

CONSTITUTION OF THE MUSIC IN AFRICA FOUNDATION

PREAMBLE

MUSIC IN AFRICA shall be guided by a pan-African ethos and shall operate under responsible management which guarantees its spirit of independence in relation to national authorities and institutions. Nonpartisan, nonracist, nonsexist and based on the principles of inclusion, MUSIC IN AFRICA does not take into account the political or religious affiliations of its membership, partners or other stakeholders, and prohibits any discriminatory behaviour or expressions of discrimination.

VISION

MUSIC IN AFRICA's vision is to be the leading source of information and exchange in and for the African music sector.

STATEMENT OF PRINCIPLES

MUSIC IN AFRICA shall be governed by a set of fundamental principles and guidelines:

- a commitment to participatory democracy including free and fair elections of its leadership and accountability to its membership;
- a commitment to transparency in decision making and the communication of decisions;
- nonpartisanship with regard to its activities: in order to preserve its independence and its capacity to assume critical positions the network is not aligned to, and will not align itself with, any political party or entity;
- a commitment to nondiscrimination on the basis of gender, language, culture, ethnicity, nationality, sexual orientation, religious belief, age and disability;
- a commitment to partnerships, to working collaboratively with existing organisations and institutions and to sharing resources and knowledge;

- a commitment to human rights, including such rights as are affirmed in Article 27-2 of the Universal Declaration of Human Rights, and the right to freedom of creative expression; and
- respect for cultural diversity and cultural coexistence.

AIMS AND OBJECTIVES

MUSIC IN AFRICA aims to support and promote the African music sector and its operators, guided by a knowledgeable and independent team of music professionals and partners. The broad objectives of MUSIC IN AFRICA include (but are not limited to):

- provide reliable and useful information that promotes the African music sector and its operators;
- connect and promote exchange between music operators from, or related to, Africa and its diasporas;
- promote and encourage the creation of content by Africans, about Africa or related to Africa and its diasporas;
- improve the distribution, accessibility and viability of such content;
- promote the spirit of entrepreneurship among the African music sector;
- enhance music education;
- facilitate and promote, through research, development and education, the use by professionals and audiences of current and future technologies; and
- provide one single and viable access point for all of the above that links existing initiatives, services and resources.

In carrying out these objectives MUSIC IN AFRICA aims, inter alia:

- to create a website or other online medium to serve as a portal for information collection and dissemination;
- to facilitate the discovery of existing music in Africa by enabling users to listen to it at its portals;
- to act as a platform for interaction and sharing of reliable information about the African music sector;

- to organise seminars, workshops and other events aimed at, but not limited to, information sharing and the development of knowledge;
- to commission relevant research in relation to the African music sector;
- to support the African music sector through capacity building and education; and
- to conduct advocacy aimed at protecting the interests of musicians through (but not limited to) awareness campaigns and lobbying in the area of intellectual property right protection.

1. NAME

The name of the nongovernmental and nonprofit organisation shall be the:

MUSIC IN AFRICA FOUNDATION

(hereinafter referred to as ‘the Foundation’)

2. LEGAL AND NONPROFIT NATURE

- 2.1. The Foundation shall be an organisation established under South African law and is a body corporate existing in its own right, separately from its members and continuing to exist even when its membership changes. The Foundation shall be able to own property and other assets and may enter into contracts, and sue and be sued in its own name.
- 2.2. The income and property of the Foundation shall be used solely for the promotion of its stated aims and objectives. The members shall have no rights to the property or other assets of the Foundation solely by virtue of their being members. No portion of the income or property of the Foundation shall be paid or distributed directly or indirectly to any person (other than in the ordinary course of undertaking any activity for or on behalf of the Foundation that complies with the Foundation’s aims and objectives) or to any member of the Foundation, except as reasonable compensation for services actually rendered to the Foundation, and reimbursement for actual costs or expenses reasonably incurred on behalf of the Foundation.

- 2.3. The Foundation shall be registered in terms of the South African Nonprofit Organisations Act, No 71 of 1997 and all mandatory provisions of the said Act shall apply to it, whether or not specifically mentioned in this Constitution.

3. MEMBERSHIP

Membership of the Foundation is open to:

- 3.1. Individuals active in the field of African music;
- 3.2. Organisations (nonprofit and nongovernmental organisations active in the field of African music); and
- 3.3. Businesses (private companies and businesses active in the field of African music).
- 3.4. The Foundation shall comprise three categories of membership: full membership, associate membership and honorary membership.
 - 3.4.1. Full membership shall be open to individuals, organisations and businesses as laid out in Clauses 3.1., 3.2. and 3.3. above and complying with the Foundation's vision, objectives and principles as expressed in this Constitution.
 - a. Only full members shall be eligible to vote at a General Meeting of the Foundation.
 - b. Every full member in good standing shall be entitled to cast one vote. For the sake of clarity, good standing in this Constitution shall mean having paid the applicable membership fee in full as well as being of good reputation and complying with the Foundation's vision, objectives and principles as expressed in this Constitution.
 - c. A member eligible to vote but unable to attend a meeting may be entitled to send a proxy. Clause 7.10 of Article 7 lays out the conditions for such proxy.

- d. The right of a member eligible to vote, in person or by proxy, may be limited by the provisions of Article 2 of Schedule I to this Constitution.
- e. All full members shall pay membership fees, with the exception of the Siemens Stiftung Germany and the Goethe-Institut, who shall be accorded the special status of full member with all the rights of such status (by virtue of their financial and organisational support in the establishment of the Foundation) without payment of membership fees. Siemens Stiftung Germany and the Goethe-Institut shall each have the right to terminate their membership in the Foundation with immediate effect at their own discretion.
- f. All present at the meeting at which this Constitution is finalised, and who are eligible for full membership in terms of Clause 3.4.1. above (including representatives of the Siemens Stiftung Germany and the Goethe-Institut) shall be deemed to be founding members and shall be accorded the status of full membership upon payment of the applicable membership fee (subject to the provisions of Clause 3.4.1 (e) above), without having to apply for membership in terms of Clause 3.5. of this Constitution.

3.4.2. Associate membership shall be open to any individuals, organisations and businesses not necessarily active in the musical field but which support the Foundation's activities and whose vision, aims and objectives are compatible with those of the Foundation.

- a. An associate member may attend meetings and may be invited to speak, but shall not vote.

3.4.3. Honorary membership may be extended to individuals, subject to members' approval at the Annual General Meeting, whose activities and achievements are greatly admired by the Foundation. Honorary members are exempted from membership fees, instead providing the Foundation with their image, reputation and support.

- a. An honorary member may attend meetings and may be invited to speak, but shall not vote.
- 3.5. Applications for membership shall be made to the Directorate which may seek whatever information is necessary to determine the applicant's eligibility. The Management Board (the Board) shall have the power to approve or reject the application. The Directorate shall keep and maintain a register of all members of the Foundation and shall present such register to the Board for information from time to time.
- 3.6. Any member may resign from the Foundation by giving one month's notice in writing of the intention to do so, and upon the expiry of such notice shall cease to be a member.
- 3.7. The Board may decide to terminate membership in the case of non-payment of fees; in the case of conduct which may bring the Foundation into disrepute; or in the case of any other violation of the Foundation's Constitution. Such a decision by the Board shall be subject to ratification at the next General Meeting to be held after such decision.
- 3.8. Membership shall be terminated upon a member's death or, in the case of a judicial body, upon its dissolution.

4. ORGANISATIONAL STRUCTURE

- 4.1. A Management Board will govern the affairs of the Foundation. The Board will be made up of not less than six (6) elected members, including a chairperson, deputy chairperson and treasurer. They are the office bearers of the Foundation.
- 4.2. A representative of Siemens Stiftung Germany and a representative of the Goethe-Institut (as initiators of the Foundation) shall also have the right to a seat on the Board as long as the organisation they represent remains involved with the work of the Foundation; but Siemens Stiftung Germany and the Goethe-Institut shall each have the right to leave the Board at their own discretion.
- 4.3. Elected members of the Board shall serve for a period of two (2) years and shall step down as members in the Annual General Meeting taking place in the second

year of their membership, but shall be eligible for re-election: provided that no member of the Board shall serve for longer than six (6) years.

- 4.5 The Board may at its discretion co-opt an additional three members. The Board shall reflect a regional balance in its composition and shall aim to have a variety of expertise related to the music sector. Where for any reason the elected members of the Board do not reflect a regional balance and/or a variety of music-sector expertise, the Board shall be required to use its co-option powers to co-opt eligible persons capable of achieving this balance and variety.
- 4.6 The Board shall meet regularly, at least twice a year. More than half of members need to be at the meeting to make decisions that are allowed to be carried forward. This constitutes a quorum.
- 4.7 Minutes will be taken at every Board meeting to record the Board's decisions. The minutes of each Board meeting will be given to board members at least two weeks before the next meeting. The minutes shall be confirmed as a true record of proceedings, by the next meeting of the Board, and shall thereafter be signed by the chairperson.
- 4.8 If a member of the Board does not attend four Board meetings in a row the Board shall find a new member to take that person's place.

5. POWERS OF THE MANAGEMENT BOARD

The Board shall act within the spirit of the Foundation and according to the principles expressed in this Constitution; and shall have the power to do all things necessary to carry out and promote the aims and objectives of the Foundation, except such matters as are required by this Constitution to be submitted to an Annual General Meeting of the Foundation, or any other specific business to be submitted at a Special General Meeting (including, in each case, amendment of this Constitution). Without limiting the powers and duties of the Board, they shall include the following:

- 5.1. To devise, approve and amend policies to guide the affairs of the Foundation; to give practical effect to the policy and strategic decisions of the Annual General Meeting; and to play an advisory role in policy implementation, strategic planning, budgeting and programming;

- 5.2. To make, amend or rescind By-laws for the administration of the affairs of the Foundation, within the scope of this Constitution;
- 5.3. To appoint committees from among its members or from a broader pool of experts for such purpose and upon such terms as may be considered desirable, and to delegate such powers as may be necessary to such committees;
- 5.4. To summon, at any time where necessary, a General Meeting of the Foundation;
- 5.5. To oversee the financial affairs of the Foundation by approving budgets and monitoring expenditure and income;
- 5.6. To authorise the Directorate to open banking accounts in the name of the Foundation and to resolve and monitor the manner of operation of such accounts;
- 5.7. To appoint and employ a director and other staff to run the Directorate of the Foundation;
- 5.8. To meet at least twice a year in order to carry out the above functions and any other functions or activities consistent with the nature, vision and objectives of the Foundation as may arise and are within the mandate of the Foundation.

6. DIRECTORATE

- 6.1. The day-to-day administration of the Foundation shall be managed by the Directorate, which shall consist of the director and any such additional staff members as it may become necessary to appoint. The director shall not be a member of the Board, but as a member of the Directorate shall organise and attend all Board meetings and take the minutes thereof.
- 6.2. The By-laws of the Foundation shall further define the competence of the Directorate.
- 6.3. The Directorate shall be based in South Africa. Regional offices or branches in other African countries may be established according to the growth, development and expansion of the Foundation.

7. GENERAL MEETINGS

- 7.1. The General Meeting is the highest decision-making body of the Foundation.
- 7.2. The General Meeting, including the Annual General Meeting, shall exercise the necessary powers for the promotion of the aims and objectives of the Foundation, and the chairperson of the Board shall preside over the Meeting.
- 7.3. The Annual General Meeting shall elect the Management Board as and when such elections may become due.
- 7.4. Special General Meetings may be called by the Directorate at the bidding of the chairperson of the Board for purposes of dealing with any specific business of the Foundation and passing resolutions thereon.
- 7.5. An Annual General Meeting may pass resolutions, and decide on the date and venue of the next Annual General Meeting.
- 7.6. Full members shall be entitled to vote at the Annual General Meeting in respect of matters constituting the business of an Annual Meeting including the approval of the budget, annual financial accounts and reports; the appointment and removal of members of the Management Board; ratification of termination of a member's membership.
- 7.7. The presence (or representation by their proxies) of five per cent (5%) of the voting members of the Foundation shall constitute a quorum at a General Meeting. No member present shall be entitled to carry more than two (2) proxies. For the sake of clarity, in this Constitution 'present' shall mean a virtual as well as an actual presence.
- 7.8. Only members present or their proxies shall be entitled to vote at a General Meeting. Except as otherwise dealt with in this Constitution, decisions at a General Meeting shall be taken by a simple majority (fifty per cent (50%) plus one vote) of members or their proxies present and voting, unless the chairperson of the Board determines otherwise.
- 7.9. The structure of the voting procedure shall be determined by the voting structure in General Meetings attached to this Constitution as Schedule I.

- 7.10. Any member who intends to send a proxy to represent her or him at a General Meeting shall, not fewer than five (5) days in advance of the Meeting, notify the Board in writing of such intention.
- 7.11. Voting at the General Meeting shall be by show of hands unless a secret poll is demanded by a member present and entitled to vote. The chairperson shall have a casting vote.
- 7.12. The Board may, if mandated to do so by a General Meeting, devise a method of voting by electronic mail using computers, laptops and/or other digital devices. Such revision of the voting process shall, if put into effect, supercede all clauses in this Constitution which limit voting to votes cast by members physically present or their proxies.
- 7.13 The Directorate shall ensure that minutes are taken of all General Meetings and shall make such minutes available to any member upon written request.

8. PROCEDURE PRIOR TO AND AT GENERAL MEETINGS

- 8.1 At least twenty-one (21) days before the date of a General Meeting (including the Annual General Meeting), the director shall, at the bidding of the Management Board, give notice to all members of the Foundation of the date, time and venue of the meeting.
- 8.2 In respect of the Annual General Meeting the director shall, in such notice, call for nominations, if applicable, for persons to serve on the Board of the Foundation and for any resolution or any specific matter to be considered at the Meeting.
- 8.3 Nominations for persons to serve on the Board or notice of any resolutions to be considered at a General Meeting may be made by any member and shall be given in writing to the director fourteen (14) days before the date of the Meeting.
- 8.4 At least seven (7) days before the date of a General Meeting the director shall send to the members of the Board and to members of the Foundation:
- a. The agenda for the meeting;

- b. In respect of an Annual General Meeting, the minutes of the previous Annual General Meeting and of any other General Meetings of which the minutes have not already been confirmed at a General Meeting;
 - c. In respect of an Annual General Meeting, a copy of the financial statements for the past financial year and a proposal for a budget for the coming financial year;
 - d. In respect of an Annual General Meeting, names of nominees for members of the Board (if applicable);
 - e. Notice of any resolution which has been proposed for adoption and/or any specific matter which has been proposed for consideration at the Meeting.
- 8.5 No resolution or specific matter of which notice has not been given shall be put to the vote at a General Meeting, but the chairperson may, at his or her discretion, allow any amendment of the wording of the resolution.
- 8.6 The Directorate shall take minutes of the proceedings of a General Meeting and shall circulate these to all members within thirty (30) days after the Meeting.

9. FINANCIAL MATTERS

- 9.1 The Directorate shall keep proper books of account with respect to the assets and liabilities of the Foundation, as well as sums of money received and spent.
- 9.2 The funds shall be under the administration of the director and the authority of the treasurer.
- 9.3. The Foundation's financial transactions shall be conducted by means of a banking account.
- 9.4 The finances of the Foundation shall be subject to annual independent audits. The Board shall present the Foundation's audited financial statements and activity report (a report prepared by the Management Board on the activities of the Foundation and the achievement of the objects of the Foundation during the

respective financial year) to the Annual General Meeting, which will adopt the annual financial statements and reports.

10. INCOME, PROPERTY AND MONIES

10.1. Whereas some of its members may engage in profit-making activities, the Foundation itself is a voluntary, nonprofit organisation.

10.2. The income, property and monies of the Foundation, from whatsoever source derived, shall be applied solely towards the promotion of the objectives of the Foundation as set forth in this Constitution and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member.

10.3. Nothing contained in Clause 10.2. shall preclude the payment to staff or members of reasonable travel, subsistence or out-of-pocket expenses, allowances or other remuneration for services rendered by them to or on behalf of the Foundation.

11. FINANCIAL YEAR OF THE FOUNDATION

The financial year of the Foundation shall run from the first day in July to the last day in June of the following year.

12. BY-LAWS

12.1. The Management Board shall also have the power to issue By-laws to clarify and provide details of issues affecting members and the operation of the Foundation; and to govern the administration of the Foundation; and they shall be binding upon members of the Board, upon members, and upon the staff of the Foundation.

12.2. In case of doubt as to the meaning of the By-laws the interpretation of the Board shall be binding until such time as the Foundation may otherwise determine at a General Meeting.

12.3. In case of contradiction between the Constitution and the By-laws, the Constitution shall take precedence.

13. INDEMNITY

13.1. Every member of the Board and of any committee acting on behalf of the Foundation shall be entitled to recompense for any reasonable cost or expense incurred on behalf of the Foundation or in the execution of his or her office, except where such cost or expense is incurred by his or her wilful act in default of his or her duty.

13.2. Neither the Foundation nor any member thereof shall be liable for any loss or misfortune sustained by any member as referred to in Article 13.1 where such loss or misfortune is not a concomitant part of his or her duty.

14. AMENDMENT OF THE CONSTITUTION

Proposed amendments to this Constitution may be made by a member eligible to vote and submitted in writing to the director at least sixty (60) days prior to the meeting at which it is to be tabled. The Constitution may be amended by the vote of not less than seventy five per cent (75%) of the members present and voting (or their proxies) at a duly convened and quorate Annual General Meeting. In this respect it should be noted that Schedule I is an integral part of this Constitution.

15. DISSOLUTION/WINDING UP

15.1. The Foundation may close down if at least two-thirds of the members present and voting at a meeting convened for the purpose of considering such matter, are in favour of closing down.

15.2. When the Foundation closes down it has to pay off all its debts. After doing this, if there is property or money left over it should not be paid or given to members of the organisation. It should be given in some way to another nonprofit organisation that has similar objectives. The organisation's general meeting can decide what organisation this should be.

This Constitution was approved and accepted by the founding members of MUSIC IN AFRICA at a meeting held in Nairobi, Kenya, on 27 July 2013 and amended at an Annual General Meeting held at Goethe-Institut in Johannesburg on 27/11/2014.

1. Ribis NZEZA BUNKETI BUSE, chairperson

2. ANDRE STEPHEN LE ROUX



3. Belisa Caboz Rodrigues, Treasurer ~~Belisa~~

4. Sokhena Aichatou DEME ~~Sokhena~~

5. BILL ODI

6 - RAMAROSON ANDRIANARY Setz

~~Bill~~
