and "international" hotels and restaurants is too well known to repeat here. It is sufficient to say that the differences of opinion on these issues are strong and that the whole situation is a sensitive one. It is therefore evident that affectionate kissing between a black man and a white woman on the public stage is not customary. Nevertheless the Board must decide whether the attempt and a kiss, the kiss and embrace are undesirable or not within the context of <u>this</u> play. There are many likely viewers who would regard the affectionate kiss between Juliana and Pepsi as quite acceptable and as in accordance with fundamental principles of human rights. On the other hand a substantial number of average black likely viewers (also of Kirby audiences, who have become accustomed to his political burlesque) would, being unacquainted with and unaccustomed to this kind of familiarity in the open on a public stage between the different races, experience an

emotional reaction which would, on the probabilities, give rise to deep-seated reactions and feelings, which would engender or contribute substantially towards animosity against whites as a section or blacks as a section, as the case may be. This act jeopardises the relations between blacks and whites by introducing an aspect for which a substantial number of average black likely viewers and/or average white likely viewers are not prepared. It is not the task of this Board to speculate on the validity of this reaction and whether it amounts to racism or not. It has to face the reality of the situation and come to a decision in the light of present racial attitudes, whether they are biased or not'.

The most recent case in which the Publications Appeal Board dealt with the Immorality Act is Country Lovers and City Lovers (68 + 69/83)

'Both films deal with sex across the colour line, which is a contravention of s 16 of the Immorality Act of 1957. In Country Lovers, a relationship develops between an Afrikaans boy and a black girl with whom he grew up on the farm, and when they are both young adults they fall in love and have sex, and a baby is born. As a result of the obvious embarrassment, the young man murders the baby....

In City Lovers a German immigrant or researcher who is in South Africa for the time being, falls in love with a coloured woman....

The publications committee gave the following reasons for its decision in connection with City Lovers:

"Die verhaal wentel om ontug oor die kleurskeidslyn tussen 'n jong mooi bruinvrou en 'n opgevoede, gesofistekeerde Duitse geoloog, 'n buitelander. Ontug word gepleeg onder die mees simpatieke omstandighede en die 'misdaad' word in sterk

emosionele dramatiese terme in sy volle naaktheid uitgebuit - veral die omsimpatieke polisie-ondersoek en die gedetailleerde eksplisiete mediese ondersoek.

(a) Die is nie die tema per se, maar die voorstelling wat die geheel onaanvaarbaar maak en daarom word dit afgekeur.

(b) Die kyker voel simpatiek teenoor die hoofkarakters en hulle persoonlike vernedering. Seksuele voorkeure en privaatheid word hier deur die landswet en sy handlangers bedreig en betree. Hoekom moet hulle so ly en agtervolg word? Die twee persone betrokke - sy, jonk, mooi en 'n prooi van ongelyke sosiale en opvoedkundige agtergrond teenoor die uiters ryp en gesofistikeerde buitelander.

(c) Op die huidige tydstip in S A is ontug oor die kleurskeidslyn heeltemal op die agtergrond geskuif en volgens inligting ingewin kom weinig klagtes en geen vervolging voor. Om dus nou hierdie 'misdaad' en sy vervolging met alles wat dit inhou, aan die groot klok van publisiteit te hang, soos hier sal slegs kontraproduktief blyk en kwaad stook. Dit sal 'n daad wees wat sonder twyfel die beste belange van S A sal skaad veral met beoogde nuwe konstitusionele bedeling.

(d) Die wyse waarop die polisie optree is heeltemal oordrewe en reflekteer uiters nadelig op hulle veral waar hulle optrede foutief is, b v vingerafdrukke neem ens.

(e) Die ontkleding van die twee hoofkarakters (vernedering) en haar eksplisiete mediese ondersoek (lang toneel) is aanstootlik onprivaat en heeltemal uit perspektief.

(f) Haar dialoog veral, bv 'You don't understand. I'm not black. I'm not a bantu. I can't live like a bantu on the roof... I'm coloured, half and half. There's a difference... You don't understand you don't understand... You don't know this country etc only highlights their differences and the sad situation as a whole vis-a-vis South Africa.

(g) Seks tussen twee ongetroudes - skadelik vir morele waardes".

Although the Board understands the decision of the publications committee, it is of the view that the committee had incorrectly applied the Publications Act. The mere fact that the treatment of this theme evokes sympathy for the protagonists is not enough for a finding of undesirability. The application of the acceptability

criterion is also incorrect. The question is whether the treatment of the theme can be "tolerated". As appellant's counsel indicated by way of statistics, the publications committee's statement that prosecutions no longer take place is incorrect. This is also substantiated by a statement by the Minister of Law and Order in Parliament during 1983. The aspect of publicity is also not relevant. The whole matter of s 16 of the Immorality Act has been referred by Parliament to a Select Committee, and this film can only contribute to the ongoing debate on s 16 of the Immorality Act. The subject is a controversial one, but this does not justify its not being debated fully, even in films. With regard to the publications committee's finding that the police are portrayed unsympathetically, the Board is of the view that the police have been portrayed as sympathetically as possible under the circumstances. It was common cause that the police were doing their duty and it is almost impossible to deal with the matter in a different manner. As the enforcers of a controversial law, the police are inevitably drawn into controversy.

The publications committee has not stated why it regards this film as prejudicial to general welfare within the meaning of s 47(2)(e), and counsel for the respondent did not enlarge upon this ground although he did not abandon it. The Board is of the view that undesirability could only be based on either para (a) or (d) or both.

The publications committee that adjudicated Country Lovers gave the following reasons for its decision:

> "Die vyf liefdestonele waarvan vier naak is en een in die seun se bed in die plaashuis plaasvind, is aanstootlik en skadelik vir openbare sedes.
>
> (1) Bogenoemde swart/wit liefdesverhouding is teenstrydig met ons landswette en skadelik vir die betrekkings tussen bevolkingsdele
>
> (2) Volle simpatie lê by die swartes en die blankes word in 'n baie swak lig gestel

(a) Die wit seun eis van Thebedi dat hul baster baba om die lewe gebring moet word

(b) Om die ware toedrag van sake te verbloem word die lojale swart familie wat 21 jaar getroue diens gelewer het, gebied om onmiddellik die plaas te verlaat en omkoopgeld word hul aangebied om te 'verdwyn'. Die afskeidstoneel waar die swartes hulle toesing is gelaai met emosie.

Dialoog - aanvegbaarhede tussen vader en seun:

(a) 'There is talk about the English giving their country away to the blacks in Rhodesia but this is a white man's land and a civilized country'.

(b) When the father gives Paulus a gun as present, he stresses the point in words of the following effect: 'This gun will keep us in command here'".

'As both these films deal with race relations, the Board has decided to limit the inquiry to s 47(2)(d) of the Act. In so far as s 47(2)(a) is concerned, the Board is of the view that a substantial number of normal likely viewers would not in either case be more prone or more inclined to commit what is immoral as a result of viewing either of these films. The test laid down in Pillay v Publications Control Board 1972 (4) SA 208(D) has therefore not been complied with. This Board's decision in It's a Boy (159/82) p 6 should also be noted in this regard. The situations portrayed in both films accentuate the problems that arise as a result of s 16 of the Immorality Act. In this sense they attempt to make a contribution to the ongoing debate in connection with s 16. A debate as to morals is not undesirable as such. Although both films, by implication, criticize s 16, immorality is not propagated at all. The accent is placed on the very real problems which result from an application of the Act or, in any case, from South African mores'.

§8.6 COMMUNISM

§8.6.1 GENERAL CONSIDERATIONS

Works about communism or those that contain the writings of Marx, Lenin, Stalin or Trotsky fall squarely within the ambit of para (e) as such matter is potentially prejudicial to the security of the State. These works do not raise questions relating either to race relations or to belittling a section of the inhabitants of the Republic and thus fall outside of the scope of paras (d) or (c) of the Publications Act.

Communist literature has certain characteristics which distinguish it from other political works. The Publications Appeal Board adopts a particularly harsh attitude towards communism, probably for some of the following reasons - though these reasons have not been articulated by the Board:

1. Communism, as a doctrine, aims to annihilate capitalism by revolutionary means.
2. It is a doctrine that appeals to the poor, who have a negligible stake in the capitalist system, rather than to the rich whose wealth is rooted in such a system. As the majority of the South African population is black and poor communism is potentially dangerous to the maintenance of the status quo in the Republic.
3. The South African Parliament has singled out communism, together with terrorism and sabotage, as forces to be suppressed by the Internal Security Act and other security legislation.
4. The dangers inherent in the spread of communism are perceived to be very real since the USSR and other

communist countries such as China and Cuba work ceaselessly in an ongoing campaign for domination of the world by means of communism. This campaign is seen as part of the total onslaught against South Africa and features prominently in political rhetoric.

§8.6.2 THE ATTITUDE OF THE PUBLICATIONS APPEAL BOARD TOWARDS COMMUNISM

The Publications Appeal Board has held on various occasions that the publisher of a work is irrelevant in judging whether a work is undesirable. An enquiry as to the undesirability of a work must be limited to the contents of the work itself (see § 7.4). However publishers of communist literature fall within the proscription of s 9(4) of the Publications Act. In terms of this section the publications committees have the power to prohibit works that deal with a specific subject or that are issued by a specific publisher. In practice no prohibitions have been made in respect of specific subjects. Prohibitions are made, however, in respect of publications issued by specific publishers and these are published in the Government Gazettes.

Flash Flash (23/83):

> Flash Flash is 'n nuusblad, wat deur die World Confederation of Labour uitgegee is. Laasgenoemde is, volgens die Publikasiekomitee, 'n internasionale sosialistiese vakbond wat sterk simpatie het met die kommunistiese ideologie.
>
> 'Die Raad is dit volkome eens met die siening van die Direktoraat en daar bly nie veel oor om te sê nie. Selfs

indien dit aanvaar word dat die blad 'n wye leserskring bestaande hoofsaaklik uit linksgesindes in Suid-Afrika sal hê, is dit nie van so 'n aard dat die belange wat deur art 47(2)(e) beskerm word daardeur aangetas sal word nie. Indien hierdie publikasie ongewens bevind moet word, sou min buitelandse nuusblaaie hier toegelaat kan word, want daar is weinig van hulle wat nie in een of ander opsig krities teenoor Suid-Afrika is nie'.

The Publications Appeal Board has decided that the use of certain phrases may not be invoked as indications that a work is 'communistic':

Benoni Student Movement (159/81):

'The present publication cannot be found to be undesirable on the grounds that it is "communistic". Even references to the Internal Security Act as being "oppressive" (p 24), to "oppressed people", "struggle", "workers' struggle", "resistance in collective terms", cannot in themselves be regarded as communistic. They can, however, be regarded as a strong expression of dissatisfaction, which attempts to arouse animosity by making use of terminology which polarizes the rich and the poor'.

According to the Board the question to be considered in judging a work on communism is whether it propagates communism and serves as a form of incitement to subversion or communism (An Introduction to the Writings of Ngugi (43/81)).This contribution to subversive activities must be gauged upon the probabilities (Ten Days that Shook the World (28/82)). The fact that a work analyses society from the Marxist perspective does not make such a work undesirable for the security laws of South Africa only outlaw Marxism as a programme for revolutionary

action (Marx without Myth (6/80)). Works that are pro-communist are also not undesirable.

§8.6.3 PRO-COMMUNIST WORKS

Radical Geography (91/82)

'Dit is 'n publikasie van hoogstaande akademiese gehalte is en dat dit van groot waarde vir die gevorderde student sal wees. Inderdaad is dit ook net die gevorderde student op die gebied van die sosio-ekonomiese en politieke wetenskappe wat dit ten volle sal kan verstaan en die boek sal gevolglik 'n uiters beperkte leserskring hê....

Dit is so dat die samesteller onomwonde verklaar dat hy in Marx se leerstellings glo en dat baie van die artikels die kapitalistiese stelsel kritiseer, maar dit is nodig om te weet wat die saak teen kapitalisme is om dit te kan verdedig. Dit is veelseggend dat Marx se boek Das Kapital en vertalings daarvan nie in Suid-Afrika verbied is nie. Daar is ook heelwat ander probleme waarmee die wêreld te kampe het wat aangeroer word en wat tot nadenke stem. Dit is geensins opswepend van aard nie en bevat geen oproep tot onregmatige optrede.

Daar is wel problematiese aspekte van die boek, maar gesien sy uiters beperkte waarskynlike leserskring het die Raad tot die gevolgtrekking gekom dat dit nie as staatsgevaarlik beskou kan word nie'. Die appèl slaag dus en die beslissing van die komitee [dat die werk ongewens is binne die betekenis van art 47(2)(e)] word ter syde gestel'.

An Introduction to the Writings of Ngugi (43/81):

'Ngugi is a controversial writer.... Moreover he believed inter alia that literature should serve social and political purposes....

For many of his views, as they are expressed in his writings, Ngugi is indebted, as Killam points out (pp 114-115), to related writers: not only to Marx and Frantz Fanon, to whom the publications committe has specifically referred, but also to William Blake, Walt Whitman, Emil Zola, and Joseph Conrad, whose writings are not regarded these days a being undesirable in any way. The ideas of these writers, Killam tells us, Ngugi has transmuted into fiction. What the publications committee regarded as undesirable is to be found in statements like "The language is that of the Marxist revolutionary who accepts the odds and recognizes that the struggle will be long and hard", but the language referred to is that that of Karega, a character in the novel Petals of Blood and not necessarily Ngugi's own.... Questions that have to be answered in considering whether this Introduction is undesirable or not in terms of the Publications Act are whether it propagates communism, serves as a form of incitement to subversion or revolution, and is relevant to race relations and the general situation in South Africa. What is to be decided here is not the undesirability of Ngugi's works in the South African context but the undesirability of a book about them, offered primarily as an aid to literary study. What the Appeal Board said of Great Political Thinkers (121/80) seems to be valid here: the publication, because of its specialised subject, has little progaganda value (if any); the likely reader will be only one who is in search of information (specifically about a writer); the publication, in setting out the views, especially the political views, of that writer, does not aim at propagating revolutionary ideas: and, above all, it is of cardinal importance, at present, that South Africans should be informed or inform themselves of what blacks are thinking and writing not only in the Republic but throughout the continent of which they are part, as well.

The view of the Appeal Board is therefore that the present publication is not undesirable. The publications committee did not refer to the limited likely readership of

the publication and apparently did not consider that to be of any significance. The Publications Appeal Board, on the other hand, regards this consideration as being of the utmost importance, so much so that it removes any possible suspicion of undesirability from this publication'.

§8.6.4 WORKS ABOUT COMMUNISM

Academic textbooks about Marxism or communism, written in a scholarly style, have been found to be not undesirable, primarily because their content and style of writing ensure that they appeal only to an educated, sophisticated and limited readership.

Marx without Myth (6/80):

Die Appèlraad stel die saak soos volg: 'Artikel 47(2)(e) van die Wet op Publikasies bepaal dat indien 'n publikasie of 'n deel daarvan nadelig is vir die veiligheid van die Staat, die algemene welsyn of die vrede en goeie orde dit ongewens is en gevolglik nie versprei mag word nie. Die woord "nadelig" dui op die feit dat die Wetgewer werklike gevaar op die oog het en dat indien 'n werk, ten spyte van die onaanvaarbare beskouings wat daar vir die Suid-Afrikaner vervat is, nie sal lei tot 'n omverwerping van die belange wat in par (e) genoem word nie of sal bydra daartoe nie, die werk nie ongewens is nie. Die geleentheid vir andersoortige politieke beskouings word dus nie gesluit deur die Wet op Publikasies nie. Hierdie geleentheid word al hoe groter na mate die waarskynlike leserskring van die werk al hoe kleiner word en verhoog ook na mate die wetenskaplike standaard van die werk toeneem. Dit is van kardinale belang vir die moderne Suid-Afrikaner om ingelig te wees oor die grondslae van die kommunisme. Wanneer 'n werk dus nie propagandisties is in die sin dat dit die kommunisme klaarblyklik progageer nie en dit van

wetenskaplike aard is, moet dit as besondere sterk positiewe faktore ten gunste van 'n bevinding van nie-ongewenstheid beskou word. Die publikasie komitee sê self dat die boek sistematies, wetenskaplik en objektief saamgestel is en dat dit van 'n hoë wetenskaplike peil is - een van die bestes oor Marx. Die rede waarom hulle egter die boek ongewens bevind is geleë in die feit dat die boek 'n groot agting vir Marx bevat.

Die Appèlraad het tot die gevolgtrekking gekom dat hierdie simpatie en agting nie sterk genoeg is om die boek propagandisties te maak nie. Dit sal nie die belange wat vermeld word in para (e) skend nie en kan dus nie as ongewens beskou word nie'.

Modern Political Ideologies (79/80):

'This selection of writings by well-known writers and historical personalities such as John Locke, J M Keynes, Jawaharlal Nehru, Marx, Lenin, Stalin, Hitler, Mussolini, David Ben Gurion, etc, are grouped under the headings Democracy, Capitalism, Socialism, Communism, Elitism and Nationalism, each section being preceded by a brief essay by the compilers....

Not many readers will today agree with the views expressed by Josiah Strong, H A Chamberlain, Adolf Hitler and various other writers featured in this book, but their views as well as the communist view is necessary to give the reader a reasonably comprehensive picture of modern political thought.

In the opinion of the Board this book will be of inestimable value to students of poltitical science. While the Board is in complete agreement with the publications committtee as regards the potential danger inherent in the Communist Manifesto as well as several of the other articles in section lV, it believes that this danger has to a large extent been neutralized by the book itself read as

whole. It also believes that the advantages to be gained from its unrestricted availablity will outweigh the potential danger'.

Structure of Marx's World View (58/80):

'...The mere fact that the publication has communism or a similar ideology as the theme does not in itself make it undesirable.... The appellant's submission that the Publications Act and the security laws of the country do not prohibit writings on Marxism as a technique for analyzing society is correct. The prohibition in these statutes extends to Marxism as a programme for revolutionary action. To this the Appeal Board wishes to add that the publication must have persuasive value in so far as its likely readership is concerned. The value of this work is limited to a few specialists who would either be students of communism or revolutionaries who would not be affected by this publication at all. As to the effect of publications of this kind see S v Manong 1979 (4) SA 429 (O) at 435 S v Essack and Another 1974 (1) SA 1 (A) especially at 22 and S v Hosey 1974 (1) SA 667 (A) especially at 680'.

The publication was found to be not undesirable in terms of s 47(2)(e) of the Publications Act.

Great Political Thinkers (121/80):

'...Die publikasie bevat omskrywings van alle politieke stelsels tesame met aanverwante aangeleenthede. Daarbenewens word werke aangehaal en na verwys van bekende staatsmanne en filosowe soos Plato... Thomas van Aquinas, Machiavelli, Calvyn Hobbes, Locke, Rousseau, Bentham, Mill, Keynes, Attlee, Sigmund Freud, Herbert Hoover, Franklin D Roosevelt ens. In hierdie opsig bied die publikasie dus 'n omvangryke volume aanhalings en verwysings wat vir ernstige en gevorderde studente as gesaghebbende bronne in hulle navorsingsprojekte kan dien....

Die Appèlraad het oorweging geskenk aan dié deel van die publikasie wat aan kommunisme gewy is, met die uiteensetting wat natuurlik op die Kommunistiese Handves gefundeer is. Dit word sonder meer toegegee dat die volledige aanhaling van die Handves op sigself ernstige oorweging vereis, asook die byvoeging van Lenin se invloedrykste stukke oor rewolusie en die opdragte vir die toepassing daarvan. Ook die drie stukke uit Stalin se hoof Rewolusie-geskrif skep verswarende faktore.

Die Appèlraad stem saam met die respondent dat die Handves as sondanig voorskrifte vir rewolusionêre optrede, die noodsaaklikheid van vooraf opgeleide rewolusionêres en die gewelddadige vernietiging van die staat ens bevat. Die trefkrag van die stukke gaan egter in die huidige konteks verlore....

Die samesteller van die publikasie het na die oordeel van die Appèlraad beslis nie in sy weergawe van kommunisme enigsins gepoog om die ideologie te propageer of goed te praat nie. Hy verstrek 'n besonder volledige, historiese relaas en feitelike patroon daarvan. Hy verswyg egter hoegenaamd nie sy opinie daarvan nie, maar behandel dié vertolking van sosialisme, soos alle ander onderwerpe in die publikasie, suiwer objektief. Hy spreek hom o a soos volg uit:

"The theory of the communists may be summed up in the single sentence: abolition of Private Property"...

Die Appèlraad aanvaar dat dit op die huidige tydstip veral van kardinale belang is dat Suid-Afrikaners ingelig moet wees oor die basiese grondslae van die kommunisme. Dit bring mee dat die waarskynlike voordele en nadele teen mekaar opgeweeg moet word. Die navorsingswaarde oorskadu die uiters geringe moontlikheid van nadeel. Die Appèlraad beoordeel op grond van waarskynlikhede en nie op grond van moontlikhede nie. Sien S v Manong 1979 (4) SA 425.

...die publikasie is nie ongewens ingevolge die bepalings van art 47(2) bevind en die verbod ingevolge art 9(3) verval dus ook'.

From the above extracts it appears that, as in the case of works with a general political content, many of the factors discussed under § 5, § 6, and § 7 are applied to works on communism. Thus the Board has considered, inter alia, the importance of context and the need for the South African reader to be informed. However, in many important aspects these various tests are applied more stringently than in respect of political works generally.

§8.6.5 WRITINGS OF COMMUNISTS

WORKS CONTAINING WRITINGS OF MARX, STALIN ETC

A work that contains the writings of Marx or Stalin is usually found to be undesirable under s 47(2)(e), although the Publications Appeal Board generally removes the possession prohibition imposed by a publications committee under s 9(3), which requires confirmation by the Board under s 9(5)). Great Books of the Western World, (147/81) was an exception in that it was not found undesirable. Instead vol 50, containing the writings of Marx, was found not undesirable albeit with the imposition of purchase and lending restrictions.

It should be noted that the attitude of the Publications Appeal Board is markedly more lenient than is the attitude of the publications committee regarding works about communism or those that contain the writings of Stalin or Marx. This appears from the guidelines laid down in the annexure to Heartland (43/82):

'If a work has research value yet is undesirable for general distribution, a possession prohibition should not be imposed too readily. "Classic" communistic works, for instance, fall into this category.

In the light of this then the Appeal Board has also decided not to subject the collected works of Lenin and Stalin to a possession ban as well. An ad hoc committee was appointed to inquire into the research value of these works and to weigh that against the putting into operation of the ideas contained in them. After several meetings with the Chairman of the Committee, Prof G Olivier, the Board unanimously decided not to confirm the possession ban imposed on these works. A finding of undesirability was thought to be sufficient: it prevents the importation, sale, and general distribution of the books and was regarded as sufficient to prevent any harm to state security. A possession ban would impose an unreasonable restriction on research'.

Great Books of the Western World (147/81):

'Volume 50 of the Great Books of the Western World, which was distributed under the heading Marx, was found undesirable by a publications committee within the meaning of s 47(2)(e) of the Publications Act. (The Directorate of Publications appealed to the Publications Appeal Board against this decision.) The Directorate contended that if the publication, which consists of an English translation of Das Kapital and the Manifesto of the Communist Party by Karl Marx and Friedrich Engels were to be distributed as part of the present set of books, it could not be regarded as undesirable because of the limited distribution and the limited sophisticated likely readership...'.

The Publications Appeal Board has come to the conclusion that if vol 50 is distributed as part of this set is would reach a limited likely readership. The

Manifesto, within this context, forms a minor part of a larger set. Different criteria would apply, however, where this volume is sold on its own or if the Manifesto is published by itself. In regard to the sale and importation of the set the Board has therefore decided that the publication is not undesirable and that it may be imported and sold as part of this set of books. Where, however, this publication, even as part of the set, is kept in a library and could, naturally, be lent out on its own, the same restrictions would apply to it as would apply to other publications of the same nature. As this set would probably also be bought by libraries, such as municipal libraries, the Board has decided not to prohibit the sale of this set to such libraries. If, however, someone wishes to borrow the book, the necesary permission must be sought from the Directorate.

In this manner the different interests which are protected by the Act can be safeguarded. Differentiation is a particular aspect of the decisions of the Publications Appeal Board which, in contrast to the publications committees, may add conditions to its findings. The appeal therefore succeeds, and the decision of the publications committee that the publication is undesirable is set aside.

The publication is not undesirable within the meaning of the Publications Act subject to the conditions that:(a) it may only be sold, hired out, or imported as part of the set of Great Books of the Western World; and (b) lending libraries may lend it or make it available to persons only on permission of the Directorate of Publications, Private Bag X9069, CAPE TOWN, 8000. The above is, of course, not applicable to the volume which is bound without the Communist Manifesto and which is unconditionally found to be not undesirable'.

J Stalin Works (16/81)
V I Lenin Collected Works (Publikasies) (22/81)

''n Publikasiekomittee het die publikasies (V I Lenin Collected Works) en (J Stalin Works) kragtens art 9(3), aan 'n besitsverbod naas die invoer- en verspreidingsverbod onderwerp. Teen hierdie beslissing het die Direktoraat van Publikasies appèl aangeteken by the Appèlraad oor Publikasies.

Artikel 47(2)(e) van die Wet op Publikasies bepaal dat indien 'n publikasie of 'n deel daarvan nadelig is vir die veiligheid van die Staat, die algemene welsyn of die vrede en goeie order dit ongewens geag word vir doeleindes van die Wet.

Die Appèlraad het dan ook in die lig hiervan besluit om die vermelde Lenin en Stalin werke nie ook nog aan 'n besitsverbod onderhewig te stel nie. 'n Ad-hoc komitee is aangestel om op die navorsingswaarde van die werke in to gaan en om dit op te weeg teen die operasionalisering van idees wat in die werke vervat is. Die Raad het na verskeie vergaderings met die voorsitter van die komitee unaniem besluit om die besitsverbod op die werke nie te bekragtig nie. 'n Bevinding van ongewenstheid is sterk genoeg; dit voorkom die invoer, verkoop en algemene uitleen van die boeke en word as voldoende beskou om enige nadeel vir die staatsveiligheid te weer. 'n Besitsverbod sal 'n onredelike stremming op navorsing plaas. Die verslag van die Ad-hoc komittee, waarmee die Appèlraad saamstem, [word by die oorsponklike beslissing aangeheg.] Hierdie benadering strook ook met die benadering wat deur hierdie Raad, onder die voorsitterskap van Sy Edele J H Snyman, gevolg is'.

Die besit van die boek is nie kragtens art 9(3) verbied nie .

J Stalin Works (83/80):

'Hierdie is 'n appèl deur die Direkteur van Publikasies teen 'n besitsverbod ingevolge art 9(3) van die Wet op Publikasies 1974, op versameling van Stalin

geskrifte (koerantartikels, pamflette, ens).

Die Raad was dit eens dat hierdie publikasies geen wetenskaplike werke is nie maar hoofsaaklik van progagandistiese aard is....

Die gevaar wat lede van die Raad in hierdie boeke sien, is dat 'n parallel gesien mag word tussen die destydse toestande in Rusland en die huidige toestand in Suid-Afrika... maar dan is die vraag in hoe 'n mate hierdie geskrifte kan bydra tot opsweping tot geweldadige opstand. Feit is dat wat in hierdie reeks boeke voorkom hoofsaaklik geskiedenis is wat algemeen bekend is....

Die oproep tot bewapening, geweld en rewolusie is of in algemene terme of slegs van toepassing op toestande wat destyds in Rusland geheers het; daar is geen bloudruk vir 'n soortgelyke rewolusie in Suid-Afrika nie. Dit bevat ook nie noemenswaardige nuwe slagspreuke of idees wat met vrug deur opruiers gebruik kan word nie. In hierdie verband is dit van belang om te let op wat die publikasiekomitee sê in sy redes in verband met die boek Modern Political Ideologies naamlik "dat in die RSA subversiewe agitasie en propaganda in die hande van opgeleide en van intellektueel geskoolde mense is, en nie langer uit bloot opruiende clichés bestaan nie." Sulke persone sal nie veel in hierdie boeke vind wat nie reeds tot hulle beskikking is nie.

Nou bly die vraag of hierdie boeke enige waarde vir die student of navorser het en of die beginsels neergelê in die beslissing oor Karl Marx - Selected Writings (48/79) daarop van toepassing is. As wetenskaplike verhandeling oor kommunisme het dit weinig waarde maar uit 'n geskiedkundige oogpunt wel...

Die besitsverbod ingevolge art 9(3) word tersyde gestel'.

Finally, it is interesting to note that the mere inclusion of the Communist Manifesto is no longer a guarantee that a work will be found to be undesirable. See Great Political Thinkers (121/80), Modern Political Ideologies (79/80) and Great Books of the Western World (147/81), all of which were found to be not undesirable, although restrictions were imposed on the last mentioned work.

A contemporaneous account of the October revolution was found to be not undesirable although selling restrictions were imposed in Ten Days that Shook the World (28/82):

> '...The Directorate of Publications appealed to the Publications Appeal Board against this decision .... The Directorate submitted that the book gives a sympathetic account of the October Russian revolution and that this would, on the probabilities, lead to sympathy for the cause of communism; ...also that only a few readers would be in a position to distinguish between fiction and fact. Lenin and Trotsky are described as heroes...'.
>
> According to the Publications Appeal Board 'The mere fact that a book is pro-communistic would not in itself lead to a finding of undesirability. It must go further than that. It must, on the probabilities, contribute to subversive activities and the like....
>
> The fact that it presents a distorted and unbalanced picture of central events during the October Revolution in Russia does not make it undesirable in terms of s 47(2)(e) of the Publications Act' (See This we Can Do for Justice and Peace (155/81)).
>
> 'Who is to be the probable reader can perhaps be judged from one's own reactions to the book. The Board found it dull and difficult to come to grips with .... What makes the book lack interest for the present day reader or,

rather, blunts whatever interest he may have is that everything in it is so remote from our world and our times.... The account, we must remember, was written in 1917, when the events dealt with were fresh in the minds of non-Russians, that is, of the English readers, especially in America, for whom the book was intended. The events, confined to Russia and a few months at the end of 1917, are now almost forgotten or, at least, unfamiliar to non-Russians. So too are most of the names of persons and places in the book...

Because of the remoteness of everything in it, which is its most obvious characteristic, the book lacks the impact of actuality and is hardly likely to constitute a danger to State security, general welfare, and peace and good order in South Africa. The segment of history dealt with is so far in the past, so localised, and confined to so brief a period that its bearings on or parallels with the political situation in South Africa are difficult to determine. Its being used for purposes of progaganda and incitement seems hardly feasible. Nowhere, for instance, is the word "communist" or "communism" used, the usual word being "socialist" or "socialism".... Descriptions of acts of subversion and violence hardly occur and are essentially documentary, not serving the purpose of inducing or stimulating readers to emulate what was achieved by the Russian revolutionaries of 1917....

As a "classic account" of the Bolshevik revolution - to quote Taylor - Ten Days that Shook the World will be of interest only to the informed and sophisticated reader, who will recognise it as a book - to quote Taylor once again - "founded on a legend, one which had largely truimphed over the facts". As the ad hoc committee said in its report on Lenin's collected works, "The Russian Revolution, in fact, was in itself no proletarian socialistic revolution, but actually a successful coup d'etat by the intelligentsia, supported by politically conscious proletarian elements instigated by the events (of the time)". The likely reader,

that is, the informed, sophisticated reader should not be deprived of access to one of many accounts of the Russian Revolution, largely that of an eye-witness, whose object it was to record what he had seen and heard and not to pass ideological judgment or to make ideological predictions.

In the light of the above the Appeal Board's conclusion is that the book is not undesirable. On the other hand notice must be taken of the Directorate's submission that the book is pro-communistic. A wide distribution could, on the probabilities, have exactly the effect which s 47(2)(e) guards against. The South African Parliament has taken a strong stand against communism, and some limitation must be placed on the distribution of a book which could, if widely distributed, contribute to that very cause. The Board has therefore come to the conclusion that the publication may be imported and sold to lending libraries who may lend it to any member of the public. In this way the likely readers would not be deprived of access to this account of the Russian revolution. The book's availability would, however, be more limited, and the probability that people could be influenced by the book and especially the appendix, which contains communistic writings, would be limited to a mere possibility'.

§8.6.6 CONSTITUTION OF THE USSR

The Constitution of the USSR has been found to be not undesirable.

The Constitution of the USSR (39/83)

'Die Direktoraat het appèl teen die beslissing van ongewentstheid bereik deur 'n publikasiekomitee aangeteken en o a die volgende aangevoer .

> "The committee seems to be in doubt whether the publication actually is the Constitution of the U S S R it refers to 'grondwet' in inverted commas and states that it contains much more than constitutional

matters. A constitutional lawyer would have set the committee's mind at rest by pointing out that the majority of written constitutions in the world today contain (i) a preamble and (ii) a statement or bill of fundamental rights. These are integral parts of the constitution which are, particularly in federal systems, upheld by the central judiciary even against laws passed by the legislative branches of government.... This publication is the Soviet Constitution, for better or for worse.

The study of constitutions is of course an accepted academic exercise in constitutional and comparative law. The latter could hardly exist without the student having the actual examples before him.

The constitution of the U S S R has been a public document for more than sixty years. It has been quoted, attacked and praised throughout this time. It has also been the touchstone by which Soviet actions in practice have been judged - and found wanting.

Normally the fact that a book has been published by a Moscow publisher is an aggravating factor. In this case, however, it puts the seal of authenticity on some of the incredible claims of the communists - such as freedom of speech, freedom of the press, freedom of religious worship, freedom of demonstrations and freedom to establish trade unions in Russia. Even the most gullible leftwinger knows that these freedoms do not exist in Russia. The actual wording of the Constitution therefore exposes that hypocrisy"....

Die Raad is dit, in hoofsaak, eens met die siening van die Direktoraat. 'Slegs hoofstuk 1 van die Grondwet, bestaande uit 12 artikels is werklik propagandisties van aard; veral artikels 2 en 4 kan as voorbeelde aangehaal word.

"The political foundation of the U S S R is the Soviets of Working People's Deputies, which grew and became strong as a result of the overthrow of the power of the landlords and capitalists and the conquest of the dictatorship of the proletariat.

The economic foundation of the U S S R is the socialist system of economy and the socialist ownership of the instruments and means of production, firmly established as a result of the liquidation of the capitalist system of economy, the abolition of private ownership of the instruments and means of production, and the elimination of the exploitation of man by man".

Dan is daar ook art 129 op bl 104 waarna in die minderheidsverslag verwys word en wat as volg lui:

> "The U S S R affords the right of asylum to foreign citizens persecuted for defending the interests of the working people, or for scientific activities, or for struggling for national liberation".

Dan is daar nog die Artikels wat vryheid van spraak, van Godsdiens, van die pers ens waarborg wat vir die oningeligte persoon as slegs normaal en vir die ingeligte persoon as lagwekkend sal voorkom. Die res is gewone prosaise bepalings soos in enige grondwet verwag kan word en wat hoofsaaklik vir die student van belang sal wees.

Dit is uiters onwaarskynlik dat hierdie publikasie 'n beduidende aantal persone tot geweld of opstand sal aanspoor, of sulke vurige kommuniste van hulle sal maak dat hulle 'n bedreiging vir die veiligheid van die staat sal word. Die appèl slaag dus, die beslissing van die komitee word tersyde gestel en die publikasie word nie ongewens bevind'.

§8.6.7 POPULAR WORKS ON COMMUNISM

The Publications Appeal Board distinguishes sharply between works in which communism is treated in a factual or historical manner and those in which it is treated in a popular manner. This popular treatment ensures a general readership as a result of the directness of the medium or the simplicity of the language used. Thus when a work is simply written it is easily understandable to a wide readership, including children, and the potential influence is great. This influence becomes threatening to the security of the State where communism is presented as being invincible or where its leaders are shown as heroes.

Chiang and Mao - China 1919-1949 (27/81)

'Soos die naam aandui gaan hierdie boekie van 23 bladsye oor 'n brokkie Sjinese geskiedenis - die stryd tussen die Kuo-Mintang onder leiding van Chiang Kai-Shek en die kommuniste onder Mao Tse-Tung tot die uiteindelike oorwinning van Mao en Chiang se uitwyking na Taiwan.

...die komitee oor publikasies het...dit nie-ongewens bevind.... Teen hierdie beslissing het die Direktoraat appèl aangeteken hoofsaaklik op grond daarvan dat die boekie bereken is om die jeug te indoktrineer met 'n verwronge en gevaarlike gunstige beeld van Sjinese kommunisme en Mao Tse-Tung....

Die meerderheid van hierdie Raad het met die Direktoraat se siening akoord gegaan en bevind dat die publikasie 'n eensydige voorstelling van die geskiedenis gee wat die kommunisme ophemel. Veral is gelet op die volgende uittreksel:

> 'We say that the Long March is the first of its kind ever recorded in history ... For twelve months we were under daily reconnaissance and bombing from the air by scores of planes. We were encircled, pursued, obstructed and intercepted on the ground by a big force of several hundred thousand men. We encountered untold difficulties and great obstacles on the way, but by keeping our two feet going we swept across a distance of more than 20 000 li (a Chinese mile, 650 metres) through the length and breadth of eleven provinces. Well, has there ever been in history a long march like ours ? No, never ...'.

Die indruk wat dit, en die boek as geheel, skep is een van onoorwinlikheid van die kommunisme. Dit is bereken om jong gemoedere aan te gryp en tot kommunisme oor te haal. Die natuurlike uitvloeisel daarvan is staatsgevaarlike aktiwiteite.... die publikasie word ongewens bevind ingevolge art 47(2)(e)'.

Mao for Beginners (7/81):

'...Dit is natuurlik noodsaaklik dat Suid-Afrikaners moet kennis dra van die lewensbeskouing van Mao Tse-Tung - om Suid-Afrikaners af te sluit van hierdie kennis sou onrealisties wees. Wanneer daar dus op wetenskaplike of selfs semi-wetenskaplike wyse 'n oorsig gegee word van sy lewe, sal dit waarskynlik nie ongewens bevind kan word nie. Die probleem met die huidige publikasie is, soos die Direktoraat dan ook aantoon, dat dit op heel populêre wyse geskyf is en dat dit op die ou end tog nie objektief is nie. Hiermee word ook nie te kenne gegee dat mens ooit 'n punt sou kon bereik waar enige oorsig van Mao Tse-Tung se lewe uit 'n Suid-Afrikaanse oogpunt gesien heeltemal objektief gegee sou kon word nie. In enige oorsig van sy lewe sou noodwendig van sy Marxisties-Leninistiese stellings weergee moes word en dit sal onder sekere omstandighede wel ongewens wees. Die kern van die vraag draai dus nie om wat hier staan nie, maar hoe dit aangebied word en wanneer dit op so 'n populêre wyse aangebied word tesame met tekeninge en foto's wat ook die aandag van kinders sal trek en hou, word daar beweeg op 'n meer riskante terrein. Mens het nie hier te doen met een of ander oorsig van sy lewe in 'n moderne nuustydskrif soos Time of Newsweek nie, maar wel met 'n publikasie wat te doen het met 'n direkte en eenvoudige kweek van Marxistiese gevoelens.

Die Direktoraat voer ook aan dat enige persoon wat nie bekend is met Mao se volle geskiedenis nie - veral die "beginners" vir wie die boek geskryf is - na die lees daarvan sal besluit dat Mao 'n baie heroïse figuur en die redder van China was en dat hy die toegewyde beskermheer van die onderdruktes en wekersklas was....

Die publikasie is ongewens bevind binne die betekenis van art 47(2)(e) van die Wet op Publikasies 1974'.

The depiction of communist revolution through the medium of motion pictures is also threatening to the safety of the State.

1900 (31/81)

'...The problem with the present film is that the capitalists, as epitomized by Alfredo's family, are portrayed as the scum of the earth, for whom only money has any meaning, and human life and human suffering mean nothing. On the other hand the peasants, all members of the Communist Party, are portrayed as the salt of the earth, and are cast in heroic mould. The viewer cannot help developing sympathy for and empathy with the workers in their suffering and strife. The film points to the release from suffering and strife. This will come through the Party. The Communist Party is presented as the embodiment of all that is noble and just. Few would quarrel with the fact that the oppression (of the poor) by the rich is unjust, and this may, of course, be portrayed in a film. When the solution to this problem is sought, however, in revolution (and, more so, in communistic revolution) the matter changes. If this aspect of the revolution were given secondary treatment in the film and kept in the background, one could probably have found the film to be not undesirable for general distribution. This, however, is not the case. The struggle of the peasants, their revolution against the landowners, and their absolute joy at the success of their revolution are brought out so strongly in the film that they dominate the second half of the film and ultimately the film as a whole.

...the film 1900 is found to be undesirable within the meaning of s 47(2)(e) of the Act...'.

Cuba (2/80):

'Die basiese tema van die rolprent is die avonture van 'n Britse huursoldaat in die diens van die Batista-regering net voor die oorname van Cuba deur Castro se gewapende rebelle. Redelik getrou aan die geskiedenis word die korrupsie van die Batista-bewind word getrou aan die geskiedenis uitgebeeld.... Aan die anderkant word die rebelle in 'n gunstige lig gestel... Die vertoning van die

reuse skare wat Castro volg na die val van die Batista-bewind, beoog ook niks anders as om die huidige bewind in Cuba te verheerlik nie.

By beoordeling van die rolprent moet onthou word dat Castro gesê het dat hy tot sy dood 'n Marxis-Leninis sal bly; dat sy buitelandse beleid gemik is op kommunistiese oorheersing van die hele wêreld; dat Suid-Afrika se verhouding met Cuba grens aan openlike gewapende vyandelikheid met sy 20 000 soldate in Angola; dat Cuba as kommunistiese land aktief deelneem aan die opleiding en bewapening van terroriste wat Suidwes-Afrika en Suid-Afrika indring en dat die uiters gunstige en simpatieke uitbeelding van die huidige Cuba die oogmerke van kommunisme en die gewapende aggressie van 'n gevaarlike vyand van Suid-Afrika bevorder.

Die nadelige trefkrag van hierdie rolprent is groter as dié in 1900 (29/78) waarin die opkoms van kommunisme in Italië uitgebeeld is en wat ongewens bevind is.

...die rolprent... is ongewens bevind binne die betekenis van art 47(2)(e)...'.

§8.7 BLACKS

§8.7.1 GENERAL INTRODUCTION

There are obviously a number of factors that distinguish writings by blacks about the position of blacks in South Africa from those written from a white perspective.

The black man's daily life is affected by social and political injustices that result from discriminatory laws and the enforcement of these laws. Furthermore, because he does not have the right to vote for the government of South Africa, the black man must of necessity pursue his political goals by means other than those available to whites. In the result strong criticism of the government, vocal protest against the actions of the various branches of government and the political solutions suggested by blacks might be expected to bring a work more easily within the ambit of undesirability. The Publications Appeal Board does make allowances, however, for the voicing of black aspirations, for protests against the hardships seen by blacks to be inflicted upon them by the 'white' system, and for pleas for change to this system. In fact, the Board has stressed on occasion that blacks should be permitted greater freedom of speech than whites because of the absence of black parliamentary representation. So, too, the use of strong, even exaggerated political invective is sanctioned. The Board bases its attitude in this respect on two divergent premises: first, that political bias and exaggeration is to be expected and is counter-productive, and, secondly, that it is essential that whites be conversant with black attitudes and grievances.

In practice the tolerance of the Publications Appeal Board towards black aspirations, grievances and protest is found to extend to black community newspapers, pamphlets and literature. Where black aspirations are pursued through the medium of banned organisations, such as the African National Congress and the Pan Africanist Congress, a sterner standard is applied and such matter is in consequence more readily found to be undesirable.

Blacks are a 'section of the inhabitants' of the South African community and consequently works in which they are depicted fall within the ambit of paras (c) and (d) of the Publications Act (see § 4.2.2). Works by and about blacks are usually written with reference to another 'section of the inhabitants', specifically whites or Afrikaners. Such works are consequently more likely to be considered under para (d) than under para (c) in that the works affect race relations by creating racial animosity. However it must be noted that, in practice, such works are often considered under both paras (d) + (e). The reasoning of the Publications Appeal Board is that the creation of racial animosity against whites or of racial conflict threatens the security of the State in that the rights of blacks are to be established by extra constitutional means. Although para (d) and (e) respectively are applied to different situations, in practice both the committees and the Appeal Board fail to draw a sharp distinction between these paragraphs where there is advocacy of black political rights.

Criticism of whites and their government by blacks is not in itself sufficient to create racial animosity between the two groups. The Publications Appeal Board relies upon the following

Supreme Court decisions in order to ascertain whether or not the emotions aroused between blacks and whites brings matter within the scope of racial animosity or hostility:

R v Sutherland and Others 1950(4) SA 66(T) op 75 F-G:

"Presumably a Samuel Wilberforce inveighing against the evils of slavery in his endeavours to secure its abolition could scarely have been said to have deliberately purposed to create hostility between slave and slave owner, whatever feelings might have been aroused in the minds of his listeners by his condemnation of the evils of slavery. Obviously of course, the language uttered or the actions employed in each case must be taken into consideration, for if they disclose such violence, prejudice, such recklessness that a reasonable man could only infer that the individual's true objective was the promotion of hostile feelings, the individual's protestation of another purpose would be rejected and he would rightly be convicted of an offence as that charged in these proceedings".

R v Brown 1929 CPD 221 op 223:

"The native is a most important political factor in the political life of this country, and both the Government and Parliament are from time to time confronted with problems relating to him, and it is only natural that in their dealings with such problems, members or ex-members of the Government, and members of Parliament generally, will, at times, be severely criticised. The Legislature, however, could not have intended to bring such criticism, even though couched in offensive and abusive language, within the scope of s 29(1) of Act 38 of 1927".

R v Nkatlo 1950(1) SA 26(C)

"Any suggestion that it might be necessary for a native to take steps in the furtherance of their rights might have the effect of promoting feelings of hositlity between the Native and European. But again it must be reiterated that this is not the issue. If it were to be held that any criticism of the lack of the Natives' right to vote and any suggestion that this alleged wrong could only be remedied by methods which did not rest on the right to vote led to an inference of an intention to promote feelings of hostility there would be... a dangerous interference with honest and impartial criticism of policy or doctrine upon which divergent views and opinions might reasonably be held".

Works by blacks may also fall within the ambit of s 47(2)(e) if they contain matter that is a direct or indirect call to action prejudicial to the security of the State or the peace and good order (see § 4.3.1) In The Classic (37/83) the Publications Appeal Board enunciated some of the factors that should be considered in determining whether para (e) has been violated.

'In considering whether this publication would contribute to the violation of the interests safeguarded by s 47(2)(e) of the Act, the following factors must, inter alia, be taken into consideration:

a) The editorial note (p 6) advocates words not war: "The black writer would, as it has so sensibly been put, 'create beautiful verse instead of molotov cocktails'".

b) The Classic is a literary work with literary pretensions - Ride on the Whirlwind (114/81).

c) The likely readership would be similar to that described in Staffrider (70/80) and Staffrider (122/80); that is, the more sophisticated black man and the white man interested in reading material by blacks. The editorial quality and the price of the publication support this view.

d) Protest is a common feature of black poetry and the Board has on previous occasions found such writings to be not undesirable - see Staffrider (70/80 and 122/80).

e) Whites are likely to gain more than to lose by being given access to black writing of this kind - cf Staffrider (70/80).

f) The Classic fulfils the need for a publication devoted to the advancement of black literature and culture

g) As The Classic is a magazine, it is unlikely to be prescribed for use in schools; cf Fire Flames (2/81)3. On the other hand it is, of course, possible that it would be available in school libraries...'.

8.7.2 PROTEST LITERATURE

The Publications Appeal Board regards protest against discriminatory laws and practices as being endemic to black literature. The Board carefully balances the negative against the positive factors in each work before reaching a conclusion that black literature creates racial animosity or that the security of the State is threatened - for example, by criticising the police force or by idealising black insurgents.

Forced Landing (45/80):

'Though there is much in the anthology that is a matter of opinion, there is much that provides the reader with insights into the tribulations, more especially, of urban blacks: the dangers of over-crowded trains, the terrorism that train gangs indulge in, the problems in urban hostels, the alcoholism to which shebeens contribute, and indirectly, commercial exploitation....

...The arguments, the protestations have the ring of sincerity and, as has been said above, will be regarded by the reader as a matter of opinion. The insight of the South African reader must not be underestimated: he is daily confronted with political news and political comment from the left and the right and is generally not so easily influenced as is sometimes thought. The Act cannot guard against possibilities and the adjudicators must base their decisions on probabilities. Weighing all the positive and negative factors which have been mentioned above against

one another, the Board has come to the conclusion that the present publication would not contribute towards the endangering of the safety of the State or create hostility or contribute towards the creation of hostility between blacks and whites. On a balance of probabilities it would rather contribute towards a better understanding of the black man's problems and create new avenues and methods of dialogue in the pursuance of peaceful co-existence'.

The publication is not undesirable in terms of s 47(2)(e).

Staffrider (122/80):

'...In its well formulated appeal the Directorate submits that Staffrider fulfils the need for a publication devoted to the advance of black literature, however uneven the product may be at times. It also favours the growth of black culture and education, in themselves desirable attainments. The Directorate also points out that black literature cannot at all times avoid voicing a protest, justified or not, against allegedly discriminatory actions or conditions. It is common cause between white and black that unnecessary and unfair discrimination should be progresssively eliminated. This cause can only be furthered if blacks are given the opportunity of indicating what they regard as unfair treatment, as is done, on more than one occasion in this Staffrider. Such objections are often clothed in exaggerated and over-colourful language which falls strange on Western ears. Exaggerated political invective however, is almost an art formed amongst Third World nations. The Directorate, in our opinion correctly, also points out that Western man, who believes in under rather than over-statement, is often unnecessarily perturbed at these verbal onslaughts which, through their very exaggeration, lose a measure of their effectiveness'.

A Ride on the Whirlwind (114/81):

'The main issues are whether the book (and, in this respect, especially the presentation of white members of the Police Force in a contemptible manner and the idolising of black insurgents) would create animosity between blacks and whites or lead to or contribute to a violation of s 47(2)(e) of the Publications Act....

Although it presents a point of view which is contrary to that of many whites and blacks and idolizes revolutionaries, the Board's conclusion is that the book substantially amounts to a historical account of what happened in Soweto in 1976 as seen through the eyes of a black contemporary. The book would be read as such, and the truths in the book should be allowed to speak for themselves, as also should the clichés, the striving for emotional effect, and the biases, of which the more obvious one is the treatment of the police, who are mostly described as inefficient and brutal. This is, however, nothing new in novels of this kind and would, as a result of its one-sidedness, have no inciting effect. It can in fact be regarded as being counter-productive'.

The publication is found to be not undesirable within the meaning of s 47(2)(d) and (e).

Staffrider (70/80):

'As may be expected in a review that publishes whatever can be covered by the umbrella of protest, there is a general derogation of whites and their government, but there are contributions that serve as a corrective to this...

As for the finding of militancy, the contribution quoted most extensively by the publications committee is the extract from Miriam Tlali's novel Amandla, which, together with Masilo Robothata's Rustaman in Zimbabwe and

Heather Bailey's Demolition Blues, expresses the most provocative sentiments. What is provocative, however, does not necessarily constitute incitement. The important question about these contributions is whether they are more than reportage... The fact is that the black masses, even the illiterate, have heard at gatherings, like funerals, the things that have been re-uttered here, and finding Staffrider undesirable on such grounds, would be like locking the stable door after the horse has bolted. Whites are likely to gain more than to lose by being given access to black thinking through this kind of medium. What is published in Staffrider has been written for the literate by the literate and for the converted by the converted. It should be judged mainly in literary terms as what the Directorate of Publications has called "a publication of prestige quality" and "a medium for established and emergent writers". Even though Staffrider itself may regard literary standards as "elitist", the fact that it includes items of literary merit and validity serves to advance black culture, and that is, indeed, a mitigating and even commendable consideration'.

The Board found this publication to be not undesirable in terms of s 47(2)(d) and (e).

The Classic (37/83):

'It is not the prose items in the publication, however, that give rise to serious doubts. Although most of them are critical, even provocative, as the appellant conceded, and protest against what they consider to be injustices, the criticism in them, more especially of whites and the government, is characteristic of what has come to be familiar in South African politics, and the protest does not become direct exhortation or incitement to any kind of action and does not propagate revolt or subversion'.

Fire Flames (2/81):

''n Komitee oor publikasies het die digbundel Fire Flames van Oswald Mtshali ongewens bevind binne die betekenis van art 47 (2) (e)...Teen hierdie beslissing het die Direktoraat van Publikasies appèl aangeteken en die volgende gronde van appèl aangevoer.

> "Hoewel die bundel 'n aantal gedigte, 'n opdrag en 'n 'author's note' bevat wat uiters emosioneel, en moontlik selfs opruiend kan wees; en hoewel die gehalte van die poësie maar baie ongelyk is; en hoewel die digter ten opsigte van 'n vyftiental gedigte uit 'n totaal van 63 die 'protes' so op die spits dryf dat die resultaat feitlik net protes en weinig poësie is; is die Direktoraat tog die mening toegedaan dat daar genoeg literêre verdienste in hierdie bundel is om minstens te versoek dat dit verder deur 'n Komitee van Deskundiges onder die oog geneem en beoordeel moet word"'.

Die bundel is na 'n Komitee van Deskundiges verwys soos versoek deur die Direktoraat asook na Dr C E Pretorius, 'n Appelraadslid; [en die verslae van beide is by die beslissing aangeheg.]

'Dit is duidelik dat hoewel die bundel nie sonder letterkundige verdienste is nie, dit van baie ongelyke gehalte is en nie genoegsaam om te vergoed vir die ongewenste aspekte daarvan nie. Wat hierdie ongewensthede betref, is daar nie verskil van mening nie. 'n Goeie vyftiental van die gedigte is opruiend van aard en al wat Blank is word uitgekryt. Ook moet in gedagte gehou word dat die swart tale besonder ryk is aan beeldspraak, dat poësie gevolglik besondere weerklank by die swartman vind en dat hy makliker daardeur aangevuur sal word as deur prosa. Dit is ook nie uitgesluit dat hierdie bundel in skole voorgeskryf mag word nie.

Terwyl die meerderheid van die lede van die Raad nie bereid was om te sê dat die boek 'n bedreiging vir die veiligheid van die Staat inhou nie, kan daar nie twyfel wees nie dat dit bereken is om haat teen die witman by the swartman aan te blaas, en dus ongewens is binne die betekenis van art 47 (2)(d) van die Wet op Publikasies'.

The Wanderers (103/83):

'In that the novel, by virtue of its plot, deals with sensitive political and racial issues not only in South Africa but in other parts of Africa as well, there are in it derogatory references to and comments on the attitudes of whites, government policies, and the police and the methods they employ in carrying out their duties. What the Board then has to decide upon is whether these would create or contribute to animosity between blacks and whites or lead to or contribute a violation of the interests safeguarded by s 47(2)(e) of the Publications Act, i e the security, peace and good order, and the welfare of the State. These are issues that must be decided upon in the light of the book's likely readership and its probable effects on that readership.

The likely readers of this publication will be sophisticated and discriminating, with an interest in literature and, more especially in the writing of African authors, among whom Mphahlele is well-known and has an established reputation. The writing in this particular novel is that of an experienced author who has avoided the faults of both excess and one-sidedness. However critical he may be of whites, he is not uncritical of blacks and of practices in other African states. There is reference, for instance, to the foul language of the eleven-year-old granddaughter of elderly neighbours of Timi's family (p 36), black women who become prostitutes (p 49), the brutality of black husbands, like Timi's own father (pp 94 and 176), the survival of the colonial pattern and colonial practices in countries like Lao-Kiku (giving rise to the question, "when the black man thought independence would win him back his land, how would he want to own it but as private property unless his government were oriented differently?" (pp 277-278), and the general lack of interest, among certain African people, in the processes of government, resulting in their voting for members of their own ethnic group and,

through their feeling the need for a dictator, in the election of a tin-god, who surrounds himself with sycophants and stooges, arranges for his own comfort, and corrupts that State and government (p 168). There is a balance in the general picture presented.

Although there is derogatory comment and in one instance, at least, misrepresentation, that is, the condoning of forced farm labour by prisoners, whereas, by law, prisoners may be used as farm labourers only if they choose to be and are then not under prison regulations, such comment, as has been pointed out in previous cases (e g A Ride on the Whirlwind (114/81)), is nothing new in novels concerned with South African political issues, and harsh criticism, as well as derogatory language, is a typical feature of South African politics (Forced Landing (45/80)). As was pointed out in the case of Staffrider - vol 3, no 3 (112/80), the Directorate itself has held "that black literature cannot at all times avoid voicing a protest, justified or not, against allegedly discriminatory actions or conditions.... Such objections are often clothed in exaggerated and over colourful language which fall strange on Western ears. Exaggerated political invective, however, is almost an art formed among Third World nations...". One of the merits of The Wanderers is its restraint, its freedom from excess and exaggeration, and its measure of balance. For that reason, the Board agrees with the publications committee in its view that the references and comments at issue are not so weighted as to be inciting. In the result, the appeal fails, and the decision of the publications committee that the publication is not undesirable within the meaning of s 47(2) of the Publications Act is confirmed.'

In a recent decision the Publications Appeal Board considered the standards to be applied in evaluating writings by African writers: House of Hunger, Why Are we so Blest? and 2000 Seasons (79-81/83). In this decision the Board was

concerned directly with s 47(2)(a), however, some of the comments of the Board relating to the reactions of the likely black reader might be applicable to s 47(2)(d).

Protest is also permitted in community newspapers provided that violent action is not advocated.

SASPU National (161/82):

'...In contrast to the previous issues (vol 2 no 3 and vol 3 no 1) the accent in the present publication is on detention without trial and, to a lesser extent, on community problems. It also appears that the present publication has more articles in the form of "news articles" than the previous issues which contained more advice on what should be done. Although the message of the publication is that the present system is unacceptable and that co-operation is necessary, it does not contain much with regard to a programme of action. The publication, is therefore, found to be not undesirable'.

Izwe Lazi Township (144/82):

'The publication, [Izwe Lazi Township] which is a local newspaper for the Alexandria township near Johannesburg, deals with issues affecting the community, general social issues, issues which the community has faced in the past, bus-fares and the successful effort to resist an increase of bus-fares in 1957 by the same community, criticism of what is said to be a bias on the part of SABC television, housing or the lack of it in the community, crime in the community, graffiti as social commentary, and letters....

Although it is true that bus boycotts have quite often in the past been accompanied by violence, the present publication does not call for violence. In fact, it argues that violence does not in the long run solve the problem. It is clearly against the raising of bus-fares, and the

monopoly by private enterprise of the transport business and calls for mass co-operation in solving this kind of problem by, for example, not making use of the transport when such raises do occur'.

§8.7.3 Political Slogans

The Publications Appeal Board has held that the use of political slogans and symbols to communicate protest against discriminatory practices or to communicate black aspirations is not in itself undesirable. Such slogans and symbols, according to the Board, have a reduced effect resulting from their frequent usage. Where, however, political slogans and symbols are coupled with emotive reporting or with photographs or other visual representation, and are likely to incite the readers to action that would lead to public disorder, such matter is undesirable under para (e). The above considerations are particularly applicable to student publications.

Izwe Lazi Township (144/82):

'The only other problem with the publication is related to the graffiti, in which sentences such as "Free Mandela", "ANC Lives", "White Republic No ... People's Republic Yes", occur in a paragraph. Futhermore, the last page is substantially taken up by a photo of an "Amandla" graffiti on a wall. Although many of these solgans have lost their effect through the very fact of their being used too often, the Board must warn the publishers that they are here treading on dangerous ground and that they should steer a course clear of slogans which have to do with banned organisations. This Board has, however, found that the "Free Mandela" campaign and a call for one man one vote are not undesirable in themselves'.

The publication was found to be not undesirable within the meaning of s 47(2)(e).

Grassroots (14-15/82):

'The Board has come to the conclusion that the newspaper itself cannot be distinguished from the previous edition which was found to be not undesirable and that it basically deals with community grievances of a local type. The clenched first, shown in some photos, has lost its strengtn as a means of incitement on its own. Although many may not like the tenor of this paper, especially those who are criticised, this type of material does not fall within the ambit of s 47 (2) (e) of the Act ...'.

Varsity (73-77/80):

'The last three publications [entitled Varsity Special Report no 2, 3 and 4] have to do with a call to students of the University of Cape Town to boycott lectures to show their solidarity with the (black) schools boycott...'. The Appeal Board has come to the conclusion that no 2 and 4 'do not amount to more than mere reporting although they are typically emotive in student fashion'.

The Board found that the photograph on the first page of Special Report no 3 transcends the bounds of political criticism or local reporting.' On this first page a demonstration by 2000 U C T students is reported. It is accompanied by a relatively large photo showing a number of students with placards bearing slogans. One reads "From the schools come revolution", another reads "Radical change", while others are not clearly readable.

That the bounds of mere political criticism are here transcended, also appears from the indication that protest songs were sung. The Board has come to the conclusion that this photograph together with the idea of protest which is put across, would contribute to the creation or furtherance of public disorder. As the publications committee points out, the boycott had not come to an end and that some of

the boycotts would contribute to the undermining of the maintenance of law and good order in the country. The Appeal Board has come to the conclusion that the publication - in any case, p 1 of it - would contribute to such unrest'.

This publication was found to be undesirable by the Appeal Board.

Benoni Student Movement (159/81):

'The main problem centres around the fact that the majority of the articles have civil disobedience as their basis. In some cases this kind of action is directly promoted by the use of references to the deprivation and frustration of the blacks in the areas of education, health, labour, housing and welfare. The terminology which is used is also calculated and would, on the probabilities, have the effect of promoting emotions of desperation: for example "gutter education", "ghetto's known as group areas", "oppression". Furthermore the publication is also interlarded with references to "heroic moments" in the resistance history of blacks. Opposition to any policy of the government is not per se undesirable. The opposition apparent in the present publication however differs from the normal party political, journalistic, or intellectual opposition which is traditional in South Africa. The present publication is opposed to the whole system. The publication is also interlarded with typical socialistic terminology. In this manner extra-constitutional methods of change are subtlely and even directly propagated'.

§8.7.4 COMMEMORATIVE EVENTS IN FREEDOM STRUGGLE

The difference between black and white political perspective is evident in the commemoration of events that mark the attainment of black political freedom. To whites these commemorations exceed the bounds of permissible political

comment, while to blacks they are hard won milestones in the 'freedom struggle'. The coupling of such events with pictorial matter more quickly incites the likely reader to violate the interests protected in para (d) and (e).

Grassroots (14-15/82)

'...In regard to the calendar itself the Board has come to the conclusion that it is undesirable within the meaning of s 47 (2)(e) of the Act. The fact that it is a calendar and would therefore have a wide likely viewership and remain in view for a whole year, is an aggravating circumstance. The calendar, which is illustrated with drawings and photos associated with the so-called freedom struggle, accentuates the important dates in every month. In this manner, 16 June (The Soweto Uprising), 30 March (the banning of the A N C), 26 June (Freedom Charter Day), 18 April (Freedom in Zimbabwe), 9 August (National Womens' Day, commemorating the day when 20 000 women marched to the Union Buildings to protest against pass laws), and other dates associated with community grievances of a more local nature, are specifically noted. Although it is doubtful whether each of these photos would be found to be undesirable, their cumulative effect together with the dates recorded will, judged on the probabilities, incite hatred and make the likely viewers more prone to disrupting public order in the same manner. In the light of the fact that the publication is a calendar, it would also, prima facie, seem to be so undesirable that its possession should also be prohibited. The latter decision as has been pointed out, is subject to appeal. In the meantime the decision of the publications committee that possession of the calendar also has to be prohibited is confirmed.'

The newspaper was found to be not undesirable, while the calendar was undesirable within the meaning of s 47 (2) (e) of the Publications Act 1974 as amended. Possession of the calendar was also prohibited.

Varsity (73-77/80):

According to the publications committee '...an article appears [in Varsity no 2 25 March 1980] under the title "Sharpeville - 20 years later the memory lives". The article is accompanied by a large photo showing a row of coffins...'.

According to the Publications Appeal Board 'it appears, however, that the article goes further than merely commemorating what happened twenty years ago. The publication has in fact made use of the opportunity to further hostile emotions against the whites. The following comment [quoted] if considered in isolation, would have been within the bounds of legitimate political criticism, but when considered together with the rest of the information, as well as an emotive photo showing a number of coffins, probably taken at the burial ceremony after Sharpeville, it contributes towards hositility and does not amount to mere commemorative material'.

The Publications Appeal Board has held that the expression of sympathy towards black leaders, who are jailed or banned because of their association with organisations such as the African National Congress, would not necessarily incite readers to action and thus to violate those interests associated with the security of the state. Consequently calls for the release of Nelson Mandela are permitted.

Race Relations News (60/80):

'Die Appèlraad is van oordeel dat dit nie ongewens is om te organiseer vir 'n petisie op die wyse wat hierdie publikasie dit doen nie. [Die publikasie is 'n petisie vir die vrylating van Mandela]. Die finale oordeel en reaksie op hierdie petisie lê nog steeds in die hande van die

regering en so 'n petisie kan beskou word as een van die mees vreedsame middels in die politieke wêreld. Die blote feit dat Mandela 'n politieke gevangene is, verander nie die saak nie. Die kernvraag bly of die stof in die onderhawinge publikasie so opruiend is dat dit tot wanorde sal lei of daartoe sal bydra. Die waarskynlike lesers van hierdie publikasie is lede van die betrokke "Institute of Race Relations"'. Volgens Mnr Tucker, appellant se verteenwoordiger, kan sodanige persone beskou word as lede van die 'Liberal Establishment' en sal nie deur hierdie publikasie beweeg word om die vermelde belange aan te tas nie.

J R News (123/80):

'Thirdly there is an article which has to do with the "Release Mandela" campaign. At the end of the article there is a petition form in connection with the release of Mandela. As has been decided in the Varsity cases (73/80; 74/80; 75/80; 76/80) the campaigning for the release of Mandela is not in itself undesirable. The same applies in regard to the making available a petition form for this purpose (See Race Relations News (60/80))'.

J/R News was found to be not undesirable.

APS Bulletin (1/81):

'Soos die appellant aandui, verheerlik die bulletin ook nie vir Mandela nie. Hy word nie as held en bevryder opgehemel nie. Wat daar oor Mandela gesê word kan moontlik as 'n feit, of as 'n geregverdige weergawe van 'n mening, aanvaar word dat Mandela as leier by die ANC se lede populêr is. Die berig gaan nie veel verder as dit nie'.

J R News (123/80):

'...The publication is sympathetic to the black man's political cause. The question is whether it would affect State security as protected in s 47(2)(e) of the Act....'

An article on the student boycotts was found to be not undesirable. 'An article called "Woman in the Struggle for a Just Society" about Lilian Ngoyi, who has been listed under the Internal Security Act for 15 years since 1962 was also found to be not undesirable. Although this article is clearly sympathetic towards her cause.... The mere fact of sympathy towards people who could be regarded as enemies of the State, is not enough for a finding of undesirability.

To be undesirable a publication must clearly incite or contribute to such incitement or divulge information which could lead to a violation of the interests protected by s 47 (2) (e). The Board came to the conclusion that the present article, although sympathetic towards her cause, does not have enough emotive value to incite or contribute to such incitement'.

§8.7.5 Freedom Charter

The Board has decided that publication of the Freedom Charter, combined with other matter, is not forbidden as such. If, however, the Freedom Charter is combined with matter in which the ANC is glorified, or is linked with violence, the work concerned would be undesirable in terms of s 47 (2)(e). The Board has not yet considered the publication of the Freedom Charter on its own.

Anti-SAIC News (38/83):

'The publications committee has indicated that it regards the TIC [Transvaal Indian Congress] as a terroristic organization which subscribes to "the revolutionary objects of the ANC" by reason only of the fact that the TIC was represented at the drawing up of the Freedom Charter, which is the ANC's blueprint for their proposed political dispensation in South Africa. The

Freedom Charter was indeed adopted by the TIC, as is acknowledged in the bulletin. The Freedom Charter, however, is a moderate document in itself, expressing sentiments contained in the constitutions of many countries, as well as in basic declarations of human rights. The sentiments expressed in the Freedom Charter are well within the bounds of legitimate aspirations and are not, and have never been, the exclusive preserve of the ANC. It is the use to which the ANC has put the Freedom Charter that has made this Charter undesirable within certain contexts. There is no evidence in the publication to suggest that the publication associates itself with violence. Even if there were to be evidence that the publishers associate themselves with violence, this is not evident in the publication itself. It is only the publication that is the subject of the ajudication. Its publisher is not being tried by the Board as he would be in a criminal trial. In fact, it is stated on p 3 the publication that it bases its arguments on what can be attained by legal means: "Notwithstanding the intransigence of the authorities and the ever decreasing room for opposition, we remain committed to the use of every available and legal means to continue the struggle for freedom". In S v Nokwe and Others 1962(3) SA 71(T) Trollip J, at 75, said the following which is also applicable to the present matter:

> "But there is nothing in either Statute that penalizes a person or body of persons for having, or for trying in their own way to achieve, the same objects as those or some of those, of the (African National) Congress. After all, such a person or body of persons could conceivably conduct their activities towards achieving those aims or objects of their own in a manner which, unlike that of the Congress, could not be regarded as endangering public safety or order, and there would, therefore, be no need to stop such activities. To take a concrete example. There are probably other bodies or organizations in the country...who aim at and work to achieve unity amongst the Bantu people, the abolition of discriminatory legislation, and/or the attainment of universal adult suffrage in the country. Those objects are similar to some of the aims of the Congress. I do not think that the mere conduct of such bodies or organizations in working to achieve those same objects could necessarily be regarded as a contravention of s 11(A) (of the Suppression of

> Communism Act, 1950). For it to be so, the State would also have to prove that such conduct in addition had assisted, or as a reasonable possibility could have assisted, the Congress to achieve, through its own members and organisation, its own objects".

This dictum was approved by the Appellate Division in S v Arenstein 1967(3) SA 366(A), pp 382-383. The publication does contain a few questionable statements, but they are not of such a kind as to be regarded as being prejudicial to the safety of the State. Before such finding can be made, it must be clear that the matter falls within the ambit of s 47(2)(e)'.

In an application for the confirmation of a decision of a publications committee that the publication The Land Shall be Shared Among Those who Work It (essentially comprising the Freedom Charter) (2/4/4/(83)) be pronibited for possession, the Board ruled as follows:

'The task of the Publications Appeal Board is limited to the contents of the Freedom Charter itself. The policies behind it or the change of policies in connection with it are irrelevant. Compare s 47(4) of the Publications Act, which provides that:

> "In determining whether any publication or object is undesirable, no regard shall be had to the purpose of the person by whom the matter was produced or distributed".

The Appeal Board is, therefore, legally not entitled to take cognisance of the fact that the ANC, which still regards the Freedom Charter as part of its constitution, has clearly changed its policy of non-violence to violence. What is more, legal organisations, in the recent past, have adopted or have at least subscribed to the aims of the Freedom Charter....

What is of importance in the present inquiry is the statement that the Freedom Charter in itself does not refer to violence as a means of achieving the stated objects. It is in this regard that the publications committee, with respect, has erred in law in its contention that a prohibition as to possession should be imposed on the present document, which contains the Freedom Charter. It gave the following reasons for its decision:

"Die vlugskrif bevat die hele Freedom Charter wat reeds verbied is en wat opgestel is deur die Congress of Democrats bestaande uit die ANC, PAC, SA Indian Congress ens. Dit is bekend dat die ANC die bestaande bestel deur middel, van n rewolusie omver wil werp. Hierdie vlugskrif is 'n mondstuk van die ANC. Dit is uiters staatsgevaarlik".

In the first place it must be pointed out that the Freedom Charter was not compiled by the Congress of Democrats. Although the Congress of Democrats was one of the sponsoring organisations and had representatives on the drafting committee, it alone was not responsible for compiling the Freedom Charter. Presumably, the Committee meant that the Freedom Charter was compiled by the Congress Alliance. If this was so, the committee was mistaken in stating that the alliance included the PAC, which was not in existence at that time. It is also not strictly true that the Freedom Charter has already been prohibited. In fact, the Freedom Charter is legally and freely available in South Africa in certain forms, though not in others. The mere fact that the ANC has adopted the Charter is, as appears from the above, in itself an irrelevant consideration. Although the ANC was one of the sponsoring organisations at the Congress of the People, it adopted the Freedom Charter only a year later, more or less and at a time when it was a legal organisation operating openly in South Africa. The fact that the Freedom Charter was adopted by the

ANC does not alter the fundamental character of the document, which remains unaffected and unaltered by the aims of those who subscribe to it (s 47(4) quoted above). The fact that the ANC has committed itself to the violent overthrow of the present system is also an irrelevant consideration.

The Board has, therefore, come to the conclusion that a prohibition as to possession of the document before it, for all intents and purposes the Freedom Charter, is not authorised by the Publications Act and that the findings of the 1961 Special Criminal Court and the Rabie Commission are in accordance with this decision. If this Board were to justify its decision for a prohibition of possession of the Freedom Charter by referring to the aims of the ANC - and if this were relevant, this could be the only ground for such a decision- it would be acting contrary to s 47(4) of the Act and in fact would be taking an illegal decision, which could quite easily be set aside by way of review or even by a criminal court, where the finding could be successfully attacked.

The Board, however wishes to sound a note of warning in the following respects:

1. As a result of the emotions evoked by the Freedom Charter and its connection,inter alia, with the ANC, which has dedicated itself to the violent overthrow of the South African State, an irresponsible use of the Freedom Charter, taken together with the concomitant circumstances, could readily lead to a conclusion that a section of the Internal Security Act has been contravened. This is, however, not a matter for this Board to decide.

2. Furthermore, s 56(1)(c) of the Internal Security Act 74 of 1982 makes the following provision:

> "Any person who without the consent of the Minister of Law and Order is in possession of any publication published or disseminated by or under the direction or guidance or on behalf of an unlawful organisation shall be guilty of an offence."

A document which clearly falls within the ambit of the said paragraph may, therefore, not be in any person's posession. If the said requirements are absent, the Internal Security Act and, as appears from the above reasons, the Publications Act are not applicable'.

§8.8 SABOTAGE AND REVOLUTION

The Publications Appeal Board has held that the treatment or depiction of revolutionary activities in South Africa will not necessarily result in sabotage or revolution. However a work in which instuctions were given on the manufacture of bombs was found to be undesirable as the instructions could be utilised by terrorists and sabateurs.

Terrorism: an Executive's Guide to Survival (125/80):

'...Die Direktoraat van Publikasies het appèl aangeteken teen hierdie beslissing [van ongewenstheid] en aangevoer dat aangesien die publikasie tog van groot nut is daar sekerheid verkry moet word oor die vraag of die resepte wat daar gegee word vir die maak van plofstowwe en bomme wel uitvoerbaar is.

Dit kan nie betwis word nie dat 'n groot deel van hierdie publikasie vir die ekonomiese, handels en industriële instansies asook vir wetsgehoorsame lede van die publiek waardevolle inligting en wenke bevat ten opsigte van sabotasie met plofstowwe en ten aansien van sekuriteit oor die algemeen. Daar is ook algemene wenke en voorskrifte van hoe opgetree moet word voor en na ontploffings onder andere, die voorkomingsaspekte en die identifikasie van gevaarlike materiaal....

In hoofstuk 11 word resepte gegee van die wyse waarop sekere springstowwe en chemikalieë gebruik kan word. Op bl 26 word die resep vir gewone buskruit verstrek. Dit is natuurlik nie 'n gekomplikseerde formule nie en omdat dit so eenvoudig is, kan die onopgeleide dit maklik vir uiters gevaarlike doeleindes aanwend. Die saboteur kan maklik ook die illustrasie van 'n vernietigende bom (bl 20) gebruik. So is daar ook op bl 22 die eenvoudige artikel, wat algemeen bekend is as die "molotov" bom, wat besonder goed gebruik kan word in verband met georganiseerde brandstigting op groot skaal. Besonderhede word ook verstrek in verband met die sogenaamde "briefbom".

Die Voorsitter van die Appèlraad het die deskundige mening in die verband bekom en daarvolgens aangedui dat alhoewel die boek uiters waardevolle inligting bevat en hy daarvan oortuig is dat enige slim terroris of voornemende terroris al die inligting oor hoe 'n bom gemaak kan word in 'n chemiebiblioteek kan verkry, hy nietemin glo dat hierdie boek nie in sy huidige vorm vir die algemene publiek beskikbaar moet wees nie. Daaruit blyk dit dan ook dat hy die resepte as gevaarlik beskou.

Dit is dus duidelik dat 'n algemene vrystelling van hierdie boek nie kan geskied nie ...die publikasie binne die betekenis van art 47 (2) (e) van die Wet val.

Dit beteken egter nou nie dat vrystellings nie op geselekteerde basis aan bona fide studente en ander instansies verskaf kan word nie. Hiervoor maak art 8(3) van die Wet dan ook voorsiening'.

The discussion of revolutionary activity does not necessarily encourage revolution or the unconstitutional overthrow of the State. The liklihood of a revolution is reduced, in the opinion of the Board, where the revolutionary activities depicted are unsuccessful or where the reader, with the benefit of hindsight, is able to learn from the experiences chronicled and consequently avoid a repetition of such violence.

Elegy for a Revolutionary (205/82):

'The Board did not find itself in agreement with the committee's point of view concerning the publication's literary merits or, rather, demerits. Instead, it found the novel to be a sensitive portrayal of the minds and characters of a number of young men and women, involved in subversive activities and, in that respect somewhat reminiscent of Joseph Conrad's The Secret Agent and Under

Western Eyes, recognised classics dealing with the theme of underground activities, violence, and even anarchy....

In that the novel is a study of revolutionaries rather than revolution, there is little, if anything, in it to propagate either subversion or revolution. Instead of approving of sabotage or other subversive activities, the novel shows how such activities fail and what consequences they have for those engaged in them. The novel, it was found, would deter rather than encourage such activities by emphasising their futility.

Moreover there are no formulas for successful subversion in the novel, and revolutionaries are not likely to read a book of this kind to advance their purposes, because in it unsuccessful rather than successful attempts at sabotage are dealt with and because divergent and conflicting views about subversion are expressed. What is most strongly disapproved of even in such acts is the loss of life...'.

Transvaal Episode (49/82):

'The main issues are whether the book (and, in this respect, especially the presentation of white members of the police force in a contemptible manner and the idolizing of black insurgents) would, on the probabilities, create animosity or contribute to the creating of animosity between blacks and whites or lead to, or contribute to a violation of the interests safeguarded by s 47(2)(e) of the Publications Act, which deals with State security and public order. Both issues must be decided in the light of the probabilities and the likely readership of the publication. Mere calculation is not sufficient (see Divide the Night (60/81)).

...Furthermore, the present publication can be regarded as a study into the effects of a communication gap between black and white. It implicitly draws attention to

the absolute necessity of a proper dialogue and a proper consideration of grievances. The reader of this novel would regard it as a period piece and be in a position to compare that situation with the present situation. Although such a riot could still easily flare up as a result of a communication gap, the present forms of dialogue are to a much greater extent geared to deal with grievances and complaints professionally. The book is of importance in so far as it amounts to a warning of the kind of effects which could follow from a communication gap and an improper dealing with grievances. In the light of this conclusion it is clear that this book would not, on the probabilities, contribute to animosity between black and white or be detrimental to the safety of the State or the peace and good order. Although the publication sides with the inhabitants of the location, this does not suffice for a finding of undesirability. South African readers of this book will be in a position to judge this in relation to the prevailing situation and would not be incited to undermine or be more inclined to undermine the security of the South African State as a result of the reading of this book. The book would lead to reflection and not to a repetition of the violence portrayed'.

Where the violent overthrow of the State by means of terrorism or 'freedom fighting' is advocated or encouraged or an incitement to action occurs the work is undesirable. A finding of undesirability is more likely where the sabotage and terrorism are linked to banned organisations such as the ANC or PAC.

We Shall Sing for the Fatherland (53/81):

'This is the language of protest with which the Appeal Board has become familiar in black and other political writings, for instance in such publications as Forced Landing (45/80) and Staffrider (122/80)) and which the

Board has found in those instances to be "a typical feature of the South African political scene"...

The references to the "bush war in the north", a "war of freedom", and to "those who are dying in order to save us" are too vague to have any effect as "a call to arms". Nowhere is there an indication of where the play is set, and, consequently, both "tne bush" and "the north" are unlocalised. Nor are those "who are dying" at all specified as representatives of a national or tribal or political group. The sentiments expressed by the young man cannot, therefore, be associated specifically with "terrorists" or "freedom fighters" that have been declared enemies of the State.

Whatever political impact the play may have been intended to have is considerably lessened both by the form of the play and by the treatment of the plot...The one-act form of the play contributes to its ineffectiveness as a medium of propaganda or as "a rallying call", if that is what it was intended to be. There is no room in the play for the clear development of ideas to illustrate a line of thought to be adopted or a course of action to be taken. As the Committee of Experts has rightly remarked, the cause of and the need for the conflict with which the play is concerned hangs vague and academic in the air and is nowhere presented or developed as a dramatic actuality. The play, because of its brevity, is too slight to convey an enduring message to its audiences, certainly not a message undesirable in terms of s 47(2)(e).

In conclusion it must be pointed out that any public entertainment which could result from the present plays is not the subject of this adjudication. The present appeal only concerns the play as a publication with its own particular likely readership, which is a limited and intellectual one'.

The play was found to be not undesirable under s 47(2)(e).

Al Zahf Al Akhdar (55/81):

'...It appears that although the publication is anti-Marxist, it nevertheless strongly supports revolutionary socialism. It also reveals a hostile attitude towards South Africa in so far as it supports the enemies who are at war with South Africa. The publications are also strongly in favour of revolution by the masses. Some of them also employ their strong rejection of racism as an instrument to polarise blacks and whites and to torment animosity against white South Africans. The Board is also of the view that the publications are not only calculated to further these interests but would also, judged on the probabilities, contribute to a violation, by the likely readers of the publication, of the interests which are protected in s 47(2)(e) of the Act. Although it is quite true, as the publications committee has pointed out, that the publications do not differ from articles which appear in many European journals and that they maintain a high standard of journalism, the former is not a factor which should influence the judgment under the relevant section, and the latter is, at the most, an alleviating factor'.

The publications were found to be undesirable within the meaning of s 47(2)(e) of the Publications Act, 1974.

§ 8.8.1 BANNED ORGANISATIONS:

ANC, PAC AND SWAPO

The fact that the ANC is mentioned or that a work is published by this organisation is not sufficient for a finding of undesirability under para (e). It is necessary that the ANC be linked with the violent overthrow of the State.

APS Bulletin (1/81):

Die komitee se redes vir 'n bevinding van

ongewenstheid sluit in:

'(a) Die Publikasie is die mondstuk van die ANC, wat 'n verbode organisasie is, en as sodanig deur art 9(4) verbied is.

In die eerste plek moet daarop gewys word dat indien die komitee reg sou wees in sy stelling dat die ANC as uitgewer kragtens art 9(4) verbied is, dit in elk geval nie nodig vir die komitee sou gewees het om oor hierdie publikasie te besluit vir sover dit art 47(2)(e) betref nie. Tweedens is die blote feit dat 'n publikasie deur 'n verbode organisasie uitgegee word nog nie afdoende bewys dat dit ongewens binne die betekenis van art 47(2)(e) van die Wet is nie. Elke publikasie moet op eie meriete beoordeel word. Die toets is steeds of die pamflet op waarskynlikheidsgrondslag beoordeel, werklik tot die skending van die art 47(2)(e) - belange sal bydra.

Basies gaan die nuusberig oor die onderskeie rolle van die ANC, PAC en die BCM in die sogenaamde bevrydingsbeweging. Die drie organisasies het mekaar dikwels al onderling beveg, en die feite in verband met die geskiedenis en fondse van die drie soos weergegee, is hoofsaaklik korrek en word sonder veel verdraaiing aangebied.

Die verwysing na die ANC is ook nie altyd onvoorwaardelik vleiend nie...

Die beskrywing van die Suid-Afrikaanse regering se nuwe beklemtoning van sekere beleidsrigtings is, soos die Direktoraat aandui, ook nie heeltemal ongebalanseerd nie. In die tweede helfte van die bulletin word die ANC ook nie eens genoem nie...

Soos die appellant aandui verheerlik die bulletin ook nie vir Mandela nie. Wat daar oor Mandela gesê word kan moontlik as 'n feit, of as 'n geregverdige weergawe van 'n mening aanvaar word dat Mandela as leier by die ANC se lede populêr is. Die berig gaan nie veel verder as dit nie'.

Die publikasie, wat hoogstens as politieke kritiek beskou kan word, is nie 'n aanstasting van die belange wat in art 47 (2)(e) beskerm word nie en is nie-ongewens bevind. Dit spreek vanself dat indien 'n publikasie nie ongewens is nie 'n art 9(3) verbod in elk geval nie ter sprake kan kom nie.

The Classic (37/83):

'It is the verse, however, that gives rise to most of the doubt. It may, for instance, be justifiably asked whether some of the verse does not extol the ANC and its leaders and, so, try to advance its cause; whether it does not see in the ANC colours of black, green, and gold, a significance that is not at once evident in Don Mattera's poem about those colours; whether there is not in it an implied acceptance of the revolution as an accomplished fact; and whether it does not also accept that the black children who have chosen exile will return to achieve, by force, the "freedom" now longed for. The verses, however, are not direct statements and, consequently, lend themselves to diverse interpretations. For example...Do the lines

> let us stop the lie of change by degree
> .....
> clean up the mess
> for god's sake,
> or be damned! (p 14)

merely suggest that peaceful change is necessary? Do the lines

> What hope existed for a bloodless revolt
> now lies shattered
> let us weep gently...
> And with one blow
> Silence the men
> who laugh as we die (pp 21-22)

suggest merely peaceful, gradual change ? And do the lines

> the unveiling of a ghost

beyond the Limpopo
shall come with chilly winds
to these shores
i presume them heavy and strong
against the anglo swords
we shall sing
and the drum shall burst. (p. 56)

suggest nothing more than that orderly change will be achieved, on their own, by blacks in South Africa (or Azania, the name obviously preferred in this publication)? Such passages, it was conceded by the appellant would be undesirable if taken out of context'.

Grassroots (84-85/83)

'It is wellknown that the African National Congress has chosen the path of violence and regards this as the solution to the South African problem.

Although mere sympathy with a banned organization does not suffice for a finding of undesirability, this is a particularly sensitive area. Where the January (February) issue comments on the people who died in Lesotho after the raid on an ANC base there, the references to the "merciless killings" the statement that the struggle must be continued, the reference to "our brothers and sisters" and the emotional photo verge on undesirability. The fact that the article introduced little that had not previously been published was regarded as an extenuating factor. The other aspects of the publication fall squarely within the guidelines set out above. The January issue is therefore not undesirable.

The April issue, however, has a few undesirable parts. These parts are again concerned with the ANC or a similar cause. One can understand the sympathy for those who are to be hanged (p 11) but when the accent is placed on the "strength (which the mother of one of the convicted men

gained) from his courage and commitment to the struggle for justice" and reference is made to a destruction of the system at its roots, these statements amount to an indirect call to resorting to violent methods which were in fact practised by the convicted man. The reference to the Freedom Charter is not undesirable in itself. Taken together with the violent actions of the convicted man, the reference acquires a violent character.

Other parts which give rise to doubt, but which are given the benefit of the doubt, are to be found on p 7: "My fellow comrades in the struggle for liberation of the oppressed and exploited masses of South Africa" and p 10 "Don't watch the action; join the struggle; it's yours, it's mine, it's ours. We shall resist".

The rest of the publication, though at times verging on the undesirable (see p 5 Omar's speech), is not undesirable'.

Shalom and Combat (1/80):

'A committee of publications decided that the above publication is not undesirable within the meaning of s 47(2)(e) of the Act. The Directorate of Publications appealed against this decision.

[This] is a publication of the World Council of Churches and is written specifically in defence of the Council's programme and special fund to combat racism. It is written for the layman and would have a wide likely readership.

In the Southern African situation the word "combat", in the title of the publication, refers to the acts of violence, sabotage and armed terror of the ANC, PAC and SWAPO. It appears from the financial statistics quoted in the publication that more than 60% of the Programme's funds, if not its energy, is devoted to South and Southern

Africa. The other word, 'shalom', in the title is used by the author to mean peace. 'This is calculated to show readers of the publication at first glance tht "peace" and "combat" (armed terror) are not necessarily mutually exclusive.

It is of course not undesirable to criticise racism. One is also fully entitled to propagate all peaceful and constitutional means for the removal of what one considers to be racism. It is however a different matter, and dangerous, when a publication, as the publication under examination does, defends and asks financial and other assistance for organisations in armed combat against what the publication considers to be racism when in fact such organisations are engaged in acts of sabotage, terrorism and killing of innocent people, including women and children with the object of the violent overthrow of the State'.

This publication was found to be undesirable in terms of s 47(2)(e) of the Act.

§8.9 WAR IN SOUTH WEST AFRICA/NAMIBIA

SWAPO differs from the ANC and the PAC in that it is not a banned organisation and operates lawfully within South West Africa/Namibia. A sympathetic portrayal of SWAPO is therefore permissible in terms of the Publications Act. However, when matter deals with SWAPO as a military force and the matter tends to disrupt the South African war effort the work becomes undesirable under para (e) of the Act.

Diakonia News (117/81):

'The problem which arises in the present matter has, according to the publications committee, to do with an article by Charles Yeats under the heading "The Church and

Struggle in Namibia". According to the publications committee, the article is sympathetic towards SWAPO's cause and aligns itself with its aims. It is common cause that there is a border war against SWAPO terrorists. The question is, however, whether the mere fact that a publication expresses sympathy with the aims of the enemy without inciting readers to action is per se undesirable within the meaning of s 47 (2) (e) of the Act. The present state of affairs also differs from the ordinary situation at a time of war: the opinions of SWAPO as a political party and a political force in Namibia are particularly topical, and it would be unreasonable to expect publications not to discuss this matter and furthermore to expect writers to subject SWAPO only to criticism. The Appeal Board has therefore come to the conclusion that although the article is clearly biased, anti-government, and anti-apartheid this cannot be regarded as undesirable within the meaning of the Publications Act. The language is unemotional and almost academic. Furthermore, the likely readers of this publication would be limited to members of Diakonia. Its basic aim, which also appears from the publication itself, is to reach members of churches. The publication would, in any case, accord with the political views of the majority of likely readers. Judged on the probabilities it would therefore not influence them so as to prejudice any of the interests safeguarded by s 47(2)(e) of the Publications Act. See in this regard: S v Manong 1979(4) SA 429 (O) at 435-436, and S v Hosey 1974 (1) SA 667 (A). Also see the Appeal Board decision in regard to the Lenin Collected Works (22/81).' The present work was found to be not undesirable in terms of s 47(2)(e).

Work In Progress (204/82):

'The publications committee, in the main, based its finding of undesirability [of the publication, Work in Progress], on an article under the heading "The Namibian Dispute". The article clearly sides with SWAPO and quotes from certain newspapers and from the Catholic Bishops

Conference report, which was also reported in a newspaper to the effect that certain atrocities were committed by South African troops in Northern Namibia. Appellant contended that these accusations were nothing new and handed in certain newspaper articles concerning court cases in this regard. It is not the task of the Appeal Board to ascertain whether these allegations are true or not. In the present matter it is clear, however, that the article does not attempt to give a balanced view of the role of the South African army in Namibia but strives to bring certain facts or allegations to the reader's notice....

In regard to the question whether these aspects mentioned in the Namibia article would not contribute to a disruption of the war effort, the Board has come to the conclusion that if this were to have been published in a pamphlet with a wide mass circulation, it would probably have been undesirable. The intellectual readership of the present publication, however, renders this aspect negative'.

Apartheid's Army in Namibia (160/82):

'Verder stem die Raad saam dat die dokument militant is en meen dat die komitee nie genoeg aandag gegee het aan die voorkant daarvan nie. Dit is 'n direkte en skerp aanval op verklaarde regeringsbeleid om nie die Suid-Afrikaanse veiligheidsmagte uit SWA te onttrek alvorens 'n aanvaarbare skikking aldaar bereik is nie. Dit is 'n aanmoediging vir SWAPO en sy ondersteuners en sal bydra om die Staat se pogings om 'n geskikte klimaat vir 'n skikking te skep, deur toestande daar te stabiliseer, te dwarsboom en om die doeltreffendheid van die veiligheidsmagte te verswak.

Die pamflet moet dus as staatsgevaarlik beskou word en ongewens binne die betekenis van art 47(2)(e) van die Wet op Publikasies'.

§8.10 LABOUR, BOYCOTTS AND STRIKES

Labour relations are a sensitive issue in South Africa. Although black trade unions were recognised in 1979, they are seen as a threat to the status quo in that they challenge both white domination and the present economic order. Works encouraging unionization and strike action may, therefore, fall under paras (d) and (e).

The Publications Appeal Board has held that the expression of grievances of domestic and farm workers, both of which incidentally are not protected by labour unions, falls within the bounds of permissible political criticism.

The Story of Cyna (87/81):

> 'The Story of Cyna was found to be not undesirable by a publications committee. The Directorate of Publications appealed to the Publications Appeal Board and petitioned the Board to find the publication is undesirable within the meaning of s 47 (2) (d) & (e) of the Publications Act 1974 as amended.
>
> The publication, which is in pamphlet form, consists of six pages including the cover and back pages. The aim of the publication, objectively ascertained from its contents, is to build up awareness of the grievances of a black female worker in a white home. Although one-sided and biased in favour of blacks, the publication, to a large extent succeeds in giving a true account of the situation of many black workers in white homes'.

Learn and Teach (41/82):

> 'When an unsophisticated black reader reads the article on farmworkers he would, according to the publications committee, gain the impression that black workers are exploited by their employers. The Appeal Board has come to

the conclusion that this publication will not contribute to a worsening of relationships. There exists either a healthy relationship, which will not be influenced by an article or publication alleging the opposite, or a poor relationship, which, in any case would not be worsened by this publication. In the latter case the reader may find confirmation for his suspicions, but this would not worsen the relationship. Writings of this nature inevitably have an emotive content. The legislature could never have intended that publications should be prohibited as a result of their emotive content alone. Writers have a right to address those whom they regard as suppressed as long as they do not in the process influence them to confront another section of the inhabitants of the Republic with violence, or contribute to such a confrontation. Bias alone cannot be found to be undesirable'.

This work was found to be not undesirable within the meaning of s 47(2)(d).

When the aspect accentuated relates to the struggle between capital and labour and capitalism as a system is denigrated the issue becomes more sensitive. Capitalism is seen as one of the pillars upon which South Africa, in its present form, is founded.

Exposing Total Strategy (30/80):

'A basic characteristic of this publication is that it casts suspicion on the capitalist system by indicating that this is the main area of conflict. It contrasts the capitalist class with the working class and indicates that these two classes are the main classes in South African society.

The capitalist system is the basis of the S A political system and is not confined only to the policies

of the government of the day. The publication in fact indicates that it is not only the labour laws of the present government which are criticised but also those that existed before 1948. After that, however, it mainly sets about criticising the actions of the present Government. Nevertheless the publication goes further than that: it casts suspicion on the very basis of the S A political system and this, considering the likely readership of this publication, is likely to influence a substantial number of readers to violate the interests which are protected in s 47 (2) (e) or at least to contribute towards this violation.

If a publication causes or contributes to the polarization and/or confrontation between sections of the community it would also be undesirable. Because the publication identifies the labour class with the blacks and criticizes blacks who succumb to the Government's policy... the Board is of the opinion that the publication would also contribute towards racial animosity through its class division, which basically amounts to a division between whites and blacks. Considered in combination with the photos and the clenched fist sign as contrasted with the photos of the army trying to subdue black unrest (p 11 and 20), this publication is also undesirable within the meaning of s 47(2)(d) of the Act'.

One-sided criticism of improvements in the labour policies of the present government is also a sensitive area.

South Africa in the 1980's (32/81):

'The recommendations and, thus far, partial implementation of the Wiehahn and Riekert Commissions are dismissed as follows: "The combined impact of the Wiehahn and Riekert Commissions has been to relegate 'surplus population' more efficiently to the homelands while catering for the formation of the stable, trained urban workforce demanded by the State and private enterprise".

> The narrowing of the wage gap and the emergence of an affluent minority in black ranks is seen as part of a sinister policy with "the clear political intention of co-opting a relatively affluent small black middle-class while relegating an impoverished majority to the policing of "independent homeland's militia". ...Many more instances can be quoted, but the general implication is the same: everything done or planned by the government to redress wrongs, to ease tension, and to create a more favourable climate for consultation is condemned as part of a sinister scheme to keep the black majority in perpetual bondage'.

References to strikes or to boycotts are not undesirable provided that such references do not result, directly or indirectly, in an incitement to undermine the general welfare of the state. When, however, either of these forms of industrial action is advocated on a national scale and is coupled with sympathy for banned organisations or with a show of militancy such matter becomes prejudicial to the maintenance of law and order as it may encourage labour unrest. The use of the general strike as a means of overthrowing the existing State is, furthermore, viewed as a well established principle of communist doctrine.

Grassroots (79/81):

> '...This judgment is based on the probabilities, and the effect of the publication on the likely reader is of paramount importance... and the mere fact that a publication suggests illegal activities would not necessarily make it undesirable under this paragraph.... In this respect it must, of course, be borne in mind that when a publication suggests illegal activities, it would more readily be found to be undesirable.

In terms of South African law, registered trade unions may strike, if they do so through certain channels. There is no obligation on trade unions to register, but if they are not registered they may not strike under any circumstances. It is therefore not unlawful to suggest that trade unions should not register - even if the object of this suggestion is to criticise legislation. If, however, likely readers are effectively incited to strike illegally so as, for example, to undermine law and order by a show of militancy or sympathy with banned organisations or their objects, the publication would be undesirable. Although illegal strikes do not necessarily lead to an imperilling of the said interests of the State, this could, in practice, easily happen. On the other hand, it would be unreasonable to find a publication undesirable if it were to suggest a strike without any direct or indirect reference to undermining action or sympathy coupled with the strike.

In regard to the publications Grassroots, vol 2, no 3 of May 1981, the Appeal Board has come to the conclusion that it has kept within the boundaries of legitimate criticism. The largest part of this publication has to do with community grievances and directly concerns specific communities and action which should be taken to solve local problems.

There is only one article ... which accentuates strikes. But this does not remove the impression that it is calculated to further the legal formation of unregistered labour unions and the furthering of bargaining opportunites. The publications committee has referred to certain clenched fist signs and decided that these signs, taken together with the aritcles, would further labour unrest. Although this would depend on the particular circumstances, the Board has come to the conclusion that the use of the clenched fist sign has lost much of its original inciting nature. The use of this sign has indeed

become counter-productive and although it would, under certain circumstances, contribute to incitement, it would seldom on its own be strong enough to have that effect. The committee's contention that the publication forms part of a propaganda campaign by foreign church organisations and the ANC to use opposition to the Republic Day Festival to create labour unrest and an explosive situation throughout the Republic of South Africa is not borne out by the contents of the publication. Any reference to the intention of the publisher or the distributor, if not borne out by the publication itself, is precluded by s 47 (4) of the Act.....

In regard to the publication SASPU National vol 2, no 3, May 1981, the situation is more problematic... Although the language is at times on an intellectual level, it is generally directed at workers and not at students. The Board has come to the conclusion that the publication is calculated, albeit indirectly, to further illegal strikes. This is combined with references to the Freedom Charter, which is said to have started to feature prominently in the demands of a wide range of groups...

It is in these repects that the present publication can be distinguished from the publication Grassroots which was found to be not undesirable in the first part of this judgment. In that publication solidarity of the workers, and not illegal militant strikes is accentuated. That publication also does not make heroes of strikers and generally only deals with community grievances. Although it could be argued that the message in favour of illegal militant strikes is only propagated indirectly, the Board has come to the conclusion that a substantial number of readers of this publication would understand this message and that it would make them more prone to strike in such a manner as to endanger the interests safeguarded by s 47(2)(e) of the Act....

In regard to the publication Wilson-Rowntree Workers' Struggle, which was found to be not undesirable by a publications committee, the Publications Appeal Board has also come to the conclusion that publication is not undesirable. The publication is a call to the people of South Africa not to buy Wilson-Rowntree sweets. Five hundred workers were on strike at the factory of the said company....

The Board has come to the conclusion that, if the present publication were of a more professional nature and not clearly the work of an amateur, the Directorate's argument would have been successful. Furthermore it must be borne in mind that the instigation of a general boycott is not a crime, although it may lead to an action for damages - see Wiehahn N E Boikot as Onregmatige Daad (LLD Thesis, Unisa 1973) pp 208-228. The present boycott is directed at one firm and, although there is a plea for a nation-wide boycott of its products, a national undermining of the economy as a probable result of this publication is too remote to be relevant. It would be otherwise if an escalation of nation-wide boycotts were to be instigated effectively by a publication - boycotts which could ultimately lead to the harming of the State's general welfare. In the present instance, however, the publication must not be regarded as something more than an amateurish attempt to initiate a boycott'.

The General Strike: Trade Councils in Action (4/80)

'Die Appèlraad gaan akkoord ... dat die patroon van General Strike tot Brittanje 1926 beperk was. Die hele grondplan is egter identies is met die voorgeskrewe optrede soos daargestel deur die internasionale kommunisme....

Dit moet aanvaar word dat absolute organisasie van 'n algemene staking, anders as 'n gewone staking, soos vervat in die publikasie General Strike, dié basiese rewolusionêre politieke wapen van kommunisme is om 'n staat totalitêr te

verlam en omver te werp (geweld is nie uitgesluit nie) - trouens, van versetters en stakers word verwag om hulle met geweld teen die Regering te verset.

Die Appèlraad besef dat die publikasie General Strike nie spesiaal na Suid-Afrika verwys nie, maar die voorskrifte t o v die beplanning van onderlinge strategie, takiek en algemene organisasie is sodanig dat dit tot nadeel van Suid-Afrika toegepas kan word en is soos voorgeskryf deur die wêreldliggame van kommunistiese oorheersing...

Dit is so dat in Suid-Afrika die algemene staking as deel van die klassestryd deur SACP, die ANC and SACTU (South African Congress of Trade Unions) bepleit word. Twee stakings het na die Soweto-onluste misluk.

Die feit dat daardie pogings nie suksesvol was nie, het as aansporing gedien om weer te probeer. Die SACTU mondstuk "Workers Unity" skryf o a "It is only through organisation developed through long months and even years of hard and careful work among the workers themselves that the fighting strength of the working class will be made equal to the tasks ahead."

'n Publikasie soos General Strike kan met sodanige organisasie behulpsaam wees en dit aanspoor...

Die sterkste wapen van die militante proletariaat is die algemene staking. Die sluit aan by die hele "liberation struggle" wat guerilla-insypeling en stedelike terrorisme insluit...

General Strike is die aanvaarde handleiding waarvolgens die Britse Trade Councils optree om die sukses van algemene staking te verwesenlik. Die nadelige wyse waarop die Britse Regerings deur hulle vakunies getref is as gevolg van algemene stakings, is goed bekend.

SACTU sal gretiglik gebruik maak van die publikasie General Strike as handleiding om sy doelstellings in Suid-Afrika te laat slaag.

Die Appèlraad is oortuig dat onbeperkte en ongehinderde sirkulasie van die publikasie in Suid-Afrika nadelige gevolge sal meebring, aangesien algemene stakings hoofsaaklik deur kommuniste die omverwerping van die Staat alhier volgens kommunistiese voorgeskrewe plan, soos dié vervat in General Strike, will bewerkstellig '.

Die publikasie is ongewens bevind deur die Appèlraad.

§8.11 SPORT

Criticism of the government's sports policy or admonitions to cancel sporting contacts with South Africa are generally not considered under s 47(2)(e) as there is no direct or indirect call to participate in terrorism or sabotage. Generally a criticism of the sports policy of the government falls within the bounds of accepted criticism, and it is only when animosity is created between blacks and whites that such matter is proscribed. The popular nature of the medium is an important factor in gauging the effect on the likely reader.

Football in South Africa - Apartheid Continues (78/80):

'The pamphlet Football in South Africa - Apartheid Continues was found to be not undesirable by a publications committee. The Director of Publications appealed against this decision.

SANROC is an overseas based organisation led by an ex-South African, Dennis Brutus, who fled his country when he was freed from Robben Island, and has never missed an opportunity... to use the influence of his organisation to bring about the expulsion of the Republic of South Africa from international gatherings.....

The pamphlet attacks the administration of soccer in the Republic and declares that it can never be nonracial, while apartheid exists. "Integrated clubs and sport constitute less that 1% of the total sports activities in South Africa". The pamphlet states that the Government's case that soccer is now non racial is based on four lies [listed in judgment]....

The Board felt that the pamphlet would not in effect bring about or contribute towards a polarization between black and white and thus was not harmful to the relations between those two sections of the inhabitants of the Republic. The criticism contained in the pamphlet is one-sided but can be regarded as fair political comment...'.

Apartheid the Real Hurdle (209/82):

'Die Raad is van mening dat die publikasie nie nadelig is vir die veiligheid van die Staat, die algemene welsyn of die vrede en goeie orde nie. Dit maak geen direkte of indirekte beroep op lesers om terrorisme, sabotasie, openbare geweld of ander ondermynende handelinge te verrig nie. Die vraag is egter of die gepaardgaande foto in kleur wat op die voorblad van die advertensie verskyn nie nadelig is vir die verhoudings tussen die wit en swart bevolkingsdele nie. Die vraag sal hier wees of die publikasie bydra tot vyandigheid of vyandigheid skep tussen wit en swart. In dié verband is die feit dat die publikasie in pamfletvorm uitgegee word 'n besonder sterk verswarende omstandigheid. Die voorblad toon drie naellopers - twee swartes en een witman, wat die naelloop wen. Aan die bene van die swart naellopers is daar kettings en gewigte by wyse van 'n tekening bygevoeg. Op hierdie gewigte staan die volgende: "Job reservation", "Pass laws", "Bantustans", "repression". Die meerderheid van die Raad is van mening dat hierdie foto haat sal verhoog of laat ontvlam by 'n wesenlike aantal swart waarskynlike lesers van hierdie publikasie, wat 'n populêre leserskring het, teen die wit

bevolkingsdeel. Die witman hardloop sonder gewigte aan sy voete en wen dus. Die voorblad is ongewens binne die betekenis van art 47 (2)(d) van die Wet op Publikasies'.

Halt all Apartheid Tours (36/83):

Appellant's attorneys convinced the Board that 'the shirt [advocating sports boycotts] does not constitute a threat to the safety of the State, the general welfare or the peace and good order. As regards para (d) of s 47(2) of the Publications Act, however, the majority of the Board was of the opinion that this case is on all fours with Apartheid, a Real Hurdle (209/82) a pamphlet adjudged undesirable by this Board on 13 April 1983. In both cases the central idea is that of the fettered or chained black man, who is being discriminated against through the laws made by the white rulers of South Africa. In the course of argument, Mr Dison [Appellant's attorney] informed the Board that only 300 of the shirts were to be produced for distribution among certain sporting bodies. It must be borne in mind, however, that once approved, the shirt can be produced and sold in thousands....

Should the injunction to halt all apartheid tours lead to action, such as the picketing of playing fields in the course of such tours in the future, violence is sure to result, which, even if it does not pose a threat to the peace and good order envisaged in para (e) will undoubtedly exacerbate ill-feelings between black and white.

In the result, the appeal is dismissed. While the committee's finding that the shirt is undesirable within the meaning of para (e) is set aside, the finding that it is also undesirable within the meaning of para (d) of s 47 (2) of the Publications Act is confirmed'.