

## **Chapter 9: Public agitation against the dominance of the Diaspora culture over South African music and challenges of the strategy for the generation of royalty**

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### **CHAPTER NINE**

#### **Public agitation against the dominance of the Diaspora culture over South African music and challenges of the strategy for the generation of royalty**

##### **9.1 Introduction**

Perceptions of the form and content of Malombo music of South Africa post 1994, need to take into consideration the socio-political context in which Malombo music was born. Philip Tabane set out to find his identity, even after the draconian laws of separate development of 1960 were passed. The laws did not, however, deter him to continue on a path that has made him an object of scorn and admiration to many. The 1960 - 1994 Apartheid laws expectedly disempowered South African indigenous music genres and the artists. The research therefore needs to investigate whether the post democratic elections of South Africa brought with them sufficient rights and empowerment for the musicians of South Africa.

##### **9.1.1 Post 1994: Scenario of protection of South African arts**

1994 represents democracy and freedom to South Africans. The year has become a proverbial symbol of change for the better in the lives of the formerly oppressed citizens of South Africa. It promised a new dawn, the advent of protection of human rights, freedom of free self expression and cultural emancipation.

This chapter argues the validity of what thinkers like Magalane Phoshoko, Caiphus Semanya, Ray Phiri and Bongani Mahlangu are saying regarding the provisions of the applicable laws of South Africa on the area of 'local content' of music in the public broadcasting arena. In doing so, the research will investigate

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what the Independent Broadcasting Authority has regulated as the official quota for local content and the implications thereof to citizen empowerment and to national arts development in general. The research will also investigate the role and function of the royalty administration authorities of South Africa such as the Southern African Music Rights Organisation (SAMRO), South African Recording Rights Association Limited (SARRAL), National Organisation for Reproduction Rights in Music in Southern Africa (NORM) and Dramatic, Artistic and Literary Rights Organisation (DALRO) with regard to the protection of composer's rights. The research will then present and analyse the implications of the legislation on the quota of 'local content' by the public broadcaster of South Africa, as well as the strengths and challenges of the provisions of applicable legislation. The analysis of statements by South African musicians and cultural activists will include the recent media publication on the controversy regarding the general implications of applicable laws, in the context of the South African Music Awards (SAMA) debacle on the 2007 Song of the Year category won by DeeJay Sbu of Yfm, using Josh Groban's composition.

The research will equally link the implications of the applicable laws on 'local content' to the analysis of sampled empirical data of Philip Tabane's royalty payout sheets for both performing and mechanical rights. The chapter will review recommendations of the Music Industry Task Team Report (MITT) (2000), and evaluate the extent to which the recommendations are carried out as intended.

The chapter will then draw conclusions on whether the applicable laws and infrastructure support South African artists, and then put forward recommendations on problematic areas with regard to future amendments of the applicable laws.

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### 9.1.2 The problem of the quota for local content

During the heritage month of 2006, *Sunday World* published an unequivocal criticism of applicable laws that are supposed to deal with the issue of the protection of South African musicians post 1994. In the article, Phoshoko was unequivocally decrying that South African musicians, especially composers, are still not protected and prioritised by the applicable laws and regulations. Phoshoko is a music scholar and teacher, as well as a music producer and owner of a South African record label, *Phela re phele* productions. He maintains that:

It is a pity that creative people continue to die with suppressed ideas and products that never receive the attention and support they deserve, while their counterparts from foreign countries occupy centre stage in our Motherland. Even now our airwaves are flooded with foreign and imperialist culture. Our own music and that of the rest of the continent remains marginalised. (Phoshoko, *Sunday World* 2006, 10).

Phoshoko rightly makes an observation that foreign compositions get more airplay than South African artists, and that South African musicians die poor as their music is marginalized. Phoshoko's observation is concurred by Bongani Mahlangu, Caiphus Semenya and Ray Phiri. The statements of the latter trio, came in the wake of a recent battle against colonial discourse in South African music, when Deejay Sbu had won the SAMA 2007's category of Song of the Year with his remix of Josh Groban's song, 'Remember when it rained'. Bongani Mahlangu, editor of Showbiz column of *Sowetan Sunday World*, had to represent the African musicians' views on what was considered an absurdity. The controversy was sparked by an obvious discord in the logic of the SAMA

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awarding a South African musician a crown for Song of the Year using a 'foreign' composition. Bongani Mahlangu blamed this unfortunate irony on the colonial mind that still prevails, and makes it unable to recognize contradictions. He decried:

The public has been conned, through radio and TV programmes and by the Sama organisers, into thinking 'Remember When It Rained' is Leope's song. The reality is that the artists who laboured to pen the composition, Josh Groban and Eric Mouquet, are from the US. Groban went on to perform 'Remember When it Rained' and made his American dream song popular. (*Sunday World*, April 2007, 22).

Mahlangu's point is fair. It is a similar point that Phoshoko made a year earlier in the same paper, but this time there is the example of Leope's case.

Caiphus Semenya, a prominent South African songwriter, arranger, international producer, music director, and performer, has this to say about Leope and SAMA organisers' awarding of a foreign song a South African Song of the Year award:

This is an insult to South Africans, I define a South African song as a composition written by an indigenous South African. We have great new local compositions, such as Judith Sephuma's 'Mme Motswadi', that should be elevated. What are the Samas about anyway? Are they here to promote South African or American music? We're not the 54th state of America. We're African people. Making an American composition a South African song of the year is straight cultural imperialism done by ourselves. (*Sunday World*, April 2007, 22).

Semenya, who does not usually comment on trivial music industry problems, could not keep quiet about this one. A comment of this nature coming from a

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stalwart that has written music for Letta Mbuli, Mirriam Makeba, Hugh Masekela, Jonas Gwangwa, as well as writing and producing for Quincy Jones and arranging the Kiswahili chant on Michael Jackson's *Liberian Girl*, directing music that comprised the likes of Dion Warwick, Canon Ball Adderly and writing the music score for *Roots*, just to name a few, must be worth some salt. The point that Semanya is making is basic logic of what the SAMA should be about. They should be about South African music performers, composers and compositions. They need to recognize significant contributions to the development of a body of work that could proudly be presented to the world as the South African music, arts and heritage. Semanya's point about projecting South African music composers, performers, as well as distinctly South African compositions is the primacy of reclaiming African identity and pride. He continued:

Have we run out of ideas so much that we claim American songs for ourselves? I don't know from which planet the judges or the people who decide on some of these things come ... I also wonder what it is that they are trying to achieve. A sad reality is that these remixed songs of foreigners take bags full of money out of the country. Where's the money to develop and grow ourselves going to come from? (Semanya, *Sunday World*, April 2007, 22).

Ray "Chikapa" Phiri, as Bongani Mahlangu rightly observes, reckons that the bigger problem stems from the fact that South Africans don't hear themselves on local radio and hardly see a reflection of who they are on TV. Mahlangu concludes by saying that Phiri and Semanya suggest that the SAMA should have a best remixed song of the year category instead of making remixes of foreign songs win prizes in the category of South African compositions. Clearly the

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South African artists' struggle post 1994 is still the struggle for space and recognition in the airwaves of their own country.

The research uses the excerpts above to present evidence that the struggle that Philip Tabane initiated in 1940, and concretised in 1964, is still not won. The research does not intend to belabour the frustrations caused by these affected African mindsets that fail to see the contradictions in the day to day running of the music business. The research begins by making an observation that South Africa has no South African music industry infrastructure in place. What it has is the establishment that is put together by predominantly foreign record companies with a license to do business in South Africa. In that vein, they have set up a forum through which they market American and European composers and compositions in Africa, launching the African offensive from South Africa. To deal adequately with this issue would be to start by uniting the South African record labels and not to call them independent labels when they are originally South African. Independent implies that the companies are not affiliated to major record companies, as if they were supposed to, in the first place. Major record companies in South Africa are foreign companies. This therefore makes the term problematic in that existence of South African companies is defined against the dominance of foreign companies and not the other way round.

The fact about the South African music industry is that record companies owned by South Africans are different from their multinational counterparts. South African companies should not allow themselves to be labelled 'independent record companies'. They should be rightly called South African record companies. The fact is that they are not independent of the laws of South Africa, nor can they be independent of the tax laws of this land. They cannot be

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independent of the artists of South Africa, because they have the responsibility to serve South Africans. Such record companies' destiny, regardless of how global they grow, is South Africa. The added fact that they conduct business in terms of the Trade and Industry Laws of South Africa makes them South African companies. Other investor record labels, do business in terms of the South African trade and industry laws, but they remain investor companies. They could disinvest and leave the country anytime they deem it fit.

Mao Tsetung mooted about national integrity and pride when he said that if we want to turn Africa into a new Europe, it is better to leave the destiny of African countries to Europeans, because they can do it better than the most gifted amongst us.

### **9.1.3 The legislative framework regarding the protection of South African music performers, composers, and compositions**

The first issue that the research focuses on in the analysis of the extent to which South African music performers, composers, and the music compositions themselves are protected, is to analyse the Copyright law of South Africa. Rather than relying on different interpretations of the Copyright Act of 1978 as amended, it is critical for the research to directly revisit the original letter and spirit of the Act itself. Here is a direct excerpt from the Act as promulgated:

#### **COPYRIGHT ACT**

#### **NO. 98 OF 1978**

*[Date of commencement: 1 January, 1979]*

*(except ss.1, 39, 40, on 30 June, 1978 and s.45 to be proclaimed)*

as amended by Copyright Amendment Acts, 56/1980, 66/1983, 52/1984, 39/1986, 13/1988, 61/1989 and 125/1992

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Intellectual Property Laws Amendment Act, No. 38 of 1997

Copyright Amendment Act, No. 9 of 2002

### **Copyright by virtue of nationality, domicile or residence, and duration of copyright**

3. (1) Copyright shall be conferred by this section on every work, eligible for copyright, of which the author or, in the case of a work of joint authorship, any one of the authors is at the time the work or a substantial part thereof is made, a qualified person, that is –

(a) in the case of an individual, a person who is a South African citizen or is domiciled or resident in the Republic; or

(b) in the case of a juristic person, a body incorporated under the laws of the Republic:

Provided that a work of architecture erected in the Republic or any other artistic work incorporated in a building or any other permanent structure in the Republic, shall be eligible for copyright, whether or not the author was a qualified person.

(2) The term of copyright conferred by this section shall be, in the case of –

(a) literary or musical works or artistic works, other than photographs, the life of the author and fifty years from the end of the year in which the author dies: Provided that if before the death of the author none of the following acts had been done in respect of such works or an adaptation thereof, namely –

(i) the publication thereof;

(ii) the performance thereof in public;

(iii) the offer for sale to the public of records thereof;

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(iv) the broadcasting thereof, the term of copyright shall continue to subsist for a period of fifty years from the end of the year in which the first of the said acts is done;

It is critical that the researcher subjects the matter of the SAMA's apparent big scandal to tight scrutiny and finality. The researcher is not aware of the SAMA executives' response to the concerns that the South African music stalwarts were raising about the 2007 Song of the Year debacle. If they did, it must have been in fine print. However if they indeed did not respond, then the silence, would seem to suggest that the SAMA executives and the record company bosses benefiting in both areas of the sector, had their backs covered. The research would like to deal with this debate accordingly, without sensationalising it as a media piece. The media article about this matter by Bongani Mahlangu raised the issue in a manner that caught the attention of the researcher. It is therefore pertinent for the researcher to dedicate time and space in the research on Malombo music to deal with the DeeJay Sbu's matter definitively. It is only in empirical research of this nature that such deep legal topics can be examined.

The researcher went out to authenticate the copyright owner of the song, 'Remember when it Rained'. The results of the search drew evidence that indeed Josh Groban owns the copyright of the song. It is listed as follows:

### JOSH GROBAN LYRICS

"Remember When It Rained"

Wash away the thoughts inside  
That keep my mind away from you.  
No more love and no more pride

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And thoughts are all I have to do.

Ohhhhhh Remember when it rained.

Felt the ground and looked up high

And called your name.

Ohhhhhh Remember when it rained.

In the darkness I remain.

Tears of hope run down my skin.

Tears for you that will not dry.

They magnify the one within

And let the outside slowly die.

Ohhhhhh Remember when it rained.

I felt the ground and looked up high

And called your name.

Ohhhhhh Remember when it rained.

In the water I remain

Running down

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The research notes the copyright ownership above is of the lyrics of the song 'Remember When It Rained'. The research makes this sterling observation that, the copyright of the song that won the 2007 SAMA category for Song of the Year, in terms of paragraph 3 (1) of the South African Copyright Act No. 78 of 1978 as amended, belongs to both Leope and Josh Groban in that Leope added a vibrant arrangement of the dance groove to the song. The researcher may not have established the royalty percentages negotiated between the Leope and Groban's publishers, but the fact is that the copyright of the version that won the South African Music Awards, 2007, is regarded as a South African composition by the provisions of the Act. Semanya, Phiri, and Mahlangu could challenge the provisions of the Act, and this would be an appropriate thing to do. However, the stipulations of the Act, does vindicate the SAMA executives from the very blame that Semanya, Phiri, and Mahlangu, have levelled against them.

At the time this version of 'Remember When It Rained' was remixed, or re-authored, Leope was regarded in terms of Copyright Act (1978) 3 (1), 'a qualified person' because he is a South African. Groban may not be a South African citizen but his composition acquires citizenship of South Africa through a marriage remix by Leope. This is a technicality of the implication of the law. The second point is that the record company that produced that album, at the time of production of the remix or 'work of joint authorship', is 'incorporated under the laws of the Republic'... 'whether or not the author was a qualified person', in terms of the Copyright Act (1978) 3 (1).

Kgatshe (2007) further points out that:

When enforcing the South African Music Content regulations, the Authority is guided by the Electronic Communications Act. Section

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61(2)(c) of the ECA provides that a musical work broadcast by a broadcasting service licensee qualifies as “South African music” if such work complies with at least two of the following criteria, namely –

1. if the lyrics (if any ) were written by a South African citizen;
2. if the music was written by a South African citizen;
3. if the music or lyrics was or were principally performed by musicians who are South African citizens;
4. if the musical work consists of a live performance which is – (aa) recorded wholly in the Republic; or (bb) performed wholly in the Republic and broadcast live in the Republic.

The analysis made above implies that the SAMA judges, acted technically in accordance with the stipulations of the Copyright Act 98 of 1978 as extracted above. It suffices to say that such a technicality does not sound politically correct.

### **9.1.4 The provisions of the quota for local content**

The next issue the research would like to analyse is Phoshoko and Phiri’s assertions about not hearing themselves on the airwaves. In terms of the Copyright Act No. 98 of 1978 as amended, high rotation of music originally not qualifying, in terms of the Act as South African copyright, suddenly qualifies through ‘work of joint authorship’ by a ‘qualifying person’ in terms of the applicable Act. However, it may sound like it provides a big window for record companies whose mandate is to market American and European music in South Africa, to further do so through this marriage deal of copyrights in terms of the Act.

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The researcher now puts a spotlight on the question of the relevant regulations and legislations that govern airplay of local as well as foreign music on South African airwaves. To deal ably with the analysis of Phoshoko, Phiri, and Semenya's concerns about insignificant airplay of South African compositions, it is therefore necessary to revisit the provisions of Electronic Communications Act, (ECA) No.35 of 2005. The Act regulates the broadcasting industry in the public interest. In South Africa, the ECA is enforced and implemented by the Independent Communications Authority of South Africa (ICASA). The latter is therefore referred to in the Act as "the Authority". ICASA seeks, amongst other things, to promote growth and development of the South African music and to give a platform to music artists to showcase their talent.

Presenting a paper titled 'Hot Seat 4 - What Happened To Local Content?' Mamedupe Kgatshe, at the annual Moshito music conference held in Newtown, Johannesburg - South Africa on 24 August 2007, sketched out a brief history of the ICASA and its post 1994 recommendations for a quota on local content. She pointed out that:

The Authority presented its Triple Inquiry Report ("the Report") to Parliament in 1995. The Report was on the "Protection and Viability of Public Broadcasting, Cross Media Control of Broadcasting Services and South African Television Content and South African Music". The Report followed a public inquiry process and the outcome of that aspect of the inquiry resulted in the introduction of the South African Music Regulations and the South African Television Content Regulations in 1997. The Report recommended 20% SA music quota across the three tiers of broadcasting. The White Paper on Broadcasting Policy, 1998, requires

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the Authority to ensure that South African broadcasters reach a predominant South African content in all genres within a target period of ten years.

The researcher argues that the post 1994 recommendation of ICASA on the quota of South African music of 20% is a serious travesty of the rights of the South African composers. The researcher notes that regulations of this nature come into being because the key informants and respondents to calls for public comment on legal frameworks of this nature, are normally the record companies that qualify to be South African but have head offices elsewhere. The researcher can only suspect that such respondents remember their hidden mandate very well when shaping the laws of the country, and that is, to expand the horizons of the market for American and European music in Africa. The researcher notes that Africa is definitely actually used as a market for such musics.

Fourteen years later since The White Paper on Broadcasting Policy has mandated the Authority to ensure that South African broadcasters reach a predominant South African content in all genres, the quota of South African music played now through electronic communication has not changed.

Given the criteria provided for in Section 61(2)(c) of the ECA as implemented by the Authority, the researcher notes that there are blank cheques, in terms of the legal framework for anything to 'qualify' as South African. Those who have predominantly informed the directions of this legislation did so being informed by the mandate that seeks never to dislodge European and American hegemony in Africa. It is depressing to watch the East and West African Idols television programme of 2007 and 2008. The programmes promote the Diaspora culture in that the prescribed or preferred song for auditions, is R Kelly's 'I believe I can Fly'. The 1963 prescription for Jazz contest at the Jabulani Amphitheatre was

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Sonny Rollins' 'Beck's Groove'. The researcher notes with concern this recurring point of the entrenchment by African, of the Diaspora culture over and above the African one. The first Democratic Policy and Regulations on content of South African music came into effect in November 1997. Included in these regulations was the requirement that the Authority should review the regulations within a period of three years after its publication. The review was done with the intention of assessing the effectiveness of the quota and increasing the levels of music performance.

As though it was revolutionary , the 1997 Regulations required the holder of any category of sound broadcasting licence which devoted 15% or more of its broadcasting time during the performance period to music to ensure that at least 20% of the musical works broadcast were South African. The South African Music Content Regulations are applicable to 11 commercial radio stations, 18 public radio stations and 98 community radio stations.

The researcher argues that these stipulations of the quota that allocate only 20% of the 15% allocated to music broadcasting by agencies holding sound broadcasting licence, are unsatisfactory. The revised quotas on radio and television, which stand at 40% for public and community broadcasters and 25% for commercial broadcasters are equally unsatisfactory. The researcher observes that it is the biggest travesty of justice for the Councillor to say that through these new quota, ICASA has responded to broadcasters' requests for more flexibility when it comes to defining what comprises '*local content*'.

This means that while South Africans might await perceived growth in the broadcast quota of actual music of South African, the variegated percentage delegations for different categories of the media could comprise a lot of

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interviews with South African musicians rather than the broadcasting of their music. The problem is that the South African Broadcasting Corporation (SABC) does not pay for radio and television interviews. This is regarded as a kind of charity that a South African musician must embrace as free advertisement, yet it is counted into the broadcast of the quota. On average, the SABC television and Radio would rather have an artist pay for an interview rather than enjoy the benefits of that provision of the August 2003 ICASA local content quota. If artists have a product they have produced or programme to run and request the Broadcaster to assist in providing interviews to talk about such, then the artists are often requested to pay for the time. Sometimes, if the broadcaster deems it important, then artists are invited to talk about their works and programmes.

A lot of South Africans have also joined in the exploitation of fellow musicians. Some South Africans acting as agents or managers and producers often exploit fellow South African artists. Copyright owners are often stripped off the rights of their works. In the two projects *Silent Beauty*, *Malombo and Man Phil*, Tabane is credited merely as a main performer and not the composer and arranger of his work.

### **9.1.5 Protecting one's Copyright**

The remaining part of this chapter investigates what Copyright means to any artist. An important excerpt from the Copyright Act (1978) amended in (2002) stipulates that:

- a composer or lyric writer, the copyright in one's work means that one has the exclusive right to do specific things with that work, or to authorize anyone else to do these on one's behalf. These are:

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- (i) reproducing the work in any manner or form;
  - (ii) publishing it;
  - (iii) performing it in public;
  - (iv) broadcasting it;
  - (v) transmitting it in a diffusion service;
  - (vi) making an adaptation of it; and
  - (vii) treating an adaptation of it in any of these six ways.
- a composer or lyric writer is at liberty to assign any or all of these rights to someone else.
  - a composer or lyric writer may also retain these rights but grant licenses to others to exercise them.
  - a composer or lyric writer copyright enables him/her to earn his/her living (at least in part) through the royalties which must be paid by those who exploit his/her music.
  - a composer or lyric writer copyright will last as long as he/she lives and for a period of 50 years after his/her death, it will form part of his/her estate when he/she dies.
  - a very special part of the copyright is a composer or lyric writer's **moral right**, which means the *right to object to any distortion, mutilation or other modification* of any of his/her works, which may be prejudicial to his/her honour and his/her reputation.

The Act further provides mechanisms for the protection and exercise of one's Copyright through the following ways:

- a composer or lyric writer is at liberty to assign any or all of the rights to anyone else.

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- if a composer or lyric writer decides to retain them, he/she may grant licenses to other persons to exercise one or more of these rights in certain areas, for certain periods, and on such conditions as he/she may decide.
- such licenses can be either exclusive or non-exclusive. Copyright agreements can be quite complicated, and a composer or lyric writer should seek the advice before he/she signs any agreements involving rights.
- in South Africa, a composer or lyric writer may consult with SAMRO which is a body that assists with guidance on copyright problems.
- a composer or lyric writer is, of course, at liberty to administer his/her performing copyrights himself/herself, but in practice it is difficult.
- a composer or lyric writer has no way of knowing where and when his/her music is being performed - in a concert in London or New York, a disco in Paris or Rome, a night-club in Tokyo or Toronto, a broadcasting station in Madrid or Montevideo. (Adapted from the SAMRO 2008 guide).

Philip Tabane did not only compose music, but also wrote plays and lyrics of songs. The researcher therefore argues that Tabane's case and those of other South Africans whose works include musicals should be protected by royalty rights administration agencies. They include:

- The Dramatic, Artistic and Literary Rights Organisation (DALRO),
- The National Organisation for Reproduction Rights in Music (NORM),
- The South African Recording Rights Association Ltd. (SARRAL) and
- The Recording Industry of South Africa (RISA)

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DALRO is directly affiliated to SAMRO and, briefly stated, it does for the authors of literary and dramatic works what SAMRO does for the composers and lyric writers of musical works - it protects and administers their rights of public performance, of broadcasting and of diffusion, with the addition of the rights of adaptation and of mechanical reproduction, including photocopying. As regards artistic works, DALRO can assist their creators with the administration of their rights of reproduction, of publication, of broadcasting, of diffusion and of adaptation.

NORM is a negotiating body which protects the interests of composers and publishers. It issues mechanical copyright licenses where music is re-recorded, e.g. audio-visuals, fibre-optic usages, backing tracks for stage shows and recordings for independent record companies not affiliated to major distributors.

SARRAL administers the mechanical reproduction rights in musical works. It issues licenses for the recording of such works on disc, tape, or on any other media. It collects the appropriate recording royalties and distributes them to the copyright owners. It is important to note that any dubbing, in other words any recording of or from an existing recording of music, is considered as a fresh recording of that music and will require a license from SARRAL.

RISA - The Recording Industry of South Africa (RiSA), formerly known as the Association of the South African Music Industry (ASAMI), is the trade association of the South African recording industry. RiSA is affiliated to the International Federation of the Phonographic Industries (IFPI) and promotes and safeguards the collective interests of the South African recording industry generally, and specifically its member record

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companies. This commitment is effected by the RiSA Executive Committee.

RiSA is known primarily for two high-profile activities, i.e. the annual South African Music Awards (SAMA) and its anti-piracy operations. RiSA's day-to-day work also includes many key aspects of the industry, among them the certification of sales achievement, representing the recording industry internationally, providing information and research, establishing and applying ethics and standards and lobbying and making representations on key issues affecting the recording industry. RiSA also attends to the collective administration of music videos on behalf of its members.

It is important to look into the mandate of the South African Broadcasting Co-operation in terms of its Charter as well. Here is an excerpt of the Charter from the SABC's website:

The functions and duties that Parliament has given to the SABC are set out in the Broadcasting Act No 4 of 1999 (as amended). Section 6 of the Act outlines the Charter with which the SABC must comply. In terms of this Charter, the SABC, in pursuit of its objectives and in the exercise of its powers, enjoy freedom of expression and journalistic, creative and programming independence as enshrined in the Constitution.

It further says that the SABC must encourage the development of South African expression by providing, in South African official languages, a wide range of programming that:

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- Reflects South African attitudes, opinions, ideas, values and artistic creativity.
- Displays South African talent in education and entertainment programmes.
- Offers a plurality of views and a variety of news, information and analysis from a South African point of view.
- Advances the national and public interest.

The SABC's mandate as a public broadcaster comes from the Charter, which defines its objectives. The Charter is laid down in chapter IV of the Broadcasting Act (as amended) and requires the SABC to encourage the development of South African expression by providing, in the official languages, a wide range of programming.

The SABC's powers and functions, as well as its rights and obligations, are derived from a number of sources: legislation, the Charter, the license conditions of each SABC station and channel, and regulations issued by ICASA from time to time, including the Code of Conduct for Broadcasters set by the BCCSA. South Africa's broadcasting legislation provides for a three-tier licensing structure for broadcasting services: public, commercial and community.

ICASA is responsible for monitoring compliance with the license conditions and with the objectives of the Charter.

The SABC Board, which is appointed by the President on the advice of the National Assembly, controls the affairs of the SABC and is mandated explicitly to protect the above freedom and independence.

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The challenges are captured neatly in the preamble to the Constitution, which sets out the objectives of the South African constitution as these:

- To heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights
- To lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by the law
- To improve the quality of life of all citizens and free the potential of each person
- To build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

While the mandate of the SABC remains nation building, in the main, ICASA's provisions of the quota in its variegated terms for commercial, regional and community radio stations, cannot assist the SABC to foster this mandate. Those provisions that count interviews as part of the quota and provide a low percentage to South African music, are not fair. It is recommended that interviews should not be counted in the quota or should be paid a royalty too, otherwise the quota needs to be increased considerably to accommodate adverts, interviews and music.

The research would like to examine the other attempt to create redress by the new democratic government post 1994. In the year 2000, Minister Ngubane, the then Minister of Arts, Culture and Sports, set up the Music Industry Task Team (MITT) to come up with recommendations on how to redress the backlog of the development of the human rights culture in the music industry.

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The MITT put forward nine recommendations to Cabinet as an offering to redress the racially divided and largely damaged integrity of the music industry. The research addresses itself only to the MITT recommendations 2, 3, 4, 8 and 9 as they deal with redress of past injustices in the music industry. The excerpts are used in the body of the chapter so that the reader can follow the critique thereof. The research lists recommendations 2, 3, 4, 8 and 9 of the MITT report below and then critiques them.

### Extension of the term of copyright

#### ***Recommendation 2:***

The speedy implementation of the recommendations of the Standing Committee on Intellectual Property regarding the extension of the term of copyright for both composers and performers to 70 and 50 years respectively, in line with international practice.

### Implementation and accession to the World Intellectual Property Organisation (WIPO) Treaties

#### ***Recommendation 3:***

South Africa should implement and accede to the World Copyright Treaty (WCT) and the World Performance and Phonograms Treaty (WPPT) without delay in the interests of protecting South African content in the digital environment and bringing South African copyright legislation in line with international trends.

### Broadening the definition of “performer”

The definition of “performer” in the Performers’ Protection Act (Act No.11 of 1967) excludes performances that are not performances of literary or

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artistic works. As a result, various other types of “un-scripted” performances, which make use of folklore, oral tradition and other forms of indigenous culture, are excluded.

### ***Recommendation 4:***

The definition of “performer” in the Performers’ Protection Act should be amended to include artists who perform works of folklore. The revised definition should include not only performances in the recognised performing arts disciplines, but also the wealth of indigenous performance. The definition in the WPPT is a useful guide.

Needle time is also referred to as the broadcast right. It gives musicians (in their capacity as performers) the right to receive remuneration when their repertoire is either played on radio or performed live amounting to a Public Performance Right. This right can impact on income for musicians and expenditure for broadcasters both domestically and internationally. It was removed from South African Copyright legislation in 1965. Amendments to relevant legislation are currently under review by the Department of Trade and Industry in Government Gazette No.21156, published on 10 May 2000, Representing African Music (MITT Report p9, 2000).

### **Compliance and monitoring**

The public broadcaster is a primary custodian of South African culture. Other broadcasters also have a profound impact on the well being of local culture. Broadcasters thus have a responsibility to mirror the broad range of national and local artistic expressions. International trends indicate that

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exposure to local music creates a demand for local music products among consumers.

The IBA has the constitutional responsibility to enforce and monitor local content. There is, however, a widespread perception that the IBA is not executing these duties adequately. As a result, many broadcasters are not adhering to the local content quota. The impact of this non-compliance on both the economics of the local music industry and on the development of South African culture is severe.

### ***Recommendation 8:***

The Minister should meet with the Chairperson of the IBA in an attempt to ensure that the IBA monitor and enforce local content quotas.

In this regard, the Minister should note that the following assistance is offered:

- In the absence of systematic monitoring by the IBA, SAMRO will attempt to provide some information to indicate trends of local content usage by broadcasters.
- The organisations comprising the MITT, notably SAMRO, MUSA and ASAMI, are willing to assist the IBA in researching the appropriate monitoring system for South Africa. In the interim, the MITT suggests that the IBA consider adopting the monitoring system outlined by ASAMI.

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### Level of quota for local music content

#### ***Recommendation 9:***

The MITT is of the view that the present local content quota of 20% is too low and recommends a quota of at least 50%. (MITT, 2000:9-10).

### **9.2 Conclusion**

Current legislation on performance rights, the protection of the South African musicians' copyright, and the profiling of the South African composition is compromised to maintain the status quo. All pieces of legislation do not prioritise indigenous South African compositions. They rather allow foreign composition access into the realm of 'qualification' to be classified as South African. A suite of these Acts, do not make SAMRO, SARRAL, SABC, DALRO, to be effective in that they all depend on the Copyright law as amended. It is rather too vague and allows for non development of South African compositions in terms of performance due to the insignificant performance quota that is allocated to it on electronic media.

To debate copyright issues meaningfully requires an interrogation of the applicable laws. The research therefore recommends to South African musicians and cultural activists, to peruse these Acts so that they could mount a formidable argument with supporting literature on the subject of the rights of musicians.

The researcher argues that until South African music is regarded as such and not referred to as 'local content'; the broadcast quota of South African music is 95% of the revised 40% for public and community radio stations, and 25% for commercial radio stations respectively, the South African arts and culture will continue to suffer cultural imperialism, and the noble political dream of 'a better life for all' will therefore not be realised. Rather it might persistently skid away into a distant horizon, like a mirage.

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The complex ramifications of the Acts stated in this chapter, as well as challenges of administrative and personnel capacity to deal with the implementation of the Acts are immense. These challenges further take away the attention on the development of indigenous music and to deal with the rights of musicians working in this category. Tabane's rights as a musician who works largely in the indigenous music sphere, have been equally affected by the negative implications of the broadcast quotas of South African music referred to as 'local content' by the Copyright Act of 1978 as amended. Existing provisions of the Act, however, are sufficient to protect Tabane's rights with regard to the non-credit of his composition, authorship, and arrangements rights in the albums *Silent Beauty*, *Malombo* and *Man Phil*. Tabane has been credited merely as the main performer in the internet sale of these albums. The most serious aspect of his rights is the fact that in the interview with Tabane (2008), he points that when *Silent Beauty* was recorded, he signed no contract for the recording because he was promised that the recording was made for purposes of archiving only, and that no material from the recording would be exploited for commercial purposes. Regrettably, *Silent Beauty* is now available in music stores and Tabane receives no royalty for it.

The researcher further recommends that all the recommendations of the MITT report be implemented because they are valid and significant in transforming the music industry of South Africa.

## Chapter 10: Festival names and sponsorship, the blemish of branding

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### CHAPTER TEN

#### Festival names and sponsorship, the blemish of branding

##### 10.1 Introduction

This chapter aims to investigate how Tabane's vision of creating a mainstreamed *malombo* discourse got to be affected by the agenda of different managers and promoters.

##### 10.1.1 Travesty in naming festivals

The revolution that Tabane started around 1940, is one that challenges the researcher to investigate the travesty of naming not only the genres that are produced in a country, but also the naming of festivals that package and present such genres and performers. Tabane performed in a number of festivals in South Africa that had very interesting names: the Fagamaboos festival, Cool Spot, Newport, Joko Tea Break Festival, Lion Lager Strike it Big Concert, 1964 Castle Larger Jazz and Variety Festival, Gilby's Dry Gin Jazz, Mapungubwe, Polokwane Festival, Soweto Festival, Ziyaphenduka Jazz Festival, and others.

It is an interesting observation that not only alcoholic brands but also Joko Tea and Lion Matchsticks brands sponsored music festivals in the 1960s. In most cases festival sponsors' branding become key elements of marketing at the expense of a common theme that runs across the participating artists' works. Some musicians are decisive enough to choose the commercial brands they would like to associate themselves with. Others, out of lack of choice, or perhaps lack of understanding of the stigmas associated with certain brands, see no problem performing in festivals associated with brands that contradict their principles. Promoters often welcome any sponsor that is prepared to fund, regardless of the stigmas associated with the brand. Others could have a discretion on this, but perhaps not many. What both the promoter and the

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sponsor forget is to foreground the common messages and the underlying essence of genres of the music. Some audiences think critically about the stigmas of sponsorship and therefore choose to either associate or dissociate themselves with such. This challenge made the researcher to scrutinise this notion of the naming of festivals a bit closely.

In the 1960s, sponsors like Joko Tea sponsored jazz festivals. Today it is hard to think of a tea brand as a possible sponsor for a jazz festival in particular. It is not even associated with gospel music at the least. It is interesting to note that Joko indeed sponsored music festivals. It is even more interesting to note the marketing strategy of using speech bubbles of cartoons in print media. This approach creates a valuable link between music and literary genres of story telling, the study of comic strips in arts education, reading comprehension activities in language studies, characterisation in drama, as well as the study of portraits in visual arts. Here is one example of such a text:



Plate 10.1: Joko Tea Break Sponsorship.

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Naming a festival appropriately has been the most difficult challenge for promoters. First, in terms of the purpose to be achieved, and second in terms of the crowds the name would appeal to in order to make profit that is desired by the promoter. The duality of money making and content are often difficult to straddle together successfully. Often promoters need to depict a genre so as to carve a niche, so as to attract a certain kind of patronage, and still have a crossover and mass appeal. Often the main purpose fails at the behest of popular appeal. To date, what is termed a jazz festival features Philip Tabane's Malombo music, Sello Galane's Free Kiba music, Oliver Mtukuzi's Tuku Music, Don Laka's Kwaai-Jazz, Malika's and Arthur Mafokate's Kwaito music, Marcus Wyatt's Straight ahead Jazz, Zim Nqawana's Zimology music, Selaelo Selota's Azanian song-book music, and KB's House Music. Yet all these styles cannot be classified as jazz.

One of the observations the researcher makes is that Jazz represents different subgenres developed in America and can therefore be used as a broad name to include fusion, straight ahead jazz, avante garde jazz, bibop, swing and so on. African music, on the contrary does not have a name that could embrace a number of different genres of popular African music. A suitable concept that could embrace various Africa-sensed sounds is Afrophonia. This term implies African sound or idiom. On a deeper level it refers to African sounds, the tonalities of the music, the phonics of the African languages, and the timbre of melorhythmic African music instruments, as well as the overall textural blend of a performance of an indigenous African composition itself.

Sponsorships like Joko Tea have a potential of bringing families together in one roof of a concert or festival than alcoholic sponsorship. The Lion Matchsticks sponsorship has the capacity to develop themes that can be associated with the

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metaphor of bringing light to the future of young people. It is sponsorships like these that have a potential to have families attend festivals together. The collage below is an advert titled 'Strike it Big Talent Contest Begins'. This advert publicises a festival that was held at Mofolo Hall in Soweto. Such neutral brands like tea and matches have great potential to find resonance with Education and Culture in the agenda of a country. It is unfortunate to learn that such cross-over appeal type of sponsorships that do not stigmatise the participants and promote healthy mindsets, are scarce these days. Below is an example that evidences those unique moments of un-blemishing branding: 'Strike it Big Talent contest Begins'



Plate 10.2: Top right, Lion Match Strike it Big Talent Contest sponsorship.

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The researcher argues that jazz is a political and cultural statement of Black America. It is not just a sound of the genres. Since around 1948 when African music started to be bundled under the tag of jazz, it happened because of the lack of a concept that would have collectively represented *kwela*, *mxhasio*, *mbube*, *kiba*, and other sounds of the time. In the same way, Tabane's efforts to create a bigger sound of Malombo was catapulted by the lack of a collective term that could have referred to him as would have Mirriam Makeba, Lemmy Mabaso, Spokes Mashiane, Zakes Nkosi, Jonas Gwangwa, Mahlathini, Mahotella Queens, and many others who stayed within the indigenous sound of Africa. For Tabane, the result was that at a point he was dubbed Malombo Jazz, a break away group from his own called itself Malombo Jazzmakers, and many other such names associated with jazz. For his managers and promoters like Ian Barnad, Peter Davidson, Duma Ndlovhu, Arabi Mocheke, Tabane's concept was less foregrounded than him. All these managers cum promoters failed to hear Tabane's yearning for an ensemble with African music connoisseurs from the *kiba* and *malombo* villages of Limpopo.

In South Africa, in the sixties, Ray Nkwe and Johannesburg Festivals were inextricably caught in the jazz festival euphoria. The Johannesburg Jazz, and Ray's *Umoya - The Wind*, organised and promoted the name 'jazz festival' for years in the sixties. The Johannesburg Festival company is the one that organised the proverbial 1964 Jazz and Variety Festival, expanding on Matshikiza's 1948 and Mehegen's Diaspora culture entrenched in 1959. It is understood that it was in 1963 that South Africans saw themselves in such a huge crowd together in what was the 1963 Jazz festival in Jabulani Amphitheatre in Soweto. The 1964 festival topped them all. From that day on, jazz gathering meant gatherings of joy. Peter Tladi, a prominent promoter of jazz music in South Africa, calls his festival programme, the Joy of Jazz series.

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The African musicians and a current crop of festival promoters have not met to interrogate, like the African writers who gathered at Makerere University, Kampala in 1971, the question of developing a truly African festival on the African continent. Panafest in Ghana is one example that could galvanize exponents of African music. The Bakamoyo Arts Festival of Tanzania does attempt to revive the Afrocentric festival programme in the African continent. Joy of Jazz and Cape Town Jazz are the biggest in South Africa. They sustain the Matshikiza and Mehegen's theories of jazz in South Africa. Even the Mapungubwe festival in Limpopo has fallen into the trap of leaning more towards the jazz music programme rather than on the indigenous music programmes of the cross border areas that comprised the ancient kingdom of Mapungubwe. The biggest stage it has is jazz festival stage and not the Kiba-Tshikona-Mushongolo stage. The latter concept embraces the three main genres found among the Bapedi, vhaVenda, and the xiTsonga speaking communities of Limpopo. The Macufe festival in Bloemfontein is another one that fails to become a brand associated with success, good corporate governance, and the promotion of African music. Organising committees of this festival are often hamstrung by limited mastery of corporate governance skills as well as lack of funds.

Since the early fifties there has not been a festival that has had a strong African name and symbolism that promoted the African image flowing from the efforts of Philip Tabane's pioneering spirit of Malombo. All festival are a compromise of the African image in that promoters cannot think outside the Mehegen framework of jazz. They cannot just cut ties with the tag of jazz as Tabane did. It takes the decisiveness of a resolute African to just look inwards and assert own strong music idiom, identity and image.

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This challenge that faced the promoters of the fifties and sixties remains unabated to date. Festivals lack themes, clear purpose, and proper packaging in terms of concept. It is better to have an arts festival featuring a variety of music genres, than to straight-jacketedly name everything just to follow the popular trend of festivals. The Grahamstown Arts Festival is simply dubbed 'the national arts festival'. Mapungubwe Festival in Limpopo fails to capture the spirit of Mapungubwe civilization and demographics. Macufe Festival which is the same as the Arts Alive in Johannesburg provides for both jazz-idiom based music, African music, but still head-lines the festival with American and British jazz musicians. Oppikoppie Festival has fallen into a similar trap. Joy of Jazz and Cape Town Jazz (formerly known as North Sea Festival) in spite of the fact that the latter happens on shores of the South sea of Cape Town, cling perfunctorily to the tag of jazz. Around 1976 there was a similar irony, a festival held in Mamelodi, Pretoria - South Africa called New Port Festival, just because Philip Tabane was returning from the New Port festival in America. Therefore when Philip Tabane finished performing at the New Port festival in America, he would be performing in the 'New Port' festival in Mamelodi - South Africa.

The South African media often revels at the rhyme of names like Joy of Jazz and forget to caution against the dope of Matshikiza and Mehegen. This is done at the expense of bigger stake of African identity, African themes, African heritage, and African discourse that helps to grow African musicology.

Africa could be galvanized under Afrophonia with the aim of uniting the African indigenous sounds. This could give African music the capacity to share music idioms, resources, approaches, philosophies, ethos, as well as perform together on the true Africa's grandest stage annually. Where necessary, instruments and approaches from other non-African communities could be used to add value to

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the world of sound and thereby enriching the African music idiom. The researcher makes this point particularly about South Africa in that South Africa has been largely exposed to the west than it has been to the rest of the African continent. The instruments, genres and approaches to music have therefore been borrowed from the west more than from other African countries on the continent. African countries are recovering from the impact of colonisation. A venture like the Afrophonia Festival can help close the gap between African countries created by colonisation and create more dialogue and exposure to the indigenous technologies of each country's cultures.

### 10.1.2 Contemporary sponsorship blemish on novel talent

In the development of Africa's novel talent, little care is taken by promoters in choosing the sponsorship that profiles the talent well. From as early as 1950s, the Castle Lager brand overshadowed novelty of talent. In South Africa, Shell, a petroleum company, was the next big sponsor of novelty in music through Shell Road to Fame Talent Search flagship. It produced stars like, Judith Sephuma, Sothokasi Arosi, and others. The University of Cape Town's music department had the prestigious Adcock Ingram Student Prize from 1999 to 2000. The project unearthed the likes of Selaelo Selota, Marcus Wyatt, Musa Manzini, Sylvester Mazinyane, etc.

In Cape Town, Old Mutual collaborated with BMG record company on a talent search project for the development of the youth of South Africa in 1996. At UCT, Adcock Ingram pulled out from sponsoring the student prize because it was rumoured that Gilbys Dry Gin wanted to partner with them for a joint sponsorship of the prize. Adcock sells health drugs and Gilby's sells alcohol, so the former refused to share sponsorship of the same prize for that reason. This amounted to a clash of interest between the two companies. Gilby's Jazz festival

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later sponsored a jazz programme in Johannesburg that profiled the novelty of talent of the late Moses Molelekwa, who was part of the Umbongo ensemble. They won the Gilby's festival prize in the early 1990s. Such branding is an indictment for the winners as they may not proudly parade the prize to their children without introducing the name of the brand to them.

In 2002 some artists refused to endorse the Castle Milk Stout's 'true greatness comes from within' campaign. This is because of the fact that they realised that branding stigmatizes. The monetary reward thereof cannot wash off the stain it leaves on a musician's name and the God given novelty of talent that has been bestowed upon an artist. Standard Bank and MTN have become the well known sponsors of South African Music Awards in the last 15 years in South Africa. If musicians had sustainable income, they would choose to endorse or not to endorse certain brands that are associated with the festivals they are usually booked to perform in. Currently, musicians are happy to be booked to perform for a living. If they do have reservations, they would not raise them just so that they could put bread on the table.

Africa needs to choose the sponsors that are associated with a humanising culture, as Nzewi (2007) puts it. Nzewi's writings reposition the human value to the teaching, practice and evaluation of music and processes of music making.

### **10.1.3 Emerging tenets of how to mainstream a tradition into the realm of popular music**

The value of a research should not be the extent to which it argues what is undesirable or contentious, but to create a new thesis for a positive and sustainable discourse. It is against this background that the researcher argues for 'new frontiers' of the development of indigenous musical arts.

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Tabane's 46 years of placing *malombo* in the realm of popular music, was not about negating jazz. It was about engendering a new discourse, establishing a thesis for the development of indigenous music. This therefore brings forth a new discourse of mainstreaming through digression in order to return to the original discourse. Malombo's brave battle with the emancipation of African music through stretching *malombo* to new frontiers of form and structure, resulted in the need to look into new musicology of 'mainstreaming an oral tradition into the realm of popular music'. Throughout the study of Tabane's development of Malombo, a number of the tenets of mainstreaming an oral tradition into the realm of popular music have emerged. These tenets point out that in adapting a tradition of music making, it is important for both scholars and promoters to:

- immerse oneself within the tradition of the music one wants to study. This will enable one to understand the nuances of signification in the culture of the music.
- isolate the new sub-genres from the general music tradition of the people whose culture and music is being analysed and packaged.
- identify the key concepts used in the culture of the music.
- identify elements of each concept discerned and how they work to produce a style and styles.
- identify the styles available in the genre you have discerned.
- learn the metalanguage and discourse of the culture of the music you are studying and intending to promote.
- analyse protocols of performance in order to understand areas of possible collaboration.
- know the different protocols for different contexts of performances.

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- extrapolate on the purpose and function of certain titles and themes in different contexts of performance as a way of social communication.
- do a systematic, scientific study of the texts in terms of broad themes and sub-themes. A linguistic study of lexicography used and the extent of poetic license.
- compile a repertoire of the genre and classify it into related themes.
- study the structure of the music compositions.
- determine:
  - what constitutes melody, and harmony.
  - what type of orchestration is used if available
  - what constitutes a full composition
  - what the minimal representation of elaborate orchestration could be
- know what is a fundamental, non-compromisable key feature of the larger body of works in that genre.
- know what is the discourse of that music from the practitioners' point of view.
- know what universal traits and elements of the indigenous genre are discernible from the overall body of the compositions in the indigenous repertoire.
- know what are adaptations and fundamentals in a genre. One could also need to do some etymological study of songs to gain in-depth understanding of the repertoire.
- do this kind of field work over time to ensure consistency and reliability of data.
- do own representation of the genre and style using one's own new compositions. Then one would have created a novelty of a tradition based on sound philosophical, musical, ethical, and artistic basis.

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- appropriately name one's style after the original style.
- compose a larger body of work in that style, experimenting with different influences and thereby expanding the demographics and horizons of a single tradition, and thereby creating a quilt of cultures and traditions. In this way one would realize the value of dynamism of culture and tradition. A tradition of musical practice will therefore find a re-entry into the mainstream economic life of the music industry, and thereby acquiring new currency, literally and figuratively.
- document the process that one would have followed in re-engendering and mainstreaming that tradition of musical practice and music making that one would have done. In doing so, one will be reconstructing a new discourse of *mainstreaming a tradition, and creating traditions of novelty by creating novelty in tradition.*

Promoters and festival organising committees need to work with ethnographic researchers whose quarry is to mainstream indigenous traditions. This will expand their horizons of possibilities than to just name everything jazz festival.

### 10.2 Conclusion

Tabane's vision of mainstreaming the *malombo* discourse was invariably affected by the intentions of different managers and promoters about him and the vision of their respective business prospects. The researcher notes that it is regrettable that most musicians in South Africa and other parts of the world do not have enough resources to mount their own shows, thereby relying on promoters and managers for exposure and conceptualization for their shows. If musicians had resources, they would put up shows that foreground their own vision about the music concepts that they do. Often some musicians begin their careers with clarity on the genre of music they want to pursue, and which variations they would like to introduce to the genre to mark their individual contribution

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thereto. This therefore determines the repertoire and style that they begin to work on so that the cumulative flair of the style represented in the repertoire represent the style and intention about their music. Once in while a crop of musicians do emerge with an innovation that charts a new path of music that would even give rise to a new genre. Philip Tabane is one of many such musician who emerged with a definite mind of his own, to pioneer a popular music style called *Malombo* music, developed from the sound of the indigenous *malombo* rituals. The researcher argues that, Tabane's vision of mainstreaming the *malombo* ritual contradicted with those of his promoters and managers.

Promoters and sponsors mostly determine festival names, and as such they may have greater influence on the marketing campaign for the festival. Full sponsorship of the festival budget often leads to the promoter's concept being totally replaced or overshadowed by the sponsor's brand.

Every brand has positive or negative connotations that are associated with it. Alcoholic brands are associated with drunkenness and low morality by religious communities and education communities and authorities. This is the reason education authorities would not take kindly to alcoholic sponsorship. Tabane's mainstreaming of a ritual concept of *malombo* music got to be mixed with alcoholic brands of Castle Lager and Gilby's Dry Gin. This indeed alienated it from possible patronage of the religious sectors, especially that of fellow *malombo* ritual practitioners. The tragedy of this consequence is that the stigma was not Tabane's own doing. Tabane was developing his craft under Dorkay House, and it was the latter that organized the sponsorship for Tabane's seminal presentation of the 1964 talent scout. The novelty of the popular music of Malombo was therefore stigmatized with the alcoholic brand to date. One cannot talk about the emergence of Malombo without talking about Castle Lager in the

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same breath. This is the travesty of such genius novelty of South Africa's own Malombo music brand. This unfortunate occurrence has continued to stigmatise most novel styles that emerge.

There are other neutral brands like Shell, Lion matchsticks, Joko tea, Standard bank, and Fagamabooks festivals. These brands do not stigmatise, rather they sell the products they represent. Regardless of the non-stigmatic nature of the brands, they all do overshadow the music concepts that the billed artists represent. The researcher argues that nothing is more precious than foregrounding the music concepts or the human values that the concert concepts represent. The collective moral and the aggregate representation of the indigenous music concepts that are featured in the festival is what needs to be fore-grounded. Sponsors need to be unselfish and allow the concepts to take the centre stage rather than to overshadow all genres with one sponsorship brand.

There are positive festivals concepts that work well for the promotion of indigenous music concepts situated in the popular music domain. These festivals include Mapungubwe festival, Polokwane festival, Macufe festival, Sejakhufe festival. These festival names represent the indigenous heritage of the people of Southern Africa. The researcher argues that *malombo* ritual music and the Malombo popular music can be represented better in these festivals than in the alcoholic brand festivals. *Malombo*, as a sacred ritual practice, has stronger links with the heritage of the indigenous civilization and technological innovations of the Mapungubwe, for example. The *malombo* spirit of healing, the sacredness of the *malombo* drums, the sacred powers of the *malombo* healers themselves, cannot afford to be associated with drunkenness and wanton marry making associated with alcoholic brands and jazz festivals.

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Popular music genres are often developed from indigenous music genres. New repertoire of popular music developed from indigenous genres should retain the original names. This assists in ensuring that the framework for the development of indigenous music into the realm of popular music is rooted in the maxims of music making of the source culture. This will allow rules of art and cultural development applicable in indigenous music to be part of the rules governing the appreciation of the popular music adaptations as well.

Central to any effort of mainstreaming the African indigenous works by Africans, should be the development of an authentic music heritage rather than to clamour for fame and superstardom. Such efforts have helped other nations to develop authentic arts identities that reflect the everyday experiences of their lives.

Philip Tabane was the first musician on record who did not find it hip or fashionable to have the music he learnt from his mother invariably given the tag of “jazz”. He literally challenged the tag in the media and it took him ten years of his life to ward off the term to the triumph of the term “Malombo”. Following in Tabane’s ideology, Sello Galane, called his music “Free Kiba” because he aimed at creating an extension of the concept of Kiba music and to acknowledge its dynamism in its compositional qualities and its musical practice and to face it from enclaves of tribalism and traditionalism. Don Laka used the term Kwaai Jazz to acknowledge the musical energies of Kwaito and the elements of Jazz and their capacity to co-exist in a composition. Whether these artists have succeeded in doing what they set out to achieve, is another subject of academic research. Tabane has succeeded in making his opinion known regarding the stigma of the jazz tag. Like all musicians who struggle for survival, he has chosen to turn a

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blind eye on the stigma associated the brands of festivals' sponsorships, and focused on mainstreaming the sounds of *malombo* in the realm of popular music.

However, Tabane's uncritical but well meaning managers and promoters, detracted, to some extent, from the depth of the noble lessons to be learnt from one who takes on a lonely mission to mainstream an oral African tradition and discourse in the midst of mal-perception and cynicism. Tabane, therefore, was not credited for what he set out to do, nevertheless he has created a new thesis, for the development of indigenous music.