

# The censorship of crudity and the crudity of censorship

 By [Anton Harber](#)

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Let's get some facts straight on the effective banning of the film, *Of Good Report\**, which was due to open the Durban International Film Festival - 18-28 July.

First, it made no difference in law how old the actor was. Those who say that the film should get through because the actor was 23 (though playing a 16-year-old), have not read the Film and Publications Act, which defines child pornography as "any image, however created, or any description of a person, real or simulated who is depicted, made to appear, look like, represented or described as being under the age of 18 years engaged in sexual conduct". And sexual conduct can include "direct or indirect fondling and touching". If you interpreted this literally and crudely - as the Board did - then this would mean that all the TV you see with under-18s engaging in what under-18s do is illegal. Full stop.

Second, the committee that declared that this was child pornography was not allowed to watch beyond the first 28 minutes. The regulations say that the minute they see images of under-18s engaged in sexual conduct, they have to stop the screening and hand over the material, presumably for fear that it might be too much for them to cope with. This means they cannot view the scene within the context of the film as a whole, to discuss whether it is actually pornography. It also means that none of us can see the film to inform an intelligent discussion.

## Trust the committee?

We are expected to trust the committee and - given the long history of the abuse of censorship in this country - that ain't gonna happen. The law - drawn up in the flurry of a child-protection campaign - has the subtlety of a machine gun in the hands of a fanatic.

Fortunately, the Constitutional Court has ruled that you have to consider the context of the allegedly pornographic scene. The committee that made the decision clearly did not know about the 2004 ruling in the case of *De Reuck v the director of public prosecutions*. Tasco Luc de Reuck was a film producer found with thousands of child-porn pictures, which he claimed were for the purposes of researching a documentary. The judges rejected this, and came down firmly against child porn, but in doing so ruled that you had to consider the context of the film as a whole to determine whether the sex was predominantly aesthetic rather than erotic.

"Any image that predominantly stimulates aesthetic feelings is not caught by the definition (of pornography)," wrote then chief justice Pius Langa. Also, "it is not possible to determine whether an image as a whole amounts to child pornography without regard to context".

## What the board could have done...

The court made it clear that you had to take a narrower definition of sexual conduct and allow for circumstances where it was not pornographic. This makes sense: to say that any under-18 sexual conduct is verboten would rule out almost any film about under-18 sex, even if it is anti-abuse or educational.

Nor did those who saw the film consider previous decisions of their own Film and Publications Review Board, which has overturned a child pornography banning on the basis that a film carried important messages. As this film was chosen to open a major film festival, I think we can presume that there is at least an argument that it has artistic merit and does not encourage abuse.

And, by the way, the board could have given the festival an exemption, as it has done in the past, even during apartheid. This means that it understands that the small and special-interest audience of a festival will want to discuss things such as the line between eroticism and pornography and the organisers can be trusted not to abuse this.

At the root of this is our discomfort with teenage sex. Let's try to pretend it is not happening, we are saying - and that is exactly what we need to confront if we are to deal with child and gender abuse.

You would have thought that after years of censors making fools of themselves in South Africa, we would have learnt to handle these things better.

The manner in which it was handled made us look small-minded, petty and foolish.

*[\\*On appeal the ban on the film was subsequently lifted, however, the Film and Publications Board could still contest the Appeal Committee's decision to unban the film.](#)*

## ABOUT ANTON HARBER

Anton Harber, Wits University Caxton Professor of Journalism and chair of the Freedom of Expression Institute, was a Weekly Mail (now Mail & Guardian) founding editor and a Kagiso Media executive director. He wrote *Diepsloot* (Jonathan Ball, 2011), *Recht Malan* Prize winner, and co-edited the first two editions of *The A-Z of South African Politics* (Penguin, 1994/5), *What is Left Unsaid: Reporting the South African HIV Epidemic* (Jacana, 2010) and *Troublemakers: The best of SA's investigative journalism* (Jacana, 2010).

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